

FEDERAL HOUSING FINANCE BOARD**12 CFR Parts 900, 905, 965, 966, 969, 985 and 989****[No. 2000-24]****RIN 3069-AA88****Office of Finance; Authority of Federal Home Loan Banks To Issue Consolidated Obligations****AGENCY:** Federal Housing Finance Board.**ACTION:** Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations governing the operations of the Office of Finance (OF), a joint office of the Federal Home Loan Banks (Bank or Banks), and the issuance of debt for the Federal Home Loan Bank System. The final rule authorizes the Banks to issue joint debt, *i.e.*, bonds, notes or debentures, on which the Banks are jointly and severally liable, to be called consolidated obligations (COs), under section 11(a) of the Federal Home Loan Act (Act). This action is intended to more closely reflect the reality of the Banks' current funding operations by allowing the Banks to be responsible for accessing the capital markets through the OF to fund their own operations, rather than having the Finance Board issue COs on behalf of the Banks as is currently the case. The final rule does not have a substantive effect on the debt issuance process or on the joint-and-several liability of the Banks on outstanding COs or COs to be issued in the future. This action is consistent with devolutionary actions taken by Congress to give the Banks greater autonomy over the management of their business and to remove the Finance Board from involvement in Bank management functions.

The final rule also incorporates changes to the leverage limit that were originally proposed as a part of conforming amendments to the policy statement entitled "Financial Management Policy of the Federal Home Loan Bank System" (FMP). Specifically, the final rule deletes the Bank System-wide leverage limit, recasts the Bank-by-Bank leverage limit from a liability-based limit to an asset-based limit and incorporates into regulation expanded leverage originally permitted for year 2000 liquidity purposes, all as consistent with the Act provisions of the recently enacted Gramm-Leach-Bliley Act.¹

The final rule also authorizes the Finance Board to continue to issue COs

under the authority of section 11(c) of the Act. At some point to be determined by the Finance Board and the OF, the issuance of debt under the authority of section 11(c) of the Act will cease and all COs will be issued under the authority of section 11(a) of the Act. The final rule makes clear that OF ultimately will be responsible for performing all CO issuance functions, including preparation of combined financial reports, for the Banks. The final rule also effects a number of other corporate governance changes to maximize the operating efficiency of the OF.

The Finance Board is also adopting in final form certain conforming amendments to the FMP. A Notice describing the FMP amendments in detail is published elsewhere in this issue of the **Federal Register**.

DATES: This final rule is effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**I. The Proposed Rule**

On January 4, 2000, the Finance Board published for comment a proposed rule to amend parts 910 and 941 of the Finance Board's regulations governing operation of the OF and issuance of COs, to enable the OF to issue debt on behalf of the Banks pursuant to section 11(a) of the Act, require the OF to prepare the quarterly and annual combined financial reports of the Bank System, and provide services at the request of two or more Banks related to joint asset activities undertaken by the requesting Banks, including the administration of Member Mortgage Asset programs and liquidity management. The proposed rule also would have amended § 900.30 of the Finance Board's regulations to provide for the termination as of December 31, 2000, of the OF's authority to act as agent for the Finance Board in the issuance of COs under section 11(c) of the Act. By this provision, the Finance Board intended to transition itself out of, and the Banks into, the debt issuance function under the provisions of section 11(a) of the Act as soon as practicable.

See 65 FR 324 (Jan. 4, 2000). The proposed rule described a new structure for the OF to accommodate additional functions proposed to address new challenges faced by the Bank System. The 60-day public comment period closed on March 6, 2000. The Finance Board received a total of 22 comments, 15 from Banks, 5 from trade associations, 1 from a Bank member, and 1 from a group of Bank members. A majority of the commenters generally supported the concept of devolving the debt issuance from the Finance Board to the Banks, but opposed the proposed restructuring of the OF.

II. Comments on the Proposed Rule and Analysis of Changes Made in the Final Rule**A. Joint Asset Activity Management and Restructuring of the Office of Finance**

The proposed rule would have amended part 941 of the regulations to authorize the OF, as the only statutorily recognized joint office of the Banks, to operate as a centralized facility through which Bank assets could be efficiently administered on a joint basis. The proposed rule provided that, to the extent requested by two or more Banks pursuant to any agreement or contract, the OF shall facilitate or provide services to the Banks in connection with any Bank joint asset activities authorized by law. With regard to the joint asset activities of the Banks, the OF would have been required to provide administrative and technical support for the origination, purchase, management, servicing or sale of any asset owned by one or more Banks pursuant to any contract, including acquired member assets; provide market information to the Banks concerning acquired member assets and other assets or investments of the Banks; conduct and provide research on such assets and investments; develop effective systems to monitor credit exposure and manage counter-party risk; adopt procedures to assist the Banks in managing their liquidity; and adopt procedures to facilitate the inter-Bank sale of participation interests in advances and investments. This section would not have required the Banks to make use of the OF in this capacity, but it would have required the OF to provide the services outlined if two or more Banks wished the OF to do so. The OF would have been authorized to establish a reasonable fee structure or charge for its services by contract or otherwise. It also would have been authorized to mediate among competing Bank demands, in accordance with its specified duties and responsibilities.

¹ Pub. L. 106-102, 113 Stat. 1338 (Nov. 12, 1999).

These proposed provisions were intended primarily to address the Finance Board's belief that the market has created an incentive and a business need for a facility controlled by the Banks and their members to provide economies and efficiencies of scale, as it has done for the issuance of COs by the Finance Board, by giving the Banks the flexibility to centralize certain of their common business functions. As discussed in the **SUPPLEMENTARY INFORMATION** of the proposed rulemaking, *see* 65 FR 324 (Jan. 4, 2000), the Finance Board anticipates that this need will become even more critical as the Banks develop asset activities such as acquired member assets as part of their core business.² Not only would such a facility provide operational benefits, it also would enhance the safety and soundness of the operations by providing both expertise and a mechanism for achieving risk management, and geographic diversity on a joint asset portfolio basis. In light of the recent enactment of Title VI of the Gramm-Leach-Bliley Act, the Federal Home Loan Bank System Modernization Act of 1999, the Finance Board proposed a reorganization of the OF that would allow OF, the only joint office of the Banks, to function in this way at the request of the Banks and facilitate growth in the Bank System's business as the Banks seek to provide their members with new credit products and respond to changes in the marketplace and congressional mandates.

The Finance Board believes that administering joint assets through a centralized facility could offer safety-and-soundness benefits of better risk-management capabilities and geographic diversity in the asset portfolio, which is particularly important given the national nature of the mortgage markets. The mortgage market is no longer the fragmented, localized market that it was when Congress created the Bank System in 1932. Driven by technological improvements, the mortgage market's delivery systems have become more national in scope, and the mortgage market now plays a central role in the national economy. The need for "an appropriate vehicle for coordination of

System-wide business issues," such as a central facility to assist the Banks in managing various aspects of their operations, including mortgage-related assets, has grown in the ten years since Congress confirmed the OF as a joint office of the Banks in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA).³

A majority of the commenters opposed this portion of the proposal, as well as the provisions of proposed § 941.4⁴ concerning the restructuring of the OF board of directors to significantly alter both the size and composition of the OF board of directors by including representatives from each Bank, elected members of the Bank System, and appointed representatives of the general public with relevant experience, and other proposed changes designed to provide the structure, additional functions and operational capacity the OF would have to possess in order to accommodate the joint assets activities function. Because the Finance Board does not wish to delay adoption of the debt issuance provisions in final form, the Finance Board has decided to remove the joint asset activity management and restructuring provisions from the text of this final rule. The proposals regarding joint asset activity management functions for the OF and the necessity to adapt the structure of the OF for the addition of such functions, however, remain under active consideration and analysis by the Finance Board. It is anticipated that the Finance Board will respond to the comments and adopt those provisions in

a future separate notice of final rulemaking.

B. Authorization of Banks To Issue Joint Debt Under Section 11(a) of the Act

As discussed in the **SUPPLEMENTARY INFORMATION** of the proposed rulemaking, section 11(a) of the Act provides that the Banks may issue bonds, debentures or other obligations "upon such terms and conditions" as the Finance Board may approve and "subject to the rules and regulations prescribed by" the Finance Board. 12 U.S.C. 1431(a). Proposed § 910.2(b) (redesignated as § 966.2(b) in the final rule) expressly authorizes the OF to undertake the issuance of joint Bank debt pursuant to section 11(a) of the Act as COs on which all of the Banks would be jointly and severally liable subject to § 966.9 of the Finance Board regulations (which governs the joint-and-several liability of the Banks on COs issued under section 11(c) of the Act). As adopted, § 966.2(b) also provides that the authorization contained therein shall be deemed to constitute satisfaction of the requirement for Finance Board approval of the "terms and conditions" pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

As discussed in the **SUPPLEMENTARY INFORMATION** of the proposed rulemaking, the Finance Board wishes to achieve the goals of continuing to give the Banks the autonomy to manage and run their own businesses by authorizing the Banks to issue the COs, while eliminating the continued potential for conflict with the Finance Board in its roles as regulator of the OF and the Banks and issuer of the COs. *See* 65 FR 324 at 325 (Jan. 4, 2000).

A majority of the commenters generally supported the concept of devolution of the CO issuance function to the Banks. However, almost all of the commenters expressed varying degrees of apprehension about recent market volatility and about how implementation of the final rule would be perceived in the capital markets, and many recommended delaying adoption of the final rule because of those concerns. Several commenters questioned whether the Finance Board had a legal basis to require, as a condition of authorizing the Banks to issue debt under section 11(a) of the Act, that the Banks be jointly and severally liable on the debt. One Bank commenter questioned whether COs issued by the OF as agent for the Banks would be afforded the same treatment under the Federal securities laws as COs issued by the Finance Board under section 11(c).

² Indeed, the General Accounting Office (GAO) foresaw this need, stating that "there may be a need for a central coordinating mechanism . . . [that] should reside in the [Bank] System itself. *See* report commissioned by Congress in section 1393 of the Housing and Community Development Act of 1992, issued on December 8, 1993 (GAO/GGD-94-38) (GAO Report), at 113. The GAO Report observed that there were certain positive goals that could be attained by relieving the Finance Board of certain Bank System governance functions, including enhanced cost control and the centralization of "certain business functions." *Id.* at 114.

