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FEDERAL ELECTION COMMISSION

[Notice 1999–19]

11 CFR Part 110

Treatment of Limited Liability Companies Under the Federal Election Campaign Act

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On July 12, 1999, the Commission published the text of revised regulations that address the treatment of limited liability companies for purposes of the Federal Election Campaign Act. 64 FR 37397. The Commission announces that these rules are effective as of November 12, 1999.

EFFECTIVE DATE: November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. N. Bradley Litchfield, Associate General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is announcing the effective date of new regulations at 11 CFR 110.1(g) that addess the treatment of limited liability companies (''LLC'') under the Federal Election Campaign Act. LLCs are non-corporate business entities, created under State law, that have characteristics of both partnerships and corporations. The new rules provide that LLCs will be treated as either partnerships or corporations for FECA purposes, consistent with the tax treatment they select under the Internal Revenue Code.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to implement Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR 110.1 were transmitted to Congress on June 25, 1999. Thirty legislative days expired in the Senate and the House of Representatives on September 24, 1999.

Announcement of Effective Date: 11 CFR 110.1(g), as published at 64 FR 37397 (July 12, 1999), is effective as of November 12, 1999.

Dated: October 5, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 910

[No. 99–51]

RIN 3069–AA78

Allocation of Joint and Several Liability on Consolidated Obligations Among the Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its rule governing the issuance of consolidated obligations, *i.e.*, bonds, notes or debentures (COs) by the Finance Board pursuant to section 11 of the Federal Home Loan Bank Act (Act), 12 U.S.C. 1431, to establish a framework for the orderly allocation of joint and several liability for the COs among the Federal Home Loan Banks (Banks). The final rule adds new provisions to the Finance Board's regulations and is intended to protect holders of COs to the greatest extent practicable by providing a framework to ensure the continued timely payment of all principal and interest on COs in the unlikely event of the projected or actual inability of a Bank to meet its debt service payment obligations.

DATES: This final rule is effective on November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Deputy Chief Economist, Office of Policy, Research and Analysis, by telephone at (202) 408–2845 or by electronic mail at *mckenziej@fhfb.gov,* or Charlotte A. Reid, Special Counsel, Office of General Counsel, by telephone at (202) 408–2510 or by electronic mail at *reidc@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On February 11, 1999, the Finance Board published for comment a proposed rule to amend its Consolidated Bonds and Debentures Regulation (CO Regulation), 12 CFR part 910, to outline a framework for the orderly allocation of joint and several liability among the Banks on COs issued by the Finance Board pursuant to section 11 of the Act, 12 U.S.C. 1431. 64 FR 6819 (Feb. 11, 1999). The sixty-day public comment period closed on April 12, 1999. The Finance Board received thirteen comment letters: twelve from Banks and one from a member institution. The commenters, noting the stability and financial strength of the Bank System, generally supported the goal of the proposed rule, but expressed nearly uniform objection to the certification and reporting requirements and requested other changes.

The Act provides plenary authority to the Finance Board in connection with the issuance of COs, for which the Banks are jointly and severally liable. Section 11 of the Act authorizes the Finance Board to issue rules and regulations governing the issuance of COs. *See* 12 U.S.C. 1431(a). Pursuant to the authority set forth in section 11(b) and (c) of the Act, the Finance Board may issue consolidated Bank debentures or bonds which ''shall be the joint and several obligations of all the Federal Home Loan Banks, and shall be secured and be issued upon such terms and conditions as the [Finance] Board may prescribe.'' *See* id. at 1431(b) and (c). Moreover, section 11(d) of the Act provides that the Finance Board shall have full power to require the Banks to ''deposit additional collateral or to make substitutions of collateral or to adjust equities between the Federal Home Loan Banks.'' Id. at 1431(d). The Act makes clear that COs are not the obligations of and are not guaranteed by the United States. *See* id. at 1435. The Banks collectively are the sole obligors on COs. Finance Board regulations governing the issuance of COs are set forth in 12 CFR parts 910 and 941.

Section 910.0(b) defines ''consolidated bonds'' to mean ''bonds or notes issued on behalf of all Federal Home Loan Banks.'' For purposes of this preamble, the terms CO(s), consolidated obligation(s), and consolidated bonds are used interchangeably. In the final rule, the term consolidated bond(s) is adopted for consistency with the existing definitions in § 910.0.

