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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 902

[93-27]

Operations

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is promulgating its final rule on miscellaneous agency internal procedures, namely: Its procedure for the semiannual assessments on the Federal Home Loan Banks ("FHLBanks") for Finance Board operating expenses, its procedure for conducting a monthly survey on rates and terms on conventional, one-family, nonfarm mortgages, its schedule of fees for specific agency services available upon request, and the establishment of its Minority Contractors Outreach Program.

EFFECTIVE DATE: April 13, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On December 30, 1991, the Finance Board promulgated its Operations regulations, at 12 CFR part 902, as a proposed rule. See 56 FR 67239 (Dec. 30, 1991). The proposed rule provided for a 30-day comment period. No public comments were received. However, the Finance Board is clarifying certain provisions of the proposed rule as detailed below.

The procedures adopted by this rule will implement provisions of various statutes. The assessment of the FHLBanks is governed by the Federal Home Loan Bank Act. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 mandates the

agency's Minority Contractors Outreach Program, and the Charter Acts of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association provide for the agency's survey of mortgage rates. The provision requiring a fee for specialized services not offered the general public is found in title 31 of the United States Code.

The definitions have been changed in the final rule. Also, the final rule deletes some of the language in § 902.4 of the proposed rule. Since the publication of the proposed rule, the agency is no longer providing a FAX broadcasting service for its monthly index of mortgage rates.

The final rule contains several changes to § 902.5—Minority Contracts Outreach Program. The proposed rule used the terms "certified minority contractors" and "minority-owned entities" throughout the section. The final rule uses only the term "minority-owned entities" to refer to either existing contractors or possible contractors, as appropriate. The next change is the addition to § 902.5(c)(ii) of a general category "(G) Other services" to allow for the identification of other categories of services beyond those specifically identified. The last change appears at § 902.5(c)(5) (i) and (ii). In each paragraph, the text has been modified to provide that contracts, whether under or over \$25,000, will be awarded in compliance with appropriate Federal procurement laws. The reference in each paragraph to "the need for full and open competition" has been eliminated because it is subsumed within the requirement that all awards be made in a manner consistent with applicable Federal procurement laws. These laws allow exception to full and open competition under appropriate circumstances, and the revised regulation eliminates the inference that such circumstances would not be available.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Finance Board certified that this regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 902

Assessments, Federal home loan banks, Government contracts, Minority businesses, Mortgages.

Accordingly, the Finance Board is amending its general regulations by adding part 902 thereto, as follows:

PART 902—OPERATIONS

- Sec.
902.1 Definitions.
902.2 Assessments.
902.3 Monthly interest rate survey.
902.4 Schedule of charges for agency services.
902.5 Minority Contractors Outreach Program.

Authority: 12 U.S.C. 1422b; 12 U.S.C. 1438(b); 12 U.S.C. 1833e.

§ 902.1 Definitions.

As used in this part:

Bank means a Federal Home Loan Bank.

Bank System means the Federal Home Loan Bank System, consisting of all twelve Banks.

Business means an enterprise, including a firm, corporation, joint stock company, partnership, joint venture or association that engages in commercial activity on a regular basis.

Chairperson means the Chairperson of the Board of Directors.

Finance Board means the Federal Housing Finance Board.

Minority means:

(1) A male person or persons classified as either an African-American, a Native-American, a Hispanic-American, or an Asian-American; or

(2) A female person or persons regardless of ethnic or racial classification.

Minority-owned entity means a business that is:

(1) Owned or controlled by any combination of African-Americans, Native-Americans, Hispanic-Americans or Asian-Americans, regardless of gender, where such ownership or control includes the management of the daily business operations; or

(2) Owned or controlled by female persons, regardless of ethnic origin, where such ownership or control includes the management of its daily business operations.

§ 902.2 Assessments.

(a) Pursuant to section 18(b) of the Federal Home Loan Bank Act, as amended, (12 U.S.C. 1438(b)), the Finance Board will assess the Bank System for such funds as may be necessary to meet the annual

administrative and operating expenses of the Finance Board. This section governs the procedures under which each Bank shall be assessed for its portion of the Finance Board's annual expenses.

(b) Prior to the end of each calendar year, or as soon as possible thereafter, the Finance Board shall adopt a resolution approving an annual budget for all Finance Board expenses for the next calendar year. A copy of such resolution shall be forwarded to each Bank president.

(c) The Finance Board shall make two assessments of the Bank System for each calendar year. The first assessment shall cover the first six-month period of each calendar year, and the second assessment shall cover the second such period.

(d) Each assessment for each six-month period on the Bank System will be for one-half of the budget approved by the Finance Board pursuant to paragraph (b) of this section, except that such amount may be offset by:

(1) Revenues received by the Finance Board from subleasing portions of its office building in the District of Columbia; and

(2) Funds, determined by the Finance Board to be surplus funds from prior assessments, in the Finance Board's special deposit account in the United States Treasury at the time of assessment.