³ *See* Pub.L. 101-73, tit. VII, sec. 702, 103 Stat. 183 (Aug. 9, 1989). The GAO report noted that FIRREA made "many changes" to the Bank System that "introduced significant cultural changes for the Banks and their members." GAO Report at 19-20. Principally, after FIRREA, the Banks were no longer involved in the oversight and supervision of their members. The members henceforth only would view the Banks as a credit facility, and this change would promote the cooperative nature of the Bank System. GAO concluded, however, that to attract new, voluntary members and retain members, the Banks "must provide sufficient value—through the products and services offered and the dividends paid—to warrant the required stock investment for membership." *Id.* at 21. The GAO Report noted the need for coordination of System-wide business issues. *Id.* at 117.

⁴ The Finance Board recently reorganized and redesignated all of its regulations. *See* 65 FR 8253 (Feb. 18, 2000). Part 900 of the Finance Board's regulations, 12 CFR part 900 (1999), was redesignated as part 905, *see* 65 FR 8253, 82 (*to be codified at* 12 CFR part 905); part 910, "Consolidated Bonds and Debentures," was redesignated as part 966 "Consolidated Obligations," *see* 65 FR 8253, 82 (*to be codified at* 12 CFR part 966); and part 941, "Operations of the Office of Finance," was redesignated as part 985, *see* 65 FR 8253, 82 (*to be codified at* 12 CFR part 985).

There are no conditions or restrictions attached to the Finance Board's authority to prescribe the rules and regulations or to approve the terms and conditions of issuance of Bank debt under section 11(a). So long as the Finance Board exercises its power to promulgate its rules in a form authorized by Congress,⁵ and the rules are reasonable and consistent with the statute, the rules will be valid and enforceable, and will have the force and effect of law.⁶

As proposed, the final rule applies the same rules governing the apportionment of joint-and-several liability to COs issued by the Finance Board pursuant to section 11(c) of the Act as to COs issued by the Banks pursuant to section 11(a). By requiring joint-and-several liability as a condition of authorizing the Banks to issue debt under section 11(a), the Finance Board is implementing by regulation an issuance scheme that is identical to the issuance scheme established by Congress elsewhere in section 11 of the Act, and the Banks will be subject to the same payment provisions (*i.e.*, the joint-and-several liability provisions) currently established in the Finance Board's regulations. Nothing in the Finance Board's regulatory action requiring the Banks to be jointly and severally liable on debt issued under section 11(a) is inconsistent with any existing statutory or regulatory requirement.

The Finance Board has concluded that it has the authority both to promulgate this rule and to require, as a condition of authorizing the Banks to issue debt under section 11(a) of the Act, that the Banks be jointly and severally liable on that debt. Further, the Finance Board has concluded that the technical change in the issuer of the COs from the Finance Board to the Banks will have no effect on the treatment of COs under the Federal securities laws.⁷

C. Authorized Liabilities

Proposed § 910.2(a) (redesignated as § 965.2 in the final rule) set forth an exclusive list of liabilities authorized for Bank business operations, which was designed to replace the Funding Guidelines section of the FMP. *See* 65 FR 324 at 328; 65 FR 339 (Jan. 4, 2000).

⁵ Generally, Congress has authorized Federal agencies to issue binding rules through the use of the notice and comment procedure set forth in section 553 of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* *See generally*, 1 Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 6.3 at 236 (3rd ed. 1994 and Supp. 1999).

⁶ *Id.* (citing *Fawcus Machine Co. v. United States*, 282 U.S. 375, 378 (1931); *Maryland Casualty Co. v. United States*, 251 U.S. 342, 349 (1920)).

⁷ *See* Op. Gen. Counsel (May 22, 2000).

Five commenters expressed opposition to various aspects of this provision.

Two Bank commenters and one trade association commenter objected to limiting the purchase of Federal funds and the use of repurchase agreements to meet the short-term liquidity needs of the Banks, stating that the standard was ambiguous or that the limits would make liquidity management more difficult. The Finance Board has reconsidered the need for the limit in light of the comments and in light of its change to the leverage limit from a liability-based limit to an asset-based limit, and has determined not to limit the purchase of Federal funds or the use of repurchase agreements in the final rule.

Proposed § 910.2(a)(2) (redesignated as § 965.2(b) in the final rule) was designed to continue each Bank's authority to accept deposits from members, other Banks and instrumentalities of the United States, but provided that deposit transactions may not be conducted in such a way as to result in the offer or sale of a security in a public offering as those terms are defined under the Federal securities laws. *See* 65 FR at 328. Three commenters criticized this provision, noting that it was unclear as proposed whether deposits from categories of financial institutions from which the Banks now accept deposits still would be permitted, and that there was no justification for limiting or eliminating a significant, low-cost source of funds for the Banks. The Finance Board did not intend to preclude the Banks from accepting deposits or cash accounts from any category of financial institution from which the Banks are currently authorized by statute or regulation to do so. The final rule has been revised in light of the comments to remedy this. Two commenters objected to the "no public offering" provision relating to deposits and recommended that it be eliminated as difficult to apply in light of the rate posting practices of the Banks and unnecessary given the nature of the Banks' depositors. The Finance Board agrees with the comments and has eliminated that restriction from the final rule.

D. Powers and Responsibilities of the OF

Proposed § 941.2 stated that the OF is a joint office of the Banks under section 2B of the Act; set out a two-pronged purpose for the OF; provided that, as a part of its purpose, OF shall issue COs on behalf of the Banks or the Finance Board and shall support the Banks upon the request of two or more Banks undertaking joint asset activities that the Banks are otherwise authorized by law

to undertake individually; and set out the functions the OF was authorized to undertake in support of the issuance of debt and the support to be provided to the Banks engaged in joint asset activities. *See* 65 FR 324 at 329. As previously discussed, because only the CO issuance provisions of the proposal are being adopted in final form at this time, only those comments are being addressed here. Three Banks, two trade associations, and one individual commented on some aspect of this provision of the proposed rule.

Proposed § 941.2(c) (redesignated as § 985.6(b) of the final rule) assigned to the OF the function of preparing the combined Bank System annual and quarterly financial reports as a part of the CO issuance or debt management function. The proposal codified current Finance Board policy (*See* Res. No. 98-27 (June 24, 1998)) (Policy Statement) and set forth the standards under which the OF would be required to prepare Bank System financial reports, including requiring that the scope, form and content of the disclosure contained in such financial reports generally be consistent with the requirements of the Securities and Exchange Commission's (SEC) Regulations S-K (specific narrative disclosure requirements) and S-X (accounting and financial statement disclosure requirements) (17 CFR parts 229 and 210) and be presented in accordance with the Statement Of Financial Accounting Standards No. 131, "Disclosures about Segments of an Enterprise and Related Information" (FAS 131).

The proposed rule included an Appendix listing exceptions to the standards set forth in proposed § 941.2(c)(1)(iv)(A) and (B), derived from the Finance Board's Policy Statement, which included certain disclosures concerning related-party transactions, biographical information, compensation, submission of matters to a vote of shareholders, exhibits, per-share information and beneficial ownership. The proposed rule also required the OF to file and distribute combined Bank System financial reports according to a schedule that mirrors the filing requirements applicable to corporate registrants under the Securities Exchange Act of 1934 (1934 Act) (*i.e.*, annual reports within 90 days after the end of the fiscal year and quarterly reports within 45 days after the end of each of the first 3 fiscal quarters). The proposal expressly confirmed the Finance Board's sole authority to determine compliance with the standards of proposed part 941 (redesignated as part 985) and provided an explicit compliance mechanism by

requiring the OF to promptly comply with any Finance Board directive pertaining to the preparation, filing, amendment or distribution of financial reports.

Two commenters objected to the timeframes within which the financial statements are required to be prepared and recommended that those deadlines be relaxed. One commenter also suggested that the provision governing the preparation of the system financial statements make clear that the Finance Board would make its determination as to whether the reports conform to the appropriate disclosure and accounting requirements *prior to* the release of the financial statement by the OF. Two commenters suggested the addition of a provision stating that the failure to comply with the rule would not create any private right of action that would not have existed in the absence of the regulation's reporting requirement.

Section 985.6(b) is adopted as proposed, with only minor changes, in the final rule. With respect to the comments concerning relaxing the timeframes for preparation of financial reports, the Finance Board continues to believe that, just as disclosure concerning the Bank System should conform to industry standards, so too should the Bank System provide that information to interested parties within the timeframes applicable in the industry. In this regard, the Finance Board prepared and completed both the 1999 combined annual financial report and the first quarter 2000 combined financial report within the applicable timeframes. There does not appear to be any reason why the OF could not and should not continue to meet this standard. Therefore, no changes have been made in the final rule to the proposed timeframes.

With respect to the comment concerning Finance Board review of disclosure prior to release of financial reports, the Finance Board does not wish to impose any delay in the issuance or distribution process, nor to have the process of review of these reports differ from the process of review practiced by the SEC. When the SEC reviews 1934 Act reports, it does not generally do so prior to issuance. Therefore, the Finance Board has adopted the review provision as proposed.

A provision stating that the failure to comply with the rule would not create any private right of action that would not have existed in the absence of the regulation's reporting requirement has been added to the rule in § 985.6(b)(7), in response to a concern expressed by the commenters. The Finance Board has

no intention by engaging in this rulemaking of creating any private right of action that would not have existed in the absence of this rule. It should be noted that the Finance Board does not believe that the Banks, the OF or the OF board of directors will incur any different or greater liability under any aspect of the final rule than existed previously. *See* Op. Gen. Counsel (May 22, 2000).

Proposed § 941.2(c)(ii)(C) (redesignated as § 985.8(c)(3) of the final rule) would have required OF to define, implement and maintain investor suitability standards, and assure that these standards are met. Several commenters noted that investor suitability is more properly dealt with by underwriters than by issuers. The Finance Board agrees with these comments and has revised the final rule to address suitability by requiring OF to require that *underwriters* of COs have and maintain adequate suitability sales practices and policies governing the distribution of Bank debt that are acceptable to, and subject to review by, the OF.