The Banks finance their operations principally with the proceeds from COs issued by the Finance Board on their behalf. As of July 31, 1999, there were approximately $444.8 billion in COs outstanding. In the history of the Bank System, no Bank has ever been delinquent or defaulted on a principal or interest payment on any CO issued by the Finance Board or the Federal Home Loan Bank Board (FHLBB), its predecessor agency.

Neither the Finance Board nor the FHLBB adopted regulations to establish the manner in which the joint and several liability of the Banks would operate in the event of impending default or delinquency on a CO. The Bank System remains financially healthy and strong, and no such default or delinquency is expected. The holders of COs benefit from the statutory joint and several liability of the Banks set forth in section 11 of the Act. Prudence dictates, however, that the Finance Board clarify how the joint and several financial responsibility for the COs would be allocated among the Banks if a Bank were to experience a payment problem.

The final rule establishes a procedure to assure timely interest and principal payments on all outstanding COs. The final rule will provide that any Bank that participates in the proceeds of a CO issuance, and that experiences or projects a payment problem, would be required to apply its assets first toward the satisfaction of that consolidated obligation. The final rule further specifies, as a regulatory matter, that the Finance Board, pursuant to its authority to ensure that the Banks operate in a safe and sound manner, remain adequately capitalized and able to raise funds in the capital markets, and to adjust the relative equities among the Banks in connection with the issuance of COs, *see* 12 U.S.C. 1422a(a)(1), (3)(A), (3)(B)(iii) and 1431(d), has ultimate authority and discretion at any time to call on any Bank to make any principal or interest payment on any CO. The underlying purpose of the final rule is to emphasize the Finance Board's intent that holders of COs not experience any interruption in the flow of interest or principal payments.

II. Summary of Comments and Analysis of Changes Made in the Final Rule.

A. Definitions—§ 910.0

1. Existing Definitions

The existing definitions in Part 910 are retained with only minor revisions. For purposes of consistency with other regulations, ''Board'' has been redefined as ''Finance Board,'' a definition of ''Bank'' has been added, and the remaining definitions have been re-designated accordingly. Additional definitions are addressed as follows.

2. Participating Bank

The proposed rule would have amended § 910.0 of the CO regulation to add a new defined term: ''Participating Bank.'' The final rule does not adopt that definition because it is not a necessary component of the certification requirement as adopted in the final rule and does not add to the requirement that each Bank must satisfy its direct obligations.

3. Non-Performing Bank

The proposed rule added another defined term to § 910.0: ''Non-performing Bank.'' A majority of the commenters contended that the term ''Non-Performing Bank'' was too broad, had negative or pejorative connotations, or could imply a default on the COs where none had occurred. One commenter suggested the term should be changed to ''Non-Compliant Bank'' to focus on the reporting and certification requirements. The Finance Board agrees that a change in the terminology is appropriate and has revised the term in the final rule to ''Non-complying Bank.'' Also in response to comments, the Finance Board has removed all references to ''net loss'' in the definition and in the revisions to the reporting and certification requirements. *See* discussion of § 910.7(b), below. Furthermore, the definition was revised to clarify that a Bank also may become a ''Non-complying Bank'' if it is required to file a notice pursuant to § 910.7(b)(2).

4. Direct Obligation

The final rule defines ''direct obligation'' to mean a Bank's obligation to repay principal and interest arising from its receipt of all or a portion of the proceeds of an issuance of COs by the Finance Board on behalf of one or more Banks. A direct obligation also includes an obligation to pay CO principal or interest that has been assumed by a Bank subsequent to the issuance of the consolidated bond, and any obligation to make assistance payments to any other Bank, whether pursuant to an agreement between two or more Banks or pursuant to a Finance Board payment order. Additionally, consistent with § 910.7(e)(1), direct obligation also includes the obligation of an assisted Bank to reimburse a Bank that pays the direct obligations of the former Bank pursuant to an assistance agreement or by order of the Finance Board. Thus, a direct obligation may arise: (1) as a result of the receipt of proceeds from the issuance of a CO, or in a subsequent assumption of a CO payment obligation; (2) by virtue of becoming obligated to make assistance payments to another Bank, either pursuant to a voluntary agreement between two or more Banks or pursuant to a Finance Board payment order; or (3) pursuant to the obligation to reimburse an assisting Bank for assistance payments made under an assistance agreement or by order of the Finance Board, including related costs and interest.

5. Other Definitional Requests

In response to several comments, references to consolidated obligations have been changed throughout the final rule to reference consolidated bonds in order to maintain consistency within part 910 and to conform to existing definitions in § 910.0.

Many commenters requested that certain definitions be added to the rule. A majority of commenters requested that the rule define the term ''non-essential expenses'' to exclude normal operating expenses or ordinary operational expenditures incurred in the regular course of business such as salaries and benefits, office space and equipment expenses. The Finance Board has adopted the recommendation by rewording § 910.7(c)(3) of the final rule to clarify that a Bank may continue to pay normal operating expenses, including salaries, costs of office space or equipment, or related expenses, but must refrain from incurring any extraordinary expenses, thus obviating the need for another defined term.

A number of commenters requested that the rule define, by establishing a fixed standard, reasonable interest as it relates to consolidated bond interest and principal payments made on behalf of a non-complying Bank, so as to avoid unnecessary disputes between the assisting and assisted Banks. The commenters who addressed the issue suggested that the standard should be the Federal Funds rate plus an amount, ranging from 50 to 300 basis points, sufficient to be punitive. The Finance Board wishes to preserve for itself maximum discretion to prescribe a reasonable interest rate based on the case presented. Therefore, no definition

of reasonable interest rate is included in the final rule. Instead, § 910.7(d) of the final rule makes it clear that, on amounts paid by one Bank to meet the principal and interest payment obligations of another Bank, the interest rate on the reimbursement will be set by the Finance Board in an order, or will be negotiated between the affected Banks, in the case of an inter-Bank assistance agreement, subject to the approval of the Finance Board.

B. Joint and Several Liability—§ 910.7

The proposed rule added a new § 910.7 to the CO Regulation to establish a framework for the orderly allocation of joint and several liability on the COs among the Banks.

1. General Requirements—§ 910.7(a)

The proposed rule at § 910.7(a) would have stated the joint and several liability of the Banks and the duty of the Banks to give priority to consolidated bond payments.

One commenter objected to the premise of proposed § 910.7(a)(2), that each Bank must ensure the CO payment obligations of all other Banks, and suggested that the final rule provide that each Bank be responsible only for its own payment obligations. Because the Finance Board believes that the essence of joint and several liability is that each Bank is ultimately liable for the repayment of any CO, no change to this provision has been adopted in the final rule, other than the addition of a new subsection (3), which states that the provisions shall not restrict, limit, or otherwise diminish the joint and several liability of all of the Banks on all of the consolidated bonds.

Several commenters questioned how other creditors of the Banks, such as swap counterparties, would be affected by proposed § 910.7(a)(2), and noted that the proposed rule would appear to give CO holders payment priority over other creditors of the Bank, regardless of the legal priorities among those parties. The Finance Board is not attempting to create regulatory creditor priorities that would not already exist under law. Therefore, the final rule has been revised to address this concern by eliminating reference to ''any other creditor not entitled by law or contract to priority over or parity with the holder of consolidated obligations.'' A provision was also added in § 910.7(g) to clarify that payments made by a Bank to satisfy the direct obligations of another Bank shall be made for the sole purpose of discharging the joint and several liability of the Banks on the consolidated bonds, not for the benefit of other creditors.

2. Certification and Reporting—§ 910.7(b)

Section 910.7(b) of the proposed rule would have required each Bank President to certify for the upcoming quarter that the Bank will not suffer a net loss, will remain in compliance with reserve and liquidity requirements, as well as with the Finance Board's Financial Management Policy (FMP), and will be capable of making full and timely payment of all its direct obligations when due. The proposed rule also would have required each Bank immediately to report to the Finance Board any projected loss, debt service deficiency or liquidity/reserves deficiency.

The comments expressed a number of objections to § 910.7(b) as proposed: (1) the impossibility of certification as to future events; (2) misplaced reliance on net loss as an indicator of a Bank's ability to meet its direct obligations; (3) the lack of a specific causal nexus between potential non-compliance with liquidity requirements and a Bank's ability to meet its direct obligations; and (4) each Bank should be required only to certify that it will have the ability in the upcoming quarter to meet its direct obligations.

a. Certification as to Future Events. The commenters stated that it would be impossible to certify as to future events given the potential variables that affect financial statements, and were concerned that forward-looking certifications might subject a Bank to liability if events played out other than as predicted. Commenters also objected to the certification requirement on the basis that a certification, which generally involves confirmation of known facts as of a certain date, would be a factual impossibility because factors beyond the control of a Bank could preclude the Bank from being able to state with certainty three months in advance that no change in circumstances would occur.

One commenter suggested that the lack of certainty as to future projections could be dealt with either by revising the required representation to assert that ''the President has no knowledge of any facts that would materially affect the accuracy of the certification,'' or requiring, based on information known to the Bank, reasonable assurance that the Bank will remain in compliance and be capable of fulfilling CO payments in the upcoming quarter.

Another commenter favored requiring that Bank management provide a negative assurance stating that, as of the date of the quarterly certification, Bank management has no actual knowledge of material facts that through the next quarter could foreseeably prevent the Bank from making full and timely payment of interest and principal on the COs due and payable in the upcoming quarter. To improve on the reporting requirement, the commenter urged that the Banks be allowed to rely on the unqualified opinion provided annually by a Bank's independent certified accountant and eliminate the management certification.

Concerned commenters noted that if certifications are given and subsequent unanticipated events adversely affect the accuracy of the statements or the ability of a Bank to make full and timely direct obligation payments when due, the result could be causes of action against the Bank and the Finance Board for false certifications.

While the Finance Board does not believe that a negative assurance or a reasonable assurance statement would accomplish the same goal as the certification and reporting requirements, the Finance Board does believe that many of the other concerns raised by the commenters have merit. The final rule addresses these concerns by modifying the certification requirement to reflect that the certification should be based on known information, current facts and financial information, which the Finance Board expects will follow reasonable investigation.

b. Net Loss. Many commenters objected to being required to certify that a Bank would not sustain a net loss in the upcoming quarter on the grounds that net loss is an inappropriate measure for determining ability to meet CO payment obligations. Several Bank commenters called for the term to be eliminated from the rule, or defined if the certification and reporting requirements were to be retained in the final rule. One commenter stated that net income and net loss are accounting concepts that bear virtually no relation to cash flow, which is the primary factor affecting a Bank's ability to make payments.

One commenter suggested that the rule should provide that prior to allocating loss to all Banks, the Finance Board should look to the other participating Banks for payment of principal and interest where another participating Bank is unable to make the payments for which it is responsible. Some of the Banks expressed a desire that the reporting periods be specified in the rule.

Several commenters argued that the various periodic financial condition reports already required to be filed by

the Banks with the Finance Board [1] provide sufficient notice to the Finance Board of any potential difficulty a Bank might experience in meeting its debt obligations, and that the certification and reporting requirements would be unnecessarily duplicative and burdensome.

The Finance Board agrees with many of the observations in the comments, and has addressed commenters' objections by eliminating the requirement that each Bank must certify that it will not sustain a net loss in the upcoming quarter.

c. Lack of Causal Nexus Between Liquidity and Ability to Pay Direct Obligations. Many comments focused on what factors actually affect a Bank's ability to meet its obligations and noted that non-compliance with liquidity requirements is not tantamount to an inability to make such payments.

One commenter, calling the liquidity requirements outmoded, stated that compliance with the liquidity requirements is not an accurate reflection of the Bank's ability to meet its payment obligations. The commenter said that factors that would more likely cause a negative impact on a Bank's ability to service its debt would be an inability to access the capital markets to replace maturing or called debt, and that the certification requirement is inconsistent with real world balance sheet management.

The Finance Board does not agree with the comment that compliance with the statutory and regulatory liquidity requirements does not bear any financial relationship to a Bank's ability to meet its direct obligations and has adopted this requirement in the final rule without change. The comment is premised on the assumption that the Banks can raise funds in the capital markets at will. However, since the Banks at times may face inhospitable conditions in the capital markets during which they might be unable to raise large amounts of money in very short time periods, the Finance Board believes it is advisable for the Banks to maintain sufficient, highly liquid assets to meet member demands. Because the Banks are required to maintain compliance with statutory and regulatory liquidity requirements at all times, no additional burden should be imposed by the requirement in the final rule that a Bank certify to that compliance.

d. Certification Only to Direct Obligations. The commenters requested that the proposed rule be clarified to require a Bank to certify only that it will remain capable of making full and timely payment of its share of all principal and interest payments on COs. The Finance Board concurs in these comments and has clarified the final rule to state that each Bank must certify that it will remain capable of making full and timely payment of all of its current obligations, including direct obligations. Direct obligations would also include the obligation to reimburse an assisting Bank for the payment of the assisted Bank's direct obligations, as provided for in § 910.7(e)(1) of the final rule.

e. The Reporting Requirement. The proposed rule called for each Bank to report immediately to the Finance Board if: (1) the Bank was unable to provide the required certification; (2) subsequent to providing the certification, the Bank projected that it would incur a net loss, fail to comply with liquidity requirements or would be unable to satisfy its payment obligations on consolidated bonds; (3) the Bank actually missed a consolidated bond payment, incurred a net loss or failed to comply with liquidity requirements. The commenters offered criticisms nearly identical to those for the certification requirement. Additionally, some commenters recommended that the rule specify the reporting period.

In response to the comments, the final rule eliminates the requirement to file a report in favor of a notice requirement. Section 910.7(b)(2) of the final rule requires a Bank to submit immediate written notice to the Finance Board if the Bank is or is expected to be unable to provide the certification when due as required by § 910.7(b)(1), or, if at any time, a Bank projects that it will not meet its liquidity requirements, direct obligations or other current obligations. Notice is also required if the Bank actually fails to meet its liquidity requirements or direct obligations. Such notice also is required if a Bank is in negotiations to enter or enters into an assistance agreement with another Bank for the payment of its direct obligations or other current obligations. Similarly, if a Bank experiences a temporary interruption in its payment operations due to an external event, which is not necessarily related to the financial condition of the Bank such as a natural disaster or power failure, the Bank must notify the Finance Board. A notice required by § 910.7(b)(2) may be provided by a senior officer of the Bank having knowledge of its financial condition and authorized by the Bank to sign the notice.

Finally, § 910.7(b)(3) of the proposed rule provided that the Finance Board could require a Bank to file a report, accompanied by a consolidated obligation payment plan, if the Finance Board had reason to believe the Bank was about to default on an obligation or cease to be compliance with the statutory or regulatory liquidity requirements. This provision has not been adopted as part of the final rule because the Finance Board believes it would be redundant in light of the revisions to the certification, notice and payment plan provisions.

3. Consolidated Obligation Payment Plan—§ 910.7(c)

Proposed § 910.7(c) would have required any Bank projecting or experiencing an inability to service its current COs to submit a consolidated obligation payment plan to the Finance Board and to refrain from incurring non-essential operating expenses, declaring or paying dividends, or redeeming any stock, until its CO payment plan is approved by the Finance Board and its consolidated obligation payment obligations were satisfied.

One commenter recommended that § 910.7(c) be modified to require only that the plan address the methods a Bank would undertake ''to make full and timely payment *of its share* of all principal and interest consolidated obligation payments in which the [Federal Home Loan] Bank is a participating Bank.'' The final rule clarifies that a Bank must file a consolidated bond payment plan outlining the methods to be used to meet its current obligations, including direct obligations. The comment that the payment of non-essential expenses should contain an exception for ''ordinary operational expenditures incurred by a Bank in its regular course of business,'' has also been adopted in § 910.7(c)(3) of the final rule.

One commenter proposed that the final rule should make provision for the Finance Board to accept or request modifications on a consolidated bond payment plan within a certain timeframe, and for automatic approval of the payment plan if the Finance Board fails to act by a date certain. Another commenter opposed the restrictions set forth in proposed § 910.7(c)(3) on payment of dividends or redemption of stock as being draconian. The commenter argued that the Finance Board should impose such sanctions only after it has reviewed the specific situation. The final rule is designed to allow the Finance Board to analyze any proffered payment plan independently and in the circumstances presented. A

[1] *See, e.g.*, 12 CFR 934.7 (balance sheets and income statement projects); 12 CFR 934.17 (support for dividend requests); 12 CFR 937.2 (information for Bank System quarterly and annual reports).

fixed timeframe for automatic approval would not further the purpose of the rule which is to afford the Finance Board a rational regulatory process for the necessary deliberation of all relevant factors. Additionally, the restrictions as to payment of dividend or stock redemption are intended to preserve assets that may be needed to ensure that the Bank will be able to continue to operate and make full and timely CO payments. For these reasons, this provision of the final rule has been adopted as proposed.

Other commenters urged the Finance Board to build flexibility into the rule to allow Banks to develop recovery plans or participate in fully-secured inter-Bank loans that would provide for orderly recovery short of liquidation, depending on the severity of the Bank's financial condition. The Finance Board has adopted certain modifications to the rule and believes that as revised the final rule provides sufficient flexibility in how the consolidated bond payment plans would be structured, and makes sufficient provision for payment assistance agreements to be reached between Banks. Inter-Bank consolidated bond payment assistance agreements are subject to Finance Board approval. Under the final rule, a Bank must notify the Finance Board when it commences negotiations for such an assistance agreement with one or more other Banks, and may not implement an assistance agreement prior to Finance Board approval. Thus, the final rule clearly affords oversight authority to the Finance Board to evaluate any given situation individually and determine what remedial steps are appropriate or required.

The final rule requires a Bank to file a consolidated bond payment plan for Finance Board approval if the Bank fails to provide the certification required in paragraph (b)(1), is required to provide the notice required in paragraph (b)(2), or if the Finance Board determines that the Bank will cease to be in compliance with the liquidity requirements or will be unable to meet its current obligations, including its direct obligations. The final rule requires that the consolidated bond payment plan specify the measures the Bank will undertake to meet its current obligations, including its direct obligations. The final rule permits a non-complying Bank to continue to incur and pay normal operating expenses in the regular course of business, but requires such a Bank to refrain from incurring any extraordinary expenses, declaring or paying dividends or redeeming capital stock until the Finance Board has approved the plan and the Bank's direct obligations have been met.

The Finance Board would have authority under the final rule to take into consideration any capital requirements mandated by statute or regulation, and make provision for the Banks to redeem capital and pay dividends in accordance with the applicable provisions of the Act. The Finance Board may waive or amend the consolidated bond payment plan requirements as necessary to accommodate future legislative changes to the capital structure of the Bank System. A separate, specific reservation of authority to do so is unnecessary.

4. Finance Board Payment Orders—§ 910.7(d)

Under proposed § 910.7(d), in the remote event that a Bank would be unable, due to actual or projected cash flow or balance sheet deficiencies, to service its direct obligations, the Finance Board could have ordered one or more other Banks to make such payments. The non-complying Bank would have been liable to the assisting Banks for reimbursement. The Finance Board would look to the assets of the non-complying Bank for reimbursement of such payments.

Section 910.7(d)(1) of the final rule makes clear that the Board of Directors of the Finance Board, in its discretion and notwithstanding any other provision in the rule, may at any time order any Bank to make any payment on any consolidated bond. The final rule in § 910.7(d)(2) establishes unequivocally that to the extent a Bank makes an assistance payment, whether by agreement or by order of the Board of Directors of the Finance Board, the assisting Bank is entitled to reimbursement of the assistance, including costs and interest. The rate of interest for the reimbursement for payments made to assist a non-complying Bank in making its payment obligations will be set by the Board. Additionally, the final rule clarifies that where an agreement is reached between an assisting Bank and a non-complying Bank (or one whose payment capabilities were temporarily impaired by payment system disruptions outside the control of the Bank) the negotiated rate will be subject to the approval of the Finance Board. As discussed previously herein, the Finance Board disagrees with the recommendations from commenters that the rate of interest on reimbursement payments should be set in the regulation at the Federal Funds rate plus 50 to 300 basis points or at an amount high enough to reflect the serious nature of a potential default and act as a deterrent. In the Finance Board's view, the interest rate is a necessary business component to compensate the assisting Bank for its expenses and assistance. The Finance Board has chosen to reserve to itself the authority to set a reasonable interest rate or to approve the terms, including an interest rate, of negotiated assistance agreements.