(e) Each assessment made pursuant to this section shall be paid by the Bank System. Each Bank's *pro rata* share of such assessment will be based on the total paid-in value of its capital stock, relative to the total paid-in value of all capital stock of the Bank System.

(f) Prior to making an assessment pursuant to this section, the Finance Board shall adopt a resolution notifying the Banks that an assessment is being levied for a particular six-month period and shall forward a copy of such resolution to each Bank president.

(g) Following the notification in paragraph (f) of this section, the Chairperson, or designee, shall determine the assessment for each Bank and notify the Banks in writing of the amount due under the assessment, based on the formula in paragraph (e) of this section.

(h) Unless otherwise instructed by the Chairperson, or designee, each Bank may transfer its *pro rata* share of an assessment to the Finance Board in equal monthly installments over the six-month period covered by the assessment.

§ 902.3 Monthly interest rate survey.

The Finance Board conducts its Monthly Survey of Rates and Terms on Conventional One-Family Nonfarm Mortgage Loans in the following manner:

(a) *Initial survey.* Each month, the Finance Board samples approximately 1,000 mortgage lenders (savings and loan associations, savings banks, commercial banks, and mortgage loan companies) and asks them to report the terms and conditions on all conventional mortgages (not federally insured or guaranteed) used to purchase single-family homes that each such lender closes during the last five working days of the month. In most cases, the information is reported electronically in a format similar to Finance Board Form FHFB 10-91. The data is weighted so that the pattern of weighted responses matches the actual pattern of mortgage originations by lender type and by region. The Finance Board tabulates the data and publishes standard data tables late in the following month.

(b) *Adjustable-rate mortgage index.* The weighted data, tabulated and published pursuant to paragraph (a) of this section, is used to compile the Finance Board's adjustable-rate mortgage index, entitled the "National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders." This index is the successor to the index maintained by the former Federal Home Loan Bank Board and is used for determining the movement of the interest rate on the renegotiable-rate mortgages and on some other adjustable-rate mortgages.

(c) *Means of survey.* The Finance Board collects the data for the compilation of the indices described in this section by contract. Pursuant to such contract, a Finance Board form, entitled "Monthly Survey of Rates and Terms on Conventional One-Family Nonfarm Mortgage Loans" (FHFB Form 10-91), is distributed to selected lending institutions. The data is collected, compiled and processed, and the completed survey results are forwarded to the Housing Finance Directorate of the Finance Board for tabulation and distribution.

§ 902.4 Schedule of charges for agency services.

(a) *Authority.* Section 9701 of title 31, United States Code, directs government agencies to charge a fee for any special service provided to a selected segment of the public that makes use of such special service (31 U.S.C. 9701). The Office of Management and Budget's Circular A-25 contains guidelines for

agencies to follow when promulgating regulations for such user fee charges. This section implements that authority.

(b) *ARM Index special programming service.* (1) The Finance Board develops and makes available special tabulations of its monthly interest rate survey data for individual users, upon request.

(2) Each request for a specialized interest rate survey will be made in writing to the Housing Finance Directorate.

(3) The fee for such special service is a \$100 per hour for the analyst's time, with a minimum charge of \$100, prepaid, to accompany the written request.

§ 902.5 Minority Contractors Outreach Program.

(a) *Scope.* (1) This section establishes the Finance Board's Minority Contractors Outreach Program and designates the officials responsible for implementing the Program and its oversight.

(2) The Minority Contractor Outreach Program:

(i) Seeks to encourage the maximum participation of minorities in all Finance Board procurement contracts for goods or services;

(ii) Shall operate consistent with the principle of full and open competition and the concept of contracting for minimum agency needs at the lowest practical cost; and

(iii) Shall not be construed to be a substitute means of procurement for the Finance Board's established procedural process for the procurement of goods or services.

(b) *Responsibilities.* (1) The Director of Administration shall have general oversight of the Minority Contractors Outreach Program.

(2) The Chairperson shall:

(i) Appoint an Minority Contractors Advocate, who shall—

(A) Have primary responsibility for furthering the purposes of the Minority Contractors Outreach Program;

(B) Be responsible for challenging barriers to, and promoting maximum participation by, minorities or minority-owned entities in the Finance Board procurement process; and

(C) Develop a manual describing the procedures by which the Finance Board will implement the Minority Contractors Outreach Program.

(ii) Assign such Advocate only such duties or responsibilities, with respect to the Minority Contractors Outreach Program, as are consistent with this section, and shall not assign such Advocate any duties of a contracting officer or of a technical representative on a contract.

(c) *Program components.* The Minority Contractors Outreach Program procedures shall include the following:

(1) *Contractor File.* (i) The Minority Contractors Advocate shall compile and maintain an ongoing file consisting of minority-owned entities that are interested in contracting with the Finance Board for goods or services through the competitive bidding or negotiated procurement process.