Proposed § 941.2(c)(2)(iv) (redesignated as § 985.6 of the final rule) would have required the OF to have systems in place for timely monitoring the unsecured credit exposure of the Banks, and appropriate systems to manage the Banks' counterparty risk. While the monitoring of counterparty risk is an existing function of the OF, management of counterparty risk, as at least two commenters pointed out, is a function more appropriately left to the Banks. The final rule has been revised to delete the requirement that the OF manage the Banks' counterparty risk, but retains the requirement that the OF timely monitor each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

Proposed § 941.2(c)(1)(i) and (iii) (redesignated as § 985.8(c)(4) of the final rule) required the OF to consider or promote the cooperative nature of the Bank System, and be mindful of and preserve the relationship between the Banks and their members, which are also issuers of debt in the capital markets. Several commenters objected to the inclusion of these concepts as ambiguous, onerous, confusing and lacking clarity as standards. One commenter suggested that this rule was not the optimal forum for addressing the matter of retail debt issuance by the Banks *vis a vis* Bank members. Another commenter, while acknowledging that Bank System debt is not currently distributed directly to retail level investors, speculated that such distributions could raise a policy issue

of "competition with the retail deposit offering of member institutions."

The Finance Board agrees that this regulation is the appropriate place to address the issue. The Finance Board agrees with the commenter that, ultimately, it should be up to the boards of directors of the Banks to determine such matters involving their members. Therefore, the final rule has been revised to prohibit the issuance of COs intended to be privately placed with or sold without the participation of an underwriter to retail investors, or issued with a concession structure designed to facilitate the placement of the COs in retail accounts, unless the OF has given notice to the board of directors of each of the Banks describing a policy permitting such issuances, soliciting comments from each Bank's board of directors, and considering the comments received before adopting a policy permitting such issuance activities. The language of the rule has been designed so as to have no effect on current debt issuance practices, which as noted above are not currently directed at retail level investors. Only departures from current practices would subject the issuance process to the notice procedure described in the rule. All other references to considering or promoting the cooperative nature of the Bank System have been deleted from the final rule.

E. Leverage Limit

The proposed rule, and corresponding proposed changes to the FMP, did not include the 20-to-1 leverage limit from § 910.1(b) of the Finance Board's regulations, or the 20-to-1 leverage limit on each Bank contained in the FMP. Instead, the proposed amendments to the FMP recast the leverage limit applicable to each Bank from a liability-based limit to an asset-based limit, and required that each Bank maintain capital in an amount equal to at least 4.76 percent of the Bank's total assets. *See* 65 FR at 328, 339. This limit required that the assets of a Bank not exceed 21 times its capital.

The Finance Board did not believe that either the elimination of the Bank System-wide leverage limit from the Finance Board's regulations, or the proposed revision to the leverage limit contained in the FMP, would have any practical effect on the Bank System or its bondholders. The Finance Board, as the regulator of the Banks, would continue to monitor each Bank for compliance with the individual leverage limit included in the FMP. The existing FMP provision prohibits a Bank from participating in COs if such transactions would cause the Bank's liabilities to

exceed 20 times the Bank's capital.⁸ The proposed revision to the FMP established an equivalent leverage standard, stated as a percentage of assets, which would require each Bank to maintain capital of at least 4.76 percent of its total assets. The imposition of the proposed standard on each Bank would ensure that the Bank System itself stays within the leverage limit, rendering any retention of a Bank System-wide leverage limit unnecessary. Further, the Finance Board noted that with the recent passage of the Gramm-Leach-Bliley Act, the Banks would be subject to asset-based statutory leverage limits and risk-based capital requirements. When implemented, the new risk-based capital regime would provide an additional safeguard to the Bank System and its bondholders by requiring Banks to hold capital in proportion to the risks they assume.

The final rule incorporates the leverage change that originally was proposed to be part of the FMP. In addition, the final rule extends and makes permanent the additional leverage authority originally permitted to the Banks for Year 2000 liquidity. In particular, the final rule allows a Bank to have asset-based leverage of up to 25 to 1 if the Bank's non-mortgage assets after deducting deposits and capital, do not exceed 11 percent of its total assets. For the purpose of the final rule, non-mortgage assets equal the total assets after deducting core mission activity assets and assets described in sections II.B.8 through II.B.11 of the FMP.⁹ The Year 2000 leverage provision allowed a Bank to have liability-based leverage of up to 25 to 1 if its ratio of non-mortgage investments did not exceed 12 percent of the liabilities for which the Bank was the primary obligor. This 25 to 1 leverage requirement is consistent with the leverage requirements of the Gramm-Leach-Bliley Act.

A number of commenters objected to the proposed change on the basis that secured liabilities, principally repurchase agreements, are not now subject to a capital requirement. Under the proposed FMP, however, assets

funded by repurchase agreements and other secured liabilities would be subject to capital charges.

Repurchase agreements are a *de minimis* portion of Bank funding. At December 31, 1999, repurchase agreements were less than one-tenth of one percent of the total funding of the Banks, eight of the Banks had no repurchase agreements, and one Bank accounted for a majority of the Bank System's repurchase agreements.

The Finance Board agrees with the recommendation that the leverage requirement be included in the Finance Board's regulations rather than in the FMP. The final rule incorporates the leverage limit provision into § 966.3(a).

The proposed rule deleted provisions of the Finance Board's regulations that purported to limit the Finance Board's ability to change the leverage limit only if the Finance Board received either written evidence from at least one major Nationally Recognized Securities Rating Organization (NRSRO) that the proposed change will not result in the lowering of that rating agency's then-current rating or assessment on senior bonds outstanding or next to be issued; or a written opinion from an investment banking firm that the proposed change would not have a materially adverse effect on the creditworthiness of senior bonds outstanding or next to be issued. See 65 FR 324 at 328–329. As proposed, these provisions are deleted by the final rule.¹⁰ Instead, § 966.3(b) of the final rule requires the Banks to seek, obtain and maintain a rating on the COs from an NRSRO. It requires each Bank to operate in such a manner and take whatever actions are necessary to ensure that the COs receive and maintain the highest rating from an NRSRO. Section 966.3(c) of the final rule requires each Bank to obtain a rating, such as a long-term credit issuer rating from Standard and Poor's or a financial strength rating from Moody's that is no lower than the second highest credit rating. Each of the Banks now has an Aaa long-term issuer credit rating from Standard and Poor's. Therefore, the ratings requirements in the final rule merely reflect current practice and will impose no new costs or burdens on the Banks.

The ratings requirements in the final rule will enhance the protections afforded the holders of COs. Requiring each of the Banks on an ongoing basis

to take whatever action may be necessary to maintain the rating of COs at the highest level is a substantially stronger protection than the current requirement of a one-time written statement from a rating agency or investment banking firm that a change in the leverage limit would not adversely affect the rating or creditworthiness of COs.

F. Other Changes

1. Amendments to Part 900

As proposed, the duplicative definitions in part 966 of the terms "Board" and "Bank," which are now defined in part 900, have been deleted. The definition of "consolidated obligation" is adopted as proposed, with minor edits, in § 900.1 of the final rule to clarify that it includes any bond, debenture or note authorized under part 966 to be issued jointly by the Banks under section 11(a) of the Act, or any bond or note issued by the Finance Board on behalf of all Banks pursuant to section 11(c) of the Act, on which the Banks are jointly and severally liable.

2. Amendment to Part 905

The proposal would have amended § 905.30 to add a new paragraph (a)(3) to provide for the termination as of December 31, 2000, of the OF's authority to act as agent for the Finance Board in the issuance of COs under section 11(c) of the Act. By this provision, the Finance Board intended to transition itself out of, and the Banks into, the debt issuance function under the provisions of section 11(a) of the Act as soon as practicable.

The Finance Board has determined that it can accomplish the same goal by deleting § 905.30 in its entirety, and providing in § 966.2 that the Finance Board may in its discretion from time to time delegate its issuance of COs under section 11(c) of the Act by resolution of the Board of Directors of the Finance Board.¹¹ The Finance Board anticipates working with the OF to determine a mutually acceptable date on which the OF will begin issuing COs under the authority of section 11(a) of the Act and ceasing to issue COs under the authority of section 11(c) of the Act.

3. Amendments to Part 966—Consolidated Obligations

Part 910 of the Finance Board's regulations was redesignated as part 966. The part has been reorganized and renumbered, terms have been modified

⁸ By resolution the Board of Directors of the Finance Board directed that, through June 30, 2000, a Bank may have leverage up to 25 to 1 as long as that Bank's ratio of non-mortgage investments to COs does not exceed 12 percent. The Finance Board adopted this additional leverage flexibility on an interim basis to allow the Banks to provide Year 2000 funding to their members. See Res. No. 99–33 (May 28, 1999).

⁹ On May 3, 2000, the Finance Board published for notice and comment a proposed rule that included a listing of activities that would qualify as core mission activities. See 65 FR 25676 at 25688 (May 3, 2000).

¹⁰ Without conceding that the terms of the current rule apply, but in an abundance of caution, so as to be in compliance with the terms of the current rule, a written opinion from an NRSRO that the changes to the leverage limit would not have a materially adverse effect on the creditworthiness of COs outstanding or next to be issued was obtained prior to adoption of the final rule.

¹¹ The Finance Board annually adopts a debt-issuance authorization to the OF that includes parameters to which the debt must conform. See Res. No. 2000–11 (Feb. 23, 2000).

as proposed in the final rule for regulatory consistency (such as by substituting "Finance Board" for "Board," "Bank" for "Federal Home Loan Bank," and "consolidated obligation" for "consolidated bond"), and a new § 966.10 has been added.

a. Definitions—§ 966.1. As proposed, the definitions of the terms "Board" and "Bank," which are now defined in part 900, and of the term "unsecured senior liabilities" have been deleted. The definition of "Nationally Recognized Statistical Rating Organizations" has been adopted as proposed in § 966.1.

b. Sections 966.2 through 966.10. The negative pledge requirement is adopted as proposed, in § 966.2(c), retaining the negative pledge requirement for debt previously issued by the OF on behalf of the Finance Board under section 11(c), and expressly requiring each Bank to maintain the specified assets free of pledge in an amount equal to the Bank's *pro rata* share in COs issued by the OF on behalf of the Banks under section 11(a) in which the Bank participated.

Proposed §§ 910.3 through 910.7 are adopted as proposed, with minor changes, in the final rule, but redesignated as §§ 966.4 through 966.8. One commenter argued that the provision in proposed § 910.3, reserving to the Finance Board the authority to prescribe the form of each CO, runs counter to the devolution of management issues. The Finance Board agrees and has therefore deleted that provision from § 966.4 of the final rule.

Proposed § 910.7, redesignated as § 966.8 in the final rule, provided the conditions under which the OF board of directors shall authorize the issuance of COs. As adopted, § 966.8 provides that the OF board of directors shall authorize the offering for current and forward settlement (not to exceed 12 months) or the reopening of COs as necessary and authorize the maturities, rates of interest, terms and conditions thereof, subject to the provisions of 31 U.S.C. 9108. It also provides that COs may be offered for sale only to the extent that the Banks are committed to take the proceeds, and continues the existing prohibition on directly placing COs with another Bank. As discussed previously, the requirements in the proposal that the OF board of directors shall implement investor suitability standards and adopt a policy addressing the relationship between the Banks and their members as debt issuers, have been deleted from the final rule.

Proposed § 910.8 (joint-and-several liability) has been redesignated as § 966.9 without change.

One commenter recommended the inclusion in the final rule of a provision

stating that agreements and instruments entered into in connection with the issuance of COs prior to implementation of the final rule will continue to be effective with respect to the issuance of COs issued under the authority of the final rule by operation of law, and that references to COs in those agreements and instruments shall be deemed to refer to all COs by whomever issued. The Finance Board agrees that such a savings clause would be prudent and would further its goal of effecting a smooth and seamless transition of the CO issuance process between it and the Banks. Accordingly, the Finance Board has added such a savings clause as § 966.10 in the final rule.

4. Amendments to Part 985—the Office of Finance

The final rule has been significantly reorganized in form, but not in substance, from the proposed rule. The most important conceptual difference between the proposed and final rules is that certain powers and duties proposed to be powers and duties of the OF board of directors have been recast as authorities and responsibilities of the OF itself in the final rule. Part 941 has been redesignated as part 985.

a. Definitions, oversight, authority of the Office of Finance, functions and funding. i. Definitions. Section 985.1 of the final rule defines "OF" as the Office of Finance, a joint office of the Banks pursuant to section 2B of the Act. See 12 U.S.C. 1422b(b)(2).

ii. Authority of the OF. Proposed § 941.5 (redesignated as § 985.2(a)), which was entitled "Powers of the OF board of directors," has been adopted as "Authority of the OF," but otherwise is enacted substantively as proposed. It provides that the OF shall have the incidental powers under section 12(a) of the Act as are necessary, convenient and proper to accomplish the efficient operation and management of the OF, including having authority to contract with a Bank or Banks for the use of Bank facilities or personnel in order to perform its functions or duties. The rule empowers the OF to act as agent (rather than the OF board of directors) for the Banks in issuing COs pursuant to section 11(a) of the Act, for the Finance Board, by delegation, in issuing COs pursuant to section 11(c) of the Act, and in making principal and interest payments on COs issued in either capacity. Finally, § 985.2 gives the OF authority to assess the Banks for the funding of its operations in accordance with the provisions of § 985.5.

iii. Functions of the OF. Proposed § 941.2(b)(1) expressly provided that the OF could issue COs on which the Banks

would be jointly and severally liable, on behalf of the Banks and the Finance Board under sections 11(a) and 11(c) of the Act, respectively. 12 U.S.C. 1431(a) and (c). That proposal has been adopted in § 985.3(a) of the final rule. Section 985.3 of the final rule goes on to provide that the OF shall prepare and issue the combined annual and quarterly financial reports for the Bank System, shall function as the Fiscal Agent for the Banks, and shall perform such duties and responsibilities for the Financing Corporation and the Resolution Funding Corporation as may be required under the Finance Board's regulations or the Act.

iv. Finance Board oversight. Proposed § 941.3 has been redesignated as § 985.4 and adopted without other changes from the proposal.

v. Funding of the OF. Proposed § 941.7 incorporated, with modest revisions, the existing provisions of the Finance Board's regulations regarding the responsibility of the Banks to fund the operations of the OF. That section has been redesignated as § 985.5 in the final rule and revised to eliminate unnecessary provisions and to more fully devolve the responsibility for this process. As adopted, § 985.5 retains the requirement that the Banks are responsible for jointly funding the OF, and makes explicit that this shall include the cost of indemnifying the members of the OF board of directors, the Managing Director, and other officers and employees of the OF. This requirement was added at the urging of several commenters, with whom the Finance Board agrees. As proposed, § 985.5(b) of the final rule provides that, at the direction of and pursuant to policies and procedures adopted by the OF board of directors, the Banks are required periodically to reimburse the OF to maintain sufficient operating funds under the budget approved by the OF board of directors. Also as proposed, the final rule provides that each Bank's respective *pro rata* share of the reimbursement must be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System. The final rule adopts the provision of the proposed rule providing authority for the OF board of directors, with the prior approval of the Finance Board, to implement an alternative formula for determining each Bank's respective share of the OF expenses or, by contract with a Bank or Banks, to choose to be reimbursed through a fee structure in lieu of or in addition to assessment, for services provided to the Bank or Banks for the

issuance or servicing of COs or for other activities.

One commenter suggested not using the Banks' paid-in capital as the allocation method for assessments on the Banks for the OF operating expense, stating that soon there would no longer exist any direct connection between the paid-in capital of a member of a Bank and the member's advances outstanding. The commenter suggested that the measure should more directly approximate the issuance costs for the Bank System and recommended further that the measure be the Banks' apportionment of the proceeds of aggregate CO issuance for the prior year or quarter. While the Finance Board believes that there may be some merit in these suggestions, no changes have been made at this time to the final rule. The Finance Board has proposed a risk-based capital rule, but it will be some time before the new capital system is fully in place. At such time as the new capital system has been implemented, the Finance Board will consider the need to change this provision of the rule. In the interim, the Banks can take advantage of the provision allowing for alternative formulae for assessments if the current formula becomes unworkable.

The final rule does not require, as did the proposed rule, that the OF's checking account be called the Imprest Fund. The final rule does contain new provisions specifying that the OF's operating funds shall not be commingled with any proceeds received from the sale of COs, and that, pursuant to the provisions of section 2B(b)(1) of the Act, 12 U.S.C. 1422b(b)(1), none of the OF's operating funds or any of the proceeds from the sale of any COs shall be construed to be Government funds or appropriated monies or subject to apportionment for the purposes of chapter 15 of title 31 of the United States Code or any other authority.

b. Debt management activities. i. Debt management duties of the OF. Proposed § 941.2(c) (redesignated as § 985.6(a) in the final rule) set out the functions the OF is authorized to undertake in support of the issuance of debt; it also set forth functions the OF is authorized to undertake in support of joint asset activities which are not being addressed at this time. As adopted in § 985.6 of the final rule, this section sets out an abbreviated version of the debt management duties of the OF proposed in § 941.2(c), including: (1) That the OF shall issue and service COs pursuant to and in accordance with the policies and procedures established by the OF board of directors; (2) that the OF shall prepare and distribute the combined

annual and quarterly financial reports for the Bank System (discussed previously in more detail); (3) that the OF shall manage relationships with the NRSROs; (4) that the OF shall conduct research reasonably related to the issuance or servicing of COs; and (5) that the OF shall timely monitor each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

Proposed § 941.2(c)(3) provides that, in accordance with policies and procedures established by the OF board of directors, the OF shall perform such duties and responsibilities for the Financing Corporation (FICO) or the Resolution Funding Corporation (REFCorp) on behalf of the Banks, as may be required. This section preserves a current function of the OF as set forth in § 941.5(b).

ii. Structure of the OF board of directors. The proposed rule would have changed the current structure of the OF board of directors to accommodate proposed new functions for the OF. As discussed previously, no new functions for the OF are being adopted at this time, except the preparation of the Bank System's combined annual and quarterly financial reports. Therefore, no changes to the structure of the OF board of directors are being adopted in the final rule. Although the structure is not being changed, provisions relating to compensation and governance of the OF board of directors in the final rule have been revised to devolve responsibilities to the OF board of directors consistent with similar regulatory provisions relating to the boards of directors of the Banks.

Section 985.7 of the final rule maintains the current three-member structure of the OF board of directors, composed of two Bank presidents and one private citizen with demonstrated expertise in financial markets, all appointed by the Finance Board. This structure has served the OF and the Bank System well while the OF's only functions have been to issue COs and to make CO principal and interest payments when due. The Finance Board believes that this structure will continue to serve these purposes in an efficient and effective manner, under the oversight and supervision of the Finance Board.

The final rule provides that the directors shall serve three-year terms. The initial terms are staggered so that $\frac{1}{3}$ of the terms will expire each year. The directors are subject to removal or suspension for cause by the Finance Board. The Finance Board fills vacancies, but only for the remainder of

the term during which the vacancy occurs. Section 985.7(c) provides that the private citizen director shall serve as the Chair, with the Vice Chair being selected by a majority vote of the directors. The Chair is responsible for ensuring that the directives, resolutions and minutes of the OF board of directors are drafted and maintained.

Proposed § 941.4(e) (redesignated as § 985.7(d) in the final rule) would have replaced the multiple provisions of the current rule with a single standard of compensation permitting members of the OF board of directors to receive compensation and reimbursement for expenses incurred as a result of their service on the OF board of directors. The final rule maintains the existing compensation provisions, with modifications to reflect recent amendments to the Finance Board's rules in light of the enactment of Gramm-Leach-Bliley. In light of the OF's role, § 985.7 of the final rule also includes a new paragraph (e) requiring, rather than merely allowing, the OF to indemnify its directors, the Managing Director, and other officers and employees of the OF under such terms and conditions as shall be determined by the OF board of directors, provided that such terms and conditions shall be generally consistent with the terms and conditions of indemnification of directors, officers and employees of the Banks generally.

iii. General Duties of the OF board of directors. Section 985.8 of the final rule sets forth general duties of the OF board of directors, adopting provisions from proposed § 941.6 and applying to the OF board of directors appropriate provisions of the Finance Board's recently adopted rule on "Powers and Responsibilities of Federal Home Loan Bank Boards of Directors and Senior Management" at part 917. See 65 FR 25267 (May 1, 2000). It retains existing requirements that the OF board of directors shall adopt bylaws, but provides that it shall do so in accordance with the provisions of § 917.10 of the Finance Board's regulations, 12 CFR 917.10. It also retains existing requirements that the OF board of directors shall conduct its business by majority vote of its members convened at a meeting in accordance with its bylaws, but goes on to require, consistent with recently adopted provisions of § 918.7, that the OF board of directors shall hold no fewer than nine meetings annually.

Section 985.8(c) adopts provisions of proposed § 941.6(b)(2) requiring the OF board of directors to establish policies regarding COs which shall govern the frequency and timing of issuance, issue

size, minimum denomination, bond concessions, underwriter qualifications, currency of issuance, interest-rate change or conversion features, call features, principal indexing features, selection and retention of outside counsel, and selection of clearing organizations. It also requires that the policies be intended to cause CO issuance efficiently and at the lowest all-in funding costs over time, consistent with: (i) Prudent risk-management practices, prudential debt parameters, short and long-term market conditions, and the Banks' role as government-sponsored enterprises; (ii) maintaining reliable access to the short-term and long-term capital markets; and (iii) positioning the issuance of debt to take advantage of current and future capital market opportunities.

Section 985.8(d) adopts without significant substantive change the provisions of proposed § 941.6(b), and requires the OF board of directors to be responsible for the conduct and performance of all duties, functions, operations and activities of the OF and for its efficient and effective operation. The final rule authorizes the OF board of directors to approve a strategic business plan for the OF and monitor the progress of its operations under such plan; and to review, adopt, and monitor the annual operating budget of the OF. The final rule requires the OF board of directors to select, employ and define the duties of the Managing Director, who shall be the chief executive officer of the OF, a member of the Directorate of the Financing Corporation, pursuant to section 21(b)(1)(A) of the Act, 12 U.S.C. 1441(b)(1)(A), and a member of the Directorate of the Resolution Funding Corporation, pursuant to section 21B(c)(1)(A) of the Act, 12 U.S.C. 1441b(c)(1)(A). The final rule provides that the OF will be the Fiscal Agent of the Banks. Additionally, the final rule requires the OF board of directors to review and approve all contracts of the OF. Pursuant to the final rule, the OF board of directors will have the exclusive authority to employ and contract for the services of an independent, external auditor for the Banks' annual and quarterly combined financial statements; select, evaluate, determine the compensation of, and, where appropriate, replace the internal auditor, who may be removed only by vote of the OF board of directors. Under the final rule, the OF board of directors will assume any other responsibilities that may from time to time be delegated to it by the Finance Board. The final rule expressly states that no private rights of action are created and none

may be deemed to be created under part 985.

Also adopted is the provision of proposed § 941.4(f) that requires the OF board of directors to establish an audit committee. The final rule provides that the OF board of directors shall constitute and perform the duties of an audit committee, which to the extent possible shall operate consistent with the requirements of § 917.6 and the requirements pertaining to audit committee reports set forth in Item 306 of Regulation S-K promulgated by the SEC.

Proposed § 941.8, which would have retained a savings clause providing that all actions taken by the OF as it existed prior to these amendments will continue to be valid as regards the Finance Board and the Bank System, is deleted, along with the rest of the provisions of current § 941.12 (which were proposed to be deleted) as obsolete and no longer necessary. As discussed above, the appropriate savings clause applying to pre-existing contracts has been included as § 966.10.

The new § 989.2 sets forth audit requirements. At the present time, the process for selecting the independent outside accountant for the Bank System and independent audit requirements is governed by Decision Memorandum 95–DM–09 (Feb. 9, 1995), as modified by Resolution 96–94 (Dec. 12, 1996). These require the Banks to have a single independent outside accountant and that this independent outside accountant provide a separate opinion on the financial statements on each Bank and on the combined financial statements for all of the Banks that appears in the annual financial report for the Bank System. Although the selection of the independent outside accountant was up to the Banks, the Finance Board, as issuer of the COs under section 11(c) of the Act, annually ratified the Banks' selection.

New § 989.2 codifies most of the provisions of Decision Memorandum 95–DM–09, with the exception of the requirement that there be a single independent outside accountant for each Bank and the Bank System. It also removes the Finance Board from any role in selecting or ratifying the selection of the independent outside accountant.

The method of selecting the independent outside accountant must change for two reasons. First, the Banks will be taking over the function of issuing COs under the authority of section 11(a) of the Act, with the OF acting as their agent in issuing and servicing the debt and in preparing the Bank System's combined financial

reports. Section 985.8(d)(7) of the final rule gives the OF board of directors the exclusive authority to select the independent outside accountant for the combined financial report.

Second, in its recently adopted governance rule, § 917.7, the Finance Board gives the audit committee of each Bank a role in the selection or retention of the independent outside accountant for that Bank. Section 989.2 of the final rule sets the criteria for selecting the independent outside accountant that each Bank and the OF must follow.

III. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. See 33 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

V. Effective Date

Because the final rule provides for revisions to the leverage limit previously authorized under Finance Board Resolution No. 99–33, dated May 28, 1999, which by its terms expires June 30, 2000, the Finance Board for good cause finds that the final rule should become effective on July 1, 2000. See 5 U.S.C. 553(d)(3).

List of Subjects

12 CFR Part 900

Administrative practice and procedure.

12 CFR Part 905

Organization and functions (Government agencies).

12 CFR Part 965

Federal home loan banks, Finance.

12 CFR Part 966

Federal home loan banks, Securities.

12 CFR 969

Federal home loan banks, Finance.

12 CFR Part 985

Federal home loan banks, Securities.

12 CFR Part 989

Accounting, Federal home loan banks, Financial disclosure.

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR parts 900, 905, 965, 966, 969, 985, and 989 as follows:

PART 900—DEFINITIONS

1. The authority citation for part 900 continues to read as follows:

Authority: 12 U.S.C. 1422b(a).

2. Amend § 900.1 to revise the definition of “Consolidated obligations” to read as follows:

§ 900.1 Definitions applying to all regulations.

* * * * *

Consolidated obligation or *CO* means any bond, debenture, or note authorized under part 966 of this chapter to be issued jointly by the Banks pursuant to section 11(a) of the Act, as amended (12 U.S.C. 1431(a)), or any bond or note issued by the Finance Board on behalf of all Banks pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)), on which the Banks are jointly and severally liable.

* * * * *

PART 905—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

3. The authority citation for part 905 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1422b(a) and 1423.

Subpart C [Removed and Reserved]

4. Remove and reserve subpart C.

5. Add part 965 to read as follows:

PART 965—SOURCE OF FUNDS

Sec.

965.1 Definitions.

965.2 Authorized liabilities.

965.3 Liquidity reserves for deposits.

Authority: 12 U.S.C. 1422a, 1422b, and 1431.

§ 965.1 Definitions.

As used in this part:

Deposits in banks or trust companies means:

- (1) A deposit in another Bank;
- (2) A demand account in a Federal Reserve Bank;
- (3) A deposit in, or a sale of Federal funds to:
- (i) An insured depository institution, as defined in section 2(12)(A) of the Act (12 U.S.C. 1422(12)(A)), that is designated by a Bank's board of directors;

(ii) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation, and is designated by a Bank's board of directors; or

(iii) A U.S. branch or agency of a foreign bank, as defined in the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*), that is subject to the supervision of the Board of Governors of the Federal Reserve System, and is designated by a Bank's board of directors.

Repurchase agreement means an agreement in which a Bank sells securities and simultaneously agrees to repurchase those securities or similar securities at an agreed upon price, with or without a stated time for repurchase.

§ 965.2 Authorized liabilities.

As a source of funds for business operations, each Bank is authorized to incur liabilities by:

- (a) Accepting proceeds from the issuance of consolidated obligations issued in accordance with part 966 of this chapter;
- (b) Accepting time or demand deposits from members, other Banks or instrumentalities of the United States, and cash accounts from members or associates pursuant to § 969.2, 950.24(b)(2)(i)(B), 950.24(d) or 961.4(a)(1), or other institutions for which the Bank is providing correspondent services pursuant to section 11(e) of the Act (12 U.S.C. 1431(e));
- (c) Purchasing Federal funds; and
- (d) Entering into repurchase agreements.

§ 965.3 Liquidity reserves for deposits.

Each Bank shall at all times have at least an amount equal to the current deposits received from its members invested in:

- (a) Obligations of the United States;
- (b) Deposits in banks or trust companies; or
- (c) Advances with a maturity of not to exceed five years that are made to members in conformity with part 950 of this chapter.

6. Revise part 966 to read as follows:

PART 966—CONSOLIDATED OBLIGATIONS

Sec.

966.1 Definitions.

966.2 Issuance of consolidated obligations.

966.3 Leverage limit and credit rating requirements.

966.4 Form of consolidated obligations.

966.5 Transactions in consolidated obligations.

966.6 Lost, stolen, destroyed, mutilated or defaced consolidated obligations.

966.7 Administrative provision.

966.8 Conditions for issuance of consolidated obligations.

966.9 Joint and several liability.

966.10 Savings clause.

Authority: 12 U.S.C. 1422a, 1422b, and 1431.

§ 966.1 Definitions.

For purposes of this part:

Financial Management Policy (FMP) has the meaning set forth in § 956.1 of this chapter.

NRSRO means a credit rating organization regarded as a Nationally Recognized Statistical Rating Organization by the Securities and Exchange Commission.

§ 966.2 Issuance of consolidated obligations.

(a) *Consolidated obligations issued by the Finance Board.* The Finance Board may issue consolidated obligations under section 11(c) of the Act (12 U.S.C. 1431(c)), including the determination of the dates of issue, maturities, rates of interest, terms and conditions thereof, and the manner in which such consolidated obligations shall be issued. The Finance Board in its discretion from time to time may delegate this by resolution of the Board of Directors of the Finance Board, or may terminate such delegation.

(b) *Consolidated obligations issued by the Banks.* (1) Pursuant to the Banks' housing finance mission set forth in section 2A(a)(3)(B)(ii) of the Act (12 U.S.C. 1422a(a)(3)(B)(ii)), pursuant to the Finance Board's duty to ensure that the Banks carry out that mission and remain adequately capitalized and able to raise funds in the capital markets under section 2A(a)(3)(B)(ii) and (iii) of the Act (12 U.S.C. 1422a(a)(3)(B)(ii) and (iii)), and subject to the provisions of this part and such rules, regulations, terms and conditions as the Finance Board may prescribe, the Banks are authorized to issue joint debt under section 11(a) of the Act (12 U.S.C. 1431(a)), which shall be called consolidated obligations and on which the Banks shall be jointly and severally liable under § 966.9 of this part.

(2) Consolidated obligations shall be issued only through the Office of Finance, as agent of the Banks pursuant to this part and part 985.

(3) The authorization contained herein shall be deemed to constitute satisfaction of the requirement for Finance Board approval of the “terms and conditions” of the consolidated obligations pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

(c) *Negative pledge requirement.* Each Bank shall at all times maintain assets

described in paragraphs (c)(1) through (c)(6) of this section free from any lien or pledge, in an amount at least equal to a *pro rata* share of the total amount of currently outstanding consolidated obligations jointly issued by the Banks pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)) and by the Finance Board pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)) and equal to such Bank's participation in all such COs outstanding, *provided that* any assets that are subject to a lien or pledge for the benefit of the holders of any issue of consolidated obligations shall be treated as if they were assets free from any lien or pledge for purposes of compliance with this paragraph (c). Eligible assets are:

- (1) Cash;
- (2) Obligations of or fully guaranteed by the United States;
- (3) Secured advances;
- (4) Mortgages as to which one or more Banks have any guaranty or insurance, or commitment therefor, by the United States or any agency thereof;
- (5) Investments described in section 16(a) of the Act (12 U.S.C. 1436(a)); and
- (6) Other securities that have been assigned a rating or assessment by an NRSRO that is equivalent to or higher than the rating or assessment assigned by that NRSRO to consolidated obligations outstanding.

§ 966.3 Leverage limit and credit rating requirements.

(a) *Bank leverage.* (1) Except as provided in paragraph (a)(2) of this section, the total assets of any Bank shall not exceed 21 times the total of paid-in capital stock, retained earnings, and reserves (excluding loss reserves and liquidity reserves for deposits pursuant to 12 U.S.C. 1431(g)) of that Bank.

(2) The aggregate amount of assets of any Bank may be up to 25 times the total paid-in capital stock, retained earnings, and reserves of that Bank, provided that non-mortgage assets, after deducting the amount of deposits and capital, do not exceed 11 percent of such total assets. For the purposes of this section, the amount of non-mortgage assets equals total assets after deduction of core mission activity assets and assets described in sections II.B.8 through II.B.11 of the FMP.

(b) *Credit ratings.* (1) The Banks, collectively, shall obtain from an NRSRO and, at all times, maintain a current credit rating on the Banks' consolidated obligations.

(2) Each Bank shall operate in such a manner and take any actions necessary, including without limitation reducing Bank leverage, to ensure that the Banks'

consolidated obligations receive and continue to receive the highest credit rating from any NRSRO by which the consolidated obligations have then been rated.

(c) *Individual Bank credit rating.* Each Bank shall operate in such a manner and take any actions necessary to ensure that the Bank has and maintains an individual issuer credit rating of at least the second highest credit rating from any NRSRO providing a rating, where such rating is a meaningful measure of the individual Bank's financial strength and stability, and is updated at least annually by an NRSRO, or more frequently as required by the Finance Board, to reflect any material changes in the condition of the Bank.

(d) *Transition provision.* Each Bank shall obtain the credit rating from an NRSRO required under paragraph (c) of this section by July 1, 2001.

§ 966.4 Form of consolidated obligations.

(a) All consolidated obligations shall be issued *in pari passu*.

(b) Consolidated obligations with maturities of one year or less may be designated consolidated notes.

§ 966.5 Transactions in consolidated obligations.

The general regulations of the Department of the Treasury now or hereafter in force governing transactions in United States securities, except 31 CFR part 357 regarding book-entry procedure, are hereby incorporated into this part 966, so far as applicable and as necessarily modified to relate to consolidated obligations, as the regulations of the Finance Board for similar transactions on consolidated obligations. The book-entry procedure for consolidated obligations is contained in part 987 of this subchapter.

§ 966.6 Lost, stolen, destroyed, mutilated or defaced consolidated obligations.

United States statutes and regulations of the Department of the Treasury now or hereafter in force governing relief on account of the loss, theft, destruction, mutilation or defacement of United States securities, so far as applicable and as necessarily modified to relate to consolidated obligations, are hereby adopted as the regulations of the Finance Board for the issuance of substitute consolidated obligations or the payment of lost, stolen, destroyed, mutilated or defaced consolidated obligations.

§ 966.7 Administrative provision.

The Secretary of the Treasury or the Acting Secretary of the Treasury is hereby authorized and empowered, as the agent of the Finance Board and the

Banks, to administer §§ 966.5 and 966.6, and to delegate such authority at their discretion to other officers, employees, and agents of the Department of the Treasury. Any such regulations may be waived on behalf of the Finance Board and the Banks by the Secretary of the Treasury, the Acting Secretary of the Treasury, or by an officer of the Department of the Treasury authorized to waive similar regulations with respect to United States securities, but only in any particular case in which a similar regulation with respect to United States securities would be waived. The terms "securities" and "bonds" as used in this section shall, unless the context otherwise requires, include and apply to coupons and interim certificates.

§ 966.8 Conditions for issuance of consolidated obligations.

(a) The OF board of directors shall authorize the offering for current and forward settlement (up to 12 months) or the reopening of COs, as necessary, and authorize the maturities, rates of interest, terms and conditions thereof, subject to the provisions of 31 U.S.C. 9108.

(b) COs may be offered for sale only to the extent that Banks are committed to take the proceeds.

(c) COs shall not be directly placed with any Bank.

§ 966.9 Joint and several liability.

(a) *In general.* (1) Each and every Bank, individually and collectively, has an obligation to make full and timely payment of all principal and interest on consolidated obligations when due.

(2) Each and every Bank, individually and collectively, shall ensure that the timely payment of principal and interest on all consolidated obligations is given priority over, and is paid in full in advance of, any payment to or redemption of shares from any shareholder.

(3) The provisions of this part shall not limit, restrict or otherwise diminish, in any manner, the joint and several liability of all of the Banks on all of the consolidated obligations issued by the Finance Board pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)) and by the Banks pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

(b) *Certification and reporting.* (1) Before the end of each calendar quarter, and before declaring or paying any dividend for that quarter, the President of each Bank shall certify in writing to the Finance Board that, based on known current facts and financial information, the Bank will remain in compliance with the liquidity requirements set forth

in section 11(g) of the Act (12 U.S.C. 1431(g)), and the Finance Board's FMP or any regulations (as the same may be amended, modified or replaced), and will remain capable of making full and timely payment of all of its current obligations, including direct obligations, coming due during the next quarter.

(2) A Bank shall immediately provide written notice to the Finance Board if at any time the Bank:

(i) Is unable to provide the certification required by paragraph (b)(1) of this section;

(ii) Projects at any time that it will fail to comply with statutory or regulatory liquidity requirements, or will be unable to timely and fully meet all of its current obligations, including direct obligations, due during the quarter;

(iii) Actually fails to comply with statutory or regulatory liquidity requirements or to timely and fully meet all of its current obligations, including direct obligations, due during the quarter; or

(iv) Negotiates to enter or enters into an agreement with one or more other Banks to obtain financial assistance to meet its current obligations, including direct obligations, due during the quarter; the notice of which shall be accompanied by a copy of the agreement, which shall be subject to the approval of the Finance Board.

(c) *Consolidated obligation payment plans.* (1) A Bank promptly shall file a consolidated obligation payment plan for Finance Board approval:

(i) If the Bank becomes a non-complying Bank as a result of failing to provide the certification required in paragraph (b)(1) of this section;

(ii) If the Bank becomes a non-complying Bank as a result of being required to provide the notice required pursuant to paragraph (b)(2) of this section, except in the event that a failure to make a principal or interest payment on a consolidated obligation when due was caused solely by a temporary interruption in the Bank's debt servicing operations resulting from an external event such as a natural disaster or a power failure; or

(iii) If the Finance Board determines that the Bank will cease to be in compliance with the statutory or regulatory liquidity requirements, or will lack the capacity to timely and fully meet all of its current obligations, including direct obligations, due during the quarter.

(2) A consolidated obligation payment plan shall specify the measures the non-complying Bank will undertake to make full and timely payments of all of its current obligations, including direct

obligations, due during the applicable quarter.

(3) A non-complying Bank may continue to incur and pay normal operating expenses incurred in the regular course of business (including salaries, benefits, or costs of office space, equipment and related expenses), but shall not incur or pay any extraordinary expenses, or declare, or pay dividends, or redeem any capital stock, until such time as the Finance Board has approved the Bank's consolidated obligation payment plan or inter-Bank assistance agreement, or ordered another remedy, and all of the non-complying Bank's direct obligations have been paid.

(d) *Finance Board payment orders; Obligation to reimburse.* (1) The Finance Board, in its discretion and notwithstanding any other provision in this section, may at any time order any Bank to make any principal or interest payment due on any consolidated obligation.

(2) To the extent that a Bank makes any payment on any consolidated obligation on behalf of another Bank, the paying Bank shall be entitled to reimbursement from the non-complying Bank, which shall have a corresponding obligation to reimburse the Bank providing assistance, to the extent of such payment and other associated costs (including interest to be determined by the Finance Board).

(e) *Adjustment of equities.* (1) Any non-complying Bank shall apply its assets to fulfill its direct obligations.

(2) If a Bank is required to meet, or otherwise meets, the direct obligations of another Bank due to a temporary interruption in the latter Bank's debt servicing operations (e.g., in the event of a natural disaster or power failure), the assisting Bank shall have the same right to reimbursement set forth in paragraph (d)(2) of this section.

(3) If the Finance Board determines that the assets of a non-complying Bank are insufficient to satisfy all of its direct obligations as set forth in paragraph (e)(1) of this section, then the Finance Board may allocate the outstanding liability among the remaining Banks on a *pro rata* basis in proportion to each Bank's participation in all consolidated obligations outstanding as of the end of the most recent month for which the Finance Board has data, or otherwise as the Finance Board may prescribe.

(f) *Reservation of authority.* Nothing in this section shall affect the Finance Board's authority to adjust equities between the Banks in a manner different than the manner described in paragraph (e) of this section, or to take enforcement or other action against any

Bank pursuant to the Finance Board's authority under the Act or otherwise to supervise the Banks and ensure that they are operated in a safe and sound manner.

(g) *No rights created.* (1) Nothing in this part shall create or be deemed to create any rights in any third party.

(2) Payments made by a Bank toward the direct obligations of another Bank are made for the sole purpose of discharging the joint and several liability of the Banks on consolidated obligations.

(3) Compliance, or the failure to comply, with any provision in this section shall not be deemed a default under the terms and conditions of the consolidated obligations.

§ 966.10 Savings clause.

Any agreements or other instruments entered into in connection with the issuance of COs prior to the amendments made to this part shall continue in effect with respect to all COs issued under the authority of section 11 of the Act and pursuant to this part. References to consolidated obligations in such agreements and instruments shall be deemed to refer to all joint and several obligations of the Banks.

PART 969—DEPOSITS

7. The authority citation for part 969 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1431.

§ 969.3 [Removed]

8. Remove § 969.3.

9. Revise part 985 to read as follows:

PART 985—THE OFFICE OF FINANCE

Sec.

985.1 Definitions.

985.2 Authority of the OF.

985.3 Functions of the OF.

985.4 Finance Board oversight.

985.5 Funding of the OF.

985.6 Debt management duties of the OF.

985.7 Structure of the OF board of directors.

985.8 General duties of the OF board of directors.

Appendix A to Part 985—Exceptions to the General Disclosure Standards

§ 985.1 Definitions.

For purposes of this part:

Bank System means the Banks and the Office of Finance.

Chair means the Chairperson of the board of directors of the Office of Finance.

Managing Director means the managing director of the Office of Finance.

OF means the Office of Finance, a joint office of the Banks pursuant to

section 2B of the Act (12 U.S.C. 1422b(b)(2)).

§ 985.2 Authority of the OF.

(a) *General.* The OF shall enjoy such incidental powers under section 12(a) of the Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient execution of its duties and functions pursuant to this part, including the authority to contract with a Bank or Banks for the use of Bank facilities or personnel in order to perform its functions or duties.

(b) *Agent.* The OF in the performance of its duties, shall have the power to act on behalf of:

(1) The Banks in issuing consolidated obligations pursuant to section 11(a) of the Act (12 U.S.C. 1431(a));

(2) By delegation of the Finance Board under § 966.2 of this chapter in issuing consolidated obligations pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)); and

(3) The Banks in paying principal and interest due on the consolidated obligations, or other obligations of the Banks.

(c) *Assessments.* The OF shall have authority to assess the Banks for the funding of its operations in accordance with § 985.5.

§ 985.3 Functions of the OF.

(a) *Joint debt issuance.* Subject to parts 965 and 966 of this chapter, and this part, the OF as agent shall offer, issue and service (including making timely payments on principal and interest due) consolidated obligations on which the Banks are jointly and severally liable on behalf of the Finance Board pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)), or the Banks pursuant to section 11(a) of the Act (12 U.S.C. 1431(a)).

(b) *Preparation of combined financial reports.* The OF shall prepare and issue the combined annual and quarterly financial reports for the Bank System in accordance with the requirements of § 985.6(b) and Appendix A of this part.

(c) *Fiscal agent.* The OF shall function as the Fiscal Agent of the Banks.

(d) *Financing Corporation and Resolution Funding Corporation.* The OF shall perform such duties and responsibilities for the Financing Corporation (FICO) as may be required under part 995 of this chapter, or for the Resolution Funding Corporation (REFCorp) as may be required under part 996 of this chapter or authorized by the Finance Board pursuant to section 21B(c)(6)(B) of the Act (12 U.S.C. 1441b(c)(6)(B)).

§ 985.4 Finance Board oversight.

(a) *Oversight and enforcement actions.* The Finance Board shall have the same regulatory oversight authority and enforcement powers over the OF, the OF board of directors, the directors, officers, employees, agents, attorneys, accountants or other OF staff, as it has over a Bank and its respective directors, officers, employees, attorneys, accountants, agents or other staff.

(b) *Examinations.* Pursuant to section 20 of the Act (12 U.S.C. 1440), the Finance Board shall examine the OF, all funds and accounts that may be established pursuant to this part 985, and the operations and activities of the OF, as provided for in the Act or any regulations promulgated pursuant thereto.

§ 985.5 Funding of the OF.

(a) *Generally.* The Banks are responsible for jointly funding all of the expenses of the Office of Finance, including the costs of indemnifying the members of the OF board of directors, the Managing Director and other officers and employees of the OF, as provided for in this part.

(b) *Funding policies.* (1) At the direction of, and pursuant to policies and procedures adopted by, the OF board of directors, the Banks shall periodically reimburse the OF in order to maintain sufficient operating funds under the budget approved by the OF board of directors. The OF operating funds shall be:

(i) Available for expenses of the Office of Finance and the OF board of directors, according to their approved budgets; and

(ii) Subject to withdrawal by check, wire transfer or draft signed by the Managing Director or other person designated by the OF board of directors.

(2) Each Bank's respective *pro rata* share of the reimbursement described in paragraph (b)(1) of this section shall be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System.

(c) *Alternative formula for assessment.* With the prior approval of the Finance Board, the OF board of directors may implement an alternative formula for determining each Bank's respective share of the OF expenses or, by contract with a Bank or Banks, may choose to be reimbursed through a fee structure in lieu of or in addition to assessment, for services provided to the Bank or Banks.

(d) *Prompt reimbursement.* Each Bank from time to time shall promptly forward funds to the OF in an amount representing its share of the

reimbursement described in paragraph (b) of this section when directed to do so by the Managing Director pursuant to procedures of the OF board of directors.

(e) *Indemnification expenses.* All expenses incident to indemnification of the members of the OF board of directors, the Managing Director, and other officers and employees of the OF shall be treated as an expense of the OF to be reimbursed by the Banks under the provisions of this part.

(f) *Operating funds shall be segregated.* (1) Any funds received by the OF from the Banks pursuant to this section for OF operating expenses promptly shall be deposited into one or more accounts and shall not be commingled with any proceeds from the sale of consolidated obligations in any manner.

(2) Neither the proceeds from the sale of consolidated obligations under part 966, nor any operating expense reimbursements received by the OF from assessments on the Banks under this section shall be construed to be Government Funds or appropriated monies or subject to apportionment for the purposes of chapter 15 of title 31 of the United States Code, or any other authority, in accordance with section 2B(b)(1) of the Act (12 U.S.C. 1422b(b)(1)).

§ 985.6 Debt management duties of the OF.

(a) *Issuance and servicing of COs.* The OF shall issue and service (including making timely payments on principal and interest due, subject to §§ 966.8 and 966.9 of this chapter) consolidated obligations pursuant to and in accordance with the policies and procedures established by the OF board of directors under this part.

(b) *Combined financial reports requirements.* The OF shall prepare and distribute the combined annual and quarterly financial reports for the Bank System in accordance with the following requirements:

(1) The scope, form and content of the disclosure generally shall be consistent with the requirements of the Securities and Exchange Commission's Regulations S-K and S-X (17 CFR parts 229 and 210).

(2) Information about each Bank shall be presented as a segment of the Bank System as if Statement of Financial Accounting Standards No. 131, titled "Disclosures about Segments of an Enterprise and Related Information" (FASB 131) applied to the combined annual and quarterly financial reports of the Bank System.

(3) The standards set forth in paragraphs (b)(1) and (2) of this section

are subject to the exceptions set forth in the Appendix to this part.

(4) The combined Bank System annual report shall be filed with the Finance Board and distributed to each Bank and Bank member within 90 days after the end of the fiscal year. The combined Bank System quarterly reports shall be filed with the Finance Board and distributed to each Bank and Bank member within 45 days after the end of the first three fiscal quarters of each year.

(5) The Finance Board in its sole discretion shall determine whether or not a combined Bank System annual or quarterly financial report complies with the standards of this part.

(6) The OF board of directors shall comply promptly with any directive of the Finance Board regarding the preparation, filing, amendment or distribution of the combined Bank System annual or quarterly financial reports.

(7) Nothing in this section shall create or be deemed to create any rights in any third party.

(c) *Capital markets data.* The OF board of directors shall provide capital markets information concerning debt to the Banks.

(d) *NRSROs.* The OF board of directors shall manage relationships with Nationally Recognized Statistical Rating Organizations in connection with their rating of consolidated obligations.

(e) *Research.* The OF shall conduct research reasonably related to the issuance or servicing of consolidated obligations.

(f) *Monitor Banks' credit exposure.* The OF shall timely monitor each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

§ 985.7 Structure of the OF board of directors.

(a) *Membership.* The OF board of directors shall consist of three part-time members appointed by the Finance Board as follows:

(1) Two Bank Presidents; and

(2) A citizen of the United States with a demonstrated expertise in financial markets. Such appointee may not be an officer, director or employee of a Bank or Bank System member, hold shares, or any other financial interest in, any member of a Bank, or be affiliated with any consolidated obligation selling or dealer group member under contract with the OF.

(b) *Terms.* (1) Except as provided in paragraph (b)(2) of this section, the members of the OF board of directors shall serve for three-year terms (which shall be staggered), and shall be subject

to removal or suspension for cause by the Finance Board.

(2) The Finance Board shall fill any vacancy occurring on the OF board of directors. An appointment to fill a vacancy shall be only for the remainder of the term during which the vacancy occurred.

(3) Any member of the OF board of directors is authorized to continue to serve on the OF board of directors after the expiration of the member's term until a successor has been appointed by the Finance Board.

(c) *Chair.* (1) The private citizen member of the OF board of directors shall serve as the Chair, and the Vice Chair shall be selected by a majority vote of the members of the OF board of directors.

(2) The Chair shall preside over the meetings of the OF board of directors. In the absence of the Chair, the Vice Chair shall preside.

(3) The Chair shall be responsible for ensuring that the directives and resolutions of the OF board of directors are drafted and maintained and for keeping the minutes of all meetings.

(d) *Compensation.* (1) The Bank President members shall not receive any additional compensation or reimbursement as a result of their service on the OF board of directors.

(2) Each Bank shall be entitled to be reimbursed by from the Office of Finance for its expenditure of travel and per diem expenses associated with its Bank President's attendance at an OF board of directors meeting as a director member thereof.

(3) The Office of Finance shall pay compensation and expenses to the private citizen member of the OF board of directors in accordance with the requirements for payment of compensation and expenses to Bank chairs as set forth in part 918 of this chapter.

(e) *Indemnification.* (1) The OF board of directors shall indemnify its members, the Managing Director, and other officers and employees of the OF under such terms and conditions as shall be determined by the OF board of directors, *provided that* such terms and conditions are consistent with the terms and conditions of indemnification of directors, officers and employees of the Bank System generally.

(2) The OF board of directors shall adopt indemnification procedures, which shall be supplemented by a contract of insurance.

(f) *Delegation.* The OF board of directors may delegate any of its authority or duties to any employee of the OF in order to enable the OF to carry out its functions.

§ 985.8 General duties of the OF board of directors.

(a) *General.* (1) *Conduct of business.* Each director shall have the duties prescribed in § 917.2(b) of this chapter, as appropriate.

(2) *Bylaws.* The OF board of directors shall adopt bylaws in accordance with the provisions of § 917.10 of this chapter.

(b) *Meetings and quorum.* The OF board of directors shall conduct its business by majority vote of its members at meetings convened in accordance with its bylaws, and shall hold no fewer than nine meetings annually. Due notice shall be given to the Finance Board by the Chair prior to each meeting. A quorum, for purposes of meetings of the OF board of directors, shall be not less than two members.

(c) *Duties regarding COs.* The OF board of directors shall establish policies regarding COs that shall:

(1) Govern the frequency and timing of issuance, issue size, minimum denomination, CO concessions, underwriter qualifications, currency of issuance, interest-rate change or conversion features, call features, principal indexing features, selection and retention of outside counsel, selection of clearing organizations, and the selection and compensation of underwriters for consolidated obligations, which shall be in accordance with the requirements and limitations set forth in paragraph (c)(4) of this section;

(2) Prohibit the issuance of COs intended to be privately placed with or sold without the participation of an underwriter to retail investors, or issued with a concession structure designed to facilitate the placement of the COs in retail accounts, unless the OF has given notice to the board of directors of each Bank describing a policy permitting such issuances, soliciting comments from each Bank's board of directors, and considering the comments received before adopting a policy permitting such issuance activities;

(3) Require all broker-dealers or underwriters under contract to the OF to have and maintain adequate suitability sales practices and policies, which shall be acceptable to, and subject to review by, the Office of Finance;

(4) Require that COs shall be issued efficiently and at the lowest all-in funding costs over time, consistent with:

(i) Prudent risk-management practices, prudential debt parameters, short and long-term market conditions, and the Banks' role as government-sponsored enterprises;

(ii) Maintaining reliable access to the short-term and long-term capital markets; and

(iii) Positioning the issuance of debt to take advantage of current and future capital market opportunities.

(d) *Other duties.* The OF board of directors shall:

(1) Set policies for management and operation of the OF;

(2) Approve a strategic business plan for the OF in accordance with the provisions of § 917.5 of this chapter, as appropriate;

(3) Review, adopt and monitor annual operating and capital budgets of the OF in accordance with the provisions of § 917.8 of this chapter, as appropriate;

(4) Constitute and perform the duties of an audit committee, which to the extent possible shall operate consistent with:

(i) The requirements of § 917.6 of this chapter, and

(ii) The requirements pertaining to audit committee reports set forth in Item 306 of Regulation S-K promulgated by the Securities and Exchange Commission.

(5) Select, employ, determine the compensation for, and assign the duties and functions of a Managing Director of the OF who shall:

(i) Be the chief executive officer for the OF and shall direct the implementation of the OF board of directors' policies;

(ii) Serve as a member of the Directorate of the Financing Corporation, pursuant to section 21(b)(1)(A) of the Act (12 U.S.C. 1441(b)(1)(A)); and

(iii) Serve as a member of the Directorate of the Resolution Funding Corporation, pursuant to section 21B(c)(1)(A) of the Act (12 U.S.C. 1441b(c)(1)(A)).

(6) Review and approve all contracts of the OF;

(7) Have the exclusive authority to employ and contract for the services of an independent, external auditor for the Banks' annual and quarterly combined financial statements;

(8) Select, evaluate, determine the compensation of, and, where appropriate, replace the internal auditor, who may be removed only by vote of the OF board of directors; and

(9) Assume any other responsibilities that may from time to time be delegated to it by the Finance Board.

(e) *No rights created.* Nothing in this part shall create or be deemed to create any rights in any third party.

Appendix A to Part 985—Exceptions to the General Disclosure Standards

A. Related-party transactions. Item 404 of Regulation S-K, 17 CFR 229.404, requires the

disclosure of certain relationships and related party transactions. In light of the cooperative nature of the Bank System, related-party transactions are to be expected, and a disclosure of all related-party transactions that meet the threshold would not be meaningful. Instead, the combined annual report will disclose the percent of advances to members an officer of which serves as a Bank director, and list the top ten holders of advances in the Bank System and the top five holders of advances by Bank, with a further disclosure indicating which of these members had an officer that served as a Bank director.

B. Biographical information. The biographical information required by Items 401 and 405 of Regulation S-K, 17 CFR 229.401 and 405, will be provided only for the members of the Board of Directors of the Finance Board, Bank presidents, chairs and vice chairs, and the directors and Managing Director of the OF.

C. Compensation. The information on compensation required by Item 402 of Regulation S-K, 17 CFR 229.402, will be provided only for Bank presidents and the Managing Director of the OF. Since stock in each Bank trades at par, the Office of Finance will not include the performance graph specified in Item 402(1) of Regulation S-K, 17 CFR 229.402(1).

D. Submission of matters to a vote of stockholders. No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10-K, 17 CFR 249.310. The only item shareholders vote upon is the annual election of directors.

E. Exhibits. The exhibits required by Item 601 of Regulation S-K, 17 CFR 229.601, are not applicable and will not be provided.

F. Per share information. The statement of financial information required by Items 301 and 302 of Rule S-K, 17 CFR 229.301 and 302, is inapplicable because the shares of the Banks are subscription capital that trades at par, and the shares expand or contract with changes in member assets or advance levels.

G. Beneficial ownership. Item 403 of Rule S-K, 17 CFR 229.403, requires the disclosure of security ownership of certain beneficial owners and management. The combined financial report will provide a listing of the ten largest holders of capital stock in the Bank System and a listing of the five largest holders of capital stock by Bank. This listing will also indicate which members had an officer that served as a director of a Bank.

PART 989—FINANCIAL STATEMENTS OF THE BANKS

10. The authority citation for part 989 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431 and 1440.

11. Add § 989.1 to read as follows:

§ 989.1 Definitions.

For purposes of this part:

Audit means an examination of the financial statements by an independent accountant in accordance with Generally Accepted Accounting

Principles for the purpose of expressing an opinion thereon.

Audit report means a document in which an independent accountant indicates the scope of the audit made and sets forth an opinion regarding the financial statement taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

§§ 989.2 and 989.3 [Redesignated]

12. Redesignate §§ 989.2 and 989.3 as §§ 989.3 and 989.4, respectively.

13. Add § 989.2 to read as follows:

§ 989.2 Audit requirements.

(a) Each Bank, the OF and the Financing Corporation shall obtain annually an independent, external audit of and an audit report on its individual financial statement.

(b) The OF board of directors shall obtain an audit and an audit report on the combined annual financial statements for the Bank System.

(c) All audits must be conducted in accordance with generally accepted auditing standards and in accordance with the most current government auditing standards issued by the Office of the Comptroller General of the United States.

(d) An independent, external auditor must meet at least twice each year with the audit committee of each Bank, the OF board of directors, and the Financing Corporation Directorate.

(e) Finance Board examiners shall have unrestricted access to all auditors' work papers and to the auditors to address substantive accounting issues that may arise during the course of any audit.

14. Revise newly designated § 989.3 to read as follows:

§ 989.3 Requirement to provide financial and other information to the Finance Board and the Office of Finance.

In order to facilitate the preparation by the Office of Finance of combined Bank System annual and quarterly reports, each Bank shall provide to the Office of Finance in such form and within such timeframes as the Finance Board or the Office of Finance shall specify, all financial and other information and assistance the Office of Finance shall request for that purpose. Nothing in this section shall contravene or be deemed to circumscribe in any manner the authority of the Finance Board to obtain any information from any Bank related to the preparation or review of any financial report.

§ 989.4 [Amended]

15. Amend newly designated § 989.4 by removing the words “Finance Board” wherever they appear and adding in their place the words “Office of Finance.”

Dated: June 2, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

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