5. Adjustment of Equities—§ 910.7(e)

Under proposed § 910.7(e), the reallocation of the payment obligations among the other Banks would have been based on the pro rata participation of each Bank in all COs outstanding as of the most recent month end for which the Finance Board has data. The reallocation (as opposed to payments that may be ordered by the Finance Board) would have occurred only after the non-complying Bank had applied all of its assets to service all of its direct consolidated obligations.

Several commenters expressed concern that the requirement in proposed § 910.7(e)(1), that a defaulting Bank shall apply its assets to fulfill its consolidated obligations payment obligations, could require a Bank to sell assets classified as ''held to maturity'' under ACCOUNTING FOR CERTAIN INVESTMENTS IN DEBT AND EQUITY SECURITIES, Statement of Financial Accounting Standards No. 115 (Fin. Accounting Standards Bd. 1993) and thereby require the Bank to mark-to-market its entire portfolio and further worsen the Bank's financial position.

One commenter asked for clarification of whether all of a Bank's assets would have to be applied to the payment of COs before such assets could be used to pay expenses as provided in proposed §§ 910.7(a)(2) and (c). Another commenter suggested that the solution to that interpretation would be to construe the phrase ''apply its assets'' to mean that a Bank may be required to apply interest earned on its assets, and any cash received upon maturity of assets to payment of consolidated obligations, after payment of all necessary expenses, then there should be minimal adverse ramifications to the Banks.

The final rule clarifies that a non-complying Bank shall apply all of its assets to pay its direct obligations, including amounts owed to reimburse any Bank that has provided assistance in meeting the non-complying Bank's direct obligations, whether under an assistance agreement or by order of the Finance Board.

A Bank that provides assistance to another Bank whose operations temporarily are impaired by a natural

disaster or power failure will have a similar right to reimbursement. Finally, § 910.7(e)(3) provides that where the Finance Board determines that a Bank is a non-complying Bank, then the Finance Board may allocate the non-complying Bank's outstanding direct obligation liability among the remaining Banks on a pro rata basis in proportion to each Bank's participation in all COs as of the end of the most recent month for which the Finance Board has data. In § 910.7(e)(1) of the final rule, a non-complying Bank is presumed to have insufficient assets to continue to operate as usual and make full and timely CO payments. The finding of asset insufficiency in paragraph (e) differs from the situation contemplated by § 910.7(c)(3) of the final rule. In the latter section, the final rule assumes that the non-complying Bank will continue to operate as usual, albeit under the terms of a payment plan approved by the Finance Board. A non-complying Bank is thus expressly authorized to continue to incur and pay ordinary operating expenses.

The final rule thus contemplates that the Finance Board will have to intervene to ensure that a non-complying Bank's CO payments are fully and timely made and that its assets are appropriately applied to outstanding consolidated bond obligations and other obligations as provided in the final rule. The Act specifically provides the authority for the Finance Board to do so, *see* 12 U.S.C. 1431(d), and the final rule provides a regulatory framework for the Finance Board to evaluate the overall situation and implement a rational payment solution. Section 910.7(f) of the final rule expressly reserves to the Finance Board the authority to adjust the equities of the Banks in a manner different from the manner scripted in § 910.7(e) to ensure the safety and soundness of one or more of the Banks.

Several commenters suggested that the final rule permit inter-Bank loans to assist in meeting payment obligations, upon terms and conditions negotiated between the Banks, which would obviate the need for the Finance Board to order a Bank to cover the CO payments of another Bank. Another commenter argued in favor of a system providing for the resources of all co-participating Banks to be tapped before the assets of a non-participating Bank are applied to cover the liability of a Bank. The Finance Board believes this could create disincentives for the Banks to enter into CO issuances as co-participants and has not incorporated this comment into the final rule. In addition, the final rule provides for inter-Bank loans and will require that the assisted Bank file notice pursuant to § 910.7(b) and thus trigger the provisions for CO payment plans and Finance Board review.

6. Reservation of Rights—§ 910.7(f)

Under proposed § 910.7(f), the Finance Board reserved its authority to take supervisory, enforcement or other action against any Bank pursuant to the Act to ensure that the Banks are operated in a safe and sound manner. The final rule adopts this and expressly preserves the Finance Board's authority to adjust the equities between the Banks in any manner different from that set forth in this rule.

7. No Rights Created—§ 910.7(g)

Several commenters suggested that the proposed rule be revised expressly to provide that the certification and reporting requirements of the rule do not create any rights in any third party and that non-compliance with the provisions of the rule would not constitute a default under the COs. The Finance Board has adopted this suggestion by including a new § 910.7(g) in the final rule. The final rule provides that nothing in the section shall be deemed to create any rights in any third party, payments made by a Bank on the direct obligations of another Bank are made solely to discharge the joint and several obligation of the Banks on the consolidated bonds, and complying with or failing to comply with the provisions of this section shall not be deemed to be an event of default under any consolidated bond.

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

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 350, *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 910

Consolidated bonds and debentures, Banks, Securities.

For the reasons stated in the preamble, the Finance Board amends 12 CFR part 910 as follows:

PART 910—CONSOLIDATED BONDS AND DEBENTURES

1. Revise the authority citation for part 910 to read as follows:

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

2. Amend § 910.0 by:

A. Revising paragraph (a).

B. Redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively.

C. Adding a new paragraph (b).

D. Revising newly designated paragraph (c).

E. Adding paragraphs (f) and (g).

The additions and revisions read as follows:

§ 910.0 Definitions.

(a) *Finance Board* means the Federal Housing Finance Board.

(b) *Bank* means Federal Home Loan Bank.

(c) *Consolidated bond* means any bond or note issued on behalf of one or more Banks by the Finance Board pursuant to section 11(c) of the Federal Home Loan Bank Act, as amended (the Act) (12 U.S.C. 1431(c)).

* * * * *

(f) *Direct Obligation* means an obligation of a Bank to make any principal or interest payment due on a consolidated bond, whether such obligation arises from:

(1) The Bank's receipt of sale proceeds from the issuance of that consolidated bond or the assumption of the obligation in a voluntary transaction subsequent to the issuance of the bond;

(2) An obligation to make an assistance payment to any other Bank, whether made pursuant to an agreement between one or more Banks or pursuant to a Finance Board payment order; or

(3) An assistance payment reimbursement obligation.

(g) *Non-complying Bank* means any Bank that fails to certify, pursuant to § 910.7(b)(1) of this part, that it is able to pay all of its current obligations, including direct obligations, in full when due; that fails to make consolidated bond payments in full when due; that is required to file a notice pursuant to § 910.7(b)(2) or a consolidated bond payment plan pursuant to § 910.7(c); or that is determined by the Finance Board to require assistance in meeting its direct obligations on consolidated bonds.

3. Add § 910.7 to read as follows:

§ 910.7 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 bonds when due.

(2) Each and every Bank, individually and collectively, shall ensure that the timely payment of principal and interest on all consolidated bonds 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 section 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 bonds issued by the Finance Board pursuant to section 11(c) of the Act.

(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 Financial Management Policy (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:

(i) The Bank is unable to provide the certification required in paragraph (b)(1) of this section;

(ii) The Bank 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) The Bank 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) The Bank negotiates to enter or enters into an agreement with one or more other Banks to obtain financial assistance from such Bank(s) 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 bond payment plans.* (1) A Bank promptly shall file a consolidated bond payment plan for Finance Board approval:

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

(ii) If it 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 bond 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 a 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 bond 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 bond 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 Board of Directors of 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 as set forth in paragraph (e)(1) 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.

(f) *Reservation of authority.* Nothing in this section shall affect the Finance Board's authority to adjust the equities between the Banks in any manner different than the manner described in this section, or to take such 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 section 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 the consolidated bonds.

(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 bonds.

Dated: October 4, 1999.

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

Bruce A. Morrison,

Chairman.

[FR Doc. 99–26283 Filed 10–8–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–40]

Amendment to Class E Airspace; Nevada, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.