(ii) The information in such file shall list the current name and address of each such minority-owned entity and shall categorize each name and address as follows:

- (A) Accounting services;
- (B) Building support services;
- (C) Computer services;
- (D) Consulting services;
- (E) Legal services;
- (F) Office supplies and equipment; or
- (G) Other services.

(2) *Solicitation.* The Minority Contractors Advocate shall implement a procedure for soliciting potential candidates for the contractor file provided for in paragraph (c)(1) of this section, by means of any of the following:

(i) Referrals from executive departments, agencies or instrumentalities of the Federal Government;

(ii) Direct solicitation of selected candidates;

(iii) Advertising by direct mail or publications specifically directed to minorities, or minority-owned entities;

(iv) Sponsoring Finance Board seminars designed to explain the Minority Contractors Outreach Program to minority contractors or minority-owned entities who have the potential of contracting with the Finance Board;

(v) Attendance at conventions, seminars or other professional conferences of minorities or minority-owned entities located in the greater Washington metropolitan area.

(3) *Certification.* (i) No minority-owned entity (whether solicited by the Minority Contractors Advocate or not) may participate in the Finance Board procurement process as a minority-owned entity unless certified as such by the Chairperson, or designee.

(ii) The certification shall be by a means and form approved by the Finance Board.

(iii) Nothing in this section shall be deemed to prevent a non-certified minority-owned entity from participating in the procurement process as an entity not designated or deemed a minority or minority-owned entity.

(4) *Promotion.* (i) The Minority Contractors Advocate shall maintain an

ongoing campaign of promotion of the Minority Contractors Outreach Program with all certified minority-owned entities.

(ii) This campaign shall include:

(A) Ongoing dissemination of information about the Minority Contractors Outreach Program with certified minority-owned entities;

(B) Alerting appropriate certified minority-owned entities when the Finance Board makes a solicitation for a bid or initiates the negotiation of a procurement contract for goods or services;

(C) Acting as a liaison between the Finance Board contracting authorities and a particular minority-owned entity; and

(D) Assisting any certified minority-owned entity to understand Finance Board contracting procedures or other information regarding a particular bid or contract.

(iii) Nothing in this paragraph (c)(4) shall authorize the Minority Contractors Advocate to represent the interests of any minority-owned entity in any contract matter or bid before the Finance Board.

(5) *Contract award guidelines—(i) Contracts not exceeding \$25,000.* The Finance Board contracting Officer shall, from time to time, award contracts for the procurement of goods or services, that do not exceed \$25,000 in costs, to certified minority-owned entities listed in the contractor file provided for in paragraph (c)(1) of this section, to the extent not inconsistent with the principles of Federal Government procurement laws. Such awards shall be made after consultation with the Minority Contractors Advocate.

(ii) *Contracts exceeding \$25,000.* Contracts for goods or services that exceed \$25,000 will be awarded on the basis and consistent with the principles of the Federal Government procurement laws. The Finance Board Contracting Officer and the Minority Contractors Advocate shall work to ensure, promote and facilitate the maximum participation of minority-owned entities in the Finance Board's procurement of goods or services that exceed \$25,000.

Dated: April 2, 1993.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,
Chairman.

[FR Doc. 93-6432 Filed 4-12-93; 8:45 am]

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12 CFR Part 904

[93-24]

**Freedom of Information Act
Regulations**

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is issuing its regulations, containing the procedures for requesting and receiving information from Finance Board records pursuant to the Freedom of Information Act (FOIA), as a final rule.

EFFECTIVE DATE: April 13, 1993.

FOR FURTHER INFORMATION CONTACT: David A. Guy, Associate General Counsel, (202) 408-2536, or Charles Szlenker, Attorney-Advisor, (202) 408-2554, Office of Legal and External Affairs, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The FOIA provides that each agency subject to its terms must promulgate regulations containing the procedures under which the public may obtain data or information from the agency. 5 U.S.C. 552(a)(1)(A). As an executive agency under Federal Home Loan Bank Act section 2A, the Finance Board is subject to FOIA. 12 U.S.C. 1422a(a)(2). Accordingly, the Finance Board issued its proposed FOIA procedures on December 30, 1991. See 56 FR 67242 (Dec. 30, 1991) (to be codified at 12 CFR part 904).

The Finance Board received comments from some of the Federal Home Loan Banks (FHLBanks), particularly with regard to whether these new FOIA regulations will apply to their records. Because the FHLBanks are not agencies within the meaning of 5 U.S.C. 552(f), it is the position of the Finance Board that information held by the FHLBanks is not subject to FOIA.

Some editorial changes have been made in the final rule, including modification of the definition of a record to conform with 44 U.S.C. 3301. The Finance Board has also decided to change the title of part 904 from "Character and Availability of Records" to the more straightforward title: "Freedom of Information Act Regulations."

List of Subjects in 12 CFR Part 904

Freedom of information.

Accordingly, part 904 is amended by revising the part heading, and by adding the text, to read as follows: