

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 78**

[Docket No. 97-108-2]

Brucellosis in Cattle; State and Area Classifications; Arkansas**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arkansas from Class A to Class Free. We have determined that Arkansas meets the standards for Class Free status. The interim rule relieved certain restrictions on the interstate movement of cattle from Arkansas.

EFFECTIVE DATE: The interim rule became effective on December 3, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. R. T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1237; (301) 734-7709.

SUPPLEMENTARY INFORMATION:**Background**

In an interim rule effective December 3, 1997, and published in the **Federal Register** on December 4, 1997 (62 FR 64134-64135, Docket No. 97-108-1), we amended the brucellosis regulations concerning the interstate movement of cattle, contained in § 78.41, by changing the classification of Arkansas from Class A to Class Free. The interim rule relieved certain restrictions on the interstate movement of cattle from Arkansas.

Comments on the interim rule were required to be received on or before February 2, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 62 FR 64134-64135 on December 4, 1997.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 2nd day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00-5597 Filed 3-7-00; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF THE TREASURY**12 CFR Part 1510****RIN 1505-AA79****Resolution Funding Corporation Operations****AGENCY:** Department of the Treasury.**ACTION:** Interim final rule with request for comments.

SUMMARY: The Secretary of the Treasury (Secretary) is revising the Treasury Department's regulation governing the operations of the Resolution Funding Corporation (Funding Corporation). The Funding Corporation is a mixed-ownership government corporation under the supervision of the Secretary. The operations regulation currently governs matters such as how the Funding Corporation raises capital, issues and services its debt, and pays its administrative expenses. The revisions in the interim final rule implement recent statutory changes affecting these activities. In addition, the revisions eliminate certain provisions in the operations regulation relating to activities the Funding Corporation no longer performs and streamline the remaining provisions.

DATES: The interim final rule is effective on March 8, 2000. Written comments on the interim final rule may be submitted to the Treasury Department on or before April 7, 2000.

ADDRESSES: Mail comments to: Office of the Assistant General Counsel (Banking and Finance), Attention: Comment Record, Room 2026, Department of the Treasury, 1500 Pennsylvania Ave., NW

20220. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make an appointment, call (202) 622-0990.

FOR FURTHER INFORMATION CONTACT:

Brandon B. Straus, Attorney-Advisor, Office of the Assistant General Counsel (Banking and Finance), (202) 622-1964, or Matthew Green, Financial Analyst, Office of Financial Institutions Policy, Department of the Treasury, (202) 622-2157.

SUPPLEMENTARY INFORMATION:**I. Statutory and Regulatory Background****A. Statutory Requirements**

In 1989, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). See Public Law 101-73, 103 Stat. 183 (1989). One of the purposes of FIRREA was to resolve a large number of insolvent savings associations. In furtherance of this purpose, FIRREA added a new section 21A to the Federal Home Loan Bank Act (Act) creating the Resolution Trust Corporation (RTC), a mixed ownership government corporation charged with containing, managing, and resolving failed savings associations. In order to fund the RTC's activities, FIRREA added a new section 21B to the Act creating the Funding Corporation.

Section 21B(f) of the Act authorizes the Funding Corporation to issue up to \$30 billion of debt obligations and to transfer the net proceeds of the debt issuance to the RTC through the purchase of RTC capital certificates. Prior to issuing any obligations, the Funding Corporation is required to establish a Principal Fund to defease the principal amount of the obligations. The Act requires the Federal Home Loan Banks (Banks) and depository institutions whose deposits are insured by the Savings Association Insurance Fund (SAIF members) to capitalize the Principal Fund through the purchase of nonvoting stock of the Funding Corporation. The Principal Fund is to be invested in noninterest bearing direct obligations of the United States having equal maturity value with the principal amount of the Funding Corporation's obligations. Upon the maturity of the Funding Corporation's obligations, the securities in the Principal Fund are to be liquidated to repay the obligations.

Section 21B(f) of the Act directs the Funding Corporation to pay interest on its obligations with funds obtained from up to five sources, which are specified in the statute. The Funding Corporation is to obtain funds from these sources in succession, to the extent that funds from

the previous source or sources are insufficient to cover the entire amount of the interest payment due. As further discussed below, these sources are: (1) Earnings on Funding Corporation assets not invested in the Principal Fund; (2) certain funds of the RTC; (3) a portion of the net earnings of the Banks; (4) funds from the Federal Savings and Loan Insurance Corporation Resolution Fund (FSLIC Resolution Fund) and (5) the Secretary.

The Act also governs matters such as the Funding Corporation's investments, administrative expenses, and management. The Funding Corporation is managed by a three-member Directorate, consisting of the Director of the Office of Finance of the Federal Home Loan Bank System (Office of Finance) and two of the 12 Bank presidents, who serve on a rotating basis. Day-to-day operations of the Funding Corporation are carried out by employees of the Office of Finance.

From 1989 to 1998, the Funding Corporation operated under the supervision of the Thrift Depositor Protection Oversight Board (Board). Congress abolished the Board in 1998 and transferred its oversight authority for the Funding Corporation to the Secretary. See Public Law 105-216, section 14, 112 Stat. 909 (1998).

B. Regulatory Requirements

The Board initially issued the operations regulation in 1989 to implement the statutory provisions discussed above. See 54 FR 41950 (Oct. 13, 1989) (codified at 12 CFR part 1510). After the Board was abolished in 1998, the Secretary transferred the operations regulation to the Treasury Department. See 63 FR 57236 (Oct. 27, 1998). The Secretary did not at that time, however, revise the operations regulation to delete references to the Board or make other changes to update the regulation.

As discussed in detail below in the Analysis of the Interim Final Rule section, this interim final rule revises the operations regulation to reflect the transfer of oversight authority to the Secretary. The interim final rule also updates the regulation to take into account developments affecting the funding of interest payments on Funding Corporation obligations, such as the termination of the RTC in 1995 and changes made by the Gramm-Leach-Bliley Act of 1999 (GLBA), Public Law 106-102 (1999). In the course of making these changes, the Secretary is streamlining the regulation by eliminating provisions that no longer need to be embodied in regulation. The interim final rule also revises the language and the overall structure of the

operations regulation to comply with the President's Memorandum of June 1, 1998 requiring the use of plain language in agency regulations.

II. Analysis of the Interim Final Rule

The operations regulation currently contains provisions implementing each of the Funding Corporation's three main statutory functions discussed above: (1) Raising capital for the Principal Fund; (2) issuing debt obligations; and (3) paying interest on the obligations. The operations regulation also implements certain administrative functions such as the payment of the Funding Corporation's administrative expenses and the investment of its surplus funds. As further discussed below, it is no longer necessary to implement the first two statutory functions—capitalization and debt issuance—by regulation. Consequently, the interim final rule eliminates existing provisions of the operations regulation related to these functions. The interim final rule also retains, streamlines, and updates the provisions of the operations regulation that implement the Funding Corporation's third main function—paying interest on its debt—as well as its administrative functions.

A. Elimination of Existing Provisions on Debt Issuance

From 1989 to 1991, the Funding Corporation undertook a series of debt issuances totaling \$29,995,180,000, in the form of noncallable bonds with 30- and 40-year maturities. Consequently, of the Funding Corporation's \$30 billion debt issuance authority, only \$4.82 million remains unused.

The statutory requirements regarding the use of the Funding Corporation's debt issuance proceeds make it highly unlikely that the Funding Corporation will ever use its remaining \$4.82 million of issuance authority. Specifically, section 21B(f)(4) of the Act provides that the Funding Corporation must use the proceeds of any debt issuance for one of two purposes: (1) To purchase RTC capital certificates; or (2) to refund previously issued Funding Corporation obligations.

The RTC terminated on December 31, 1995, pursuant to section 21A(m) of the Act. Therefore, the Funding Corporation can no longer transfer funds to the RTC through the purchase of RTC capital certificates. Accordingly, any new debt issuance could not fulfill the first statutory purpose cited above. Furthermore, since the Funding Corporation's outstanding obligations are noncallable, the Funding Corporation is contractually bound not to repay them prior to maturity.

Therefore, the Funding Corporation would not issue new obligations for the second statutory purpose.

In sum, the primary purpose of the Funding Corporation's debt issuance function—to raise funds to finance the resolution activities of the RTC—was fulfilled by 1991, and the circumstances under which a new debt issuance would be warranted are remote. Consequently, provisions in the operations regulation at existing § 1510.4, entitled "Authority to issue obligations", and existing § 1510.8, entitled "Issuance expenses", are no longer necessary and may be removed. The elimination of these regulatory provisions, however, does not affect the Funding Corporation's underlying statutory authority to issue obligations or the Secretary's authority to regulate their issuance. These authorities remain in effect under the Act.

B. Elimination of Existing Provisions on Capitalization of the Principal Fund

The Principal Fund is a segregated custodial account held by the Funding Corporation's fiscal agent, the Federal Reserve Bank of New York. The sole purpose of the Principal Fund is to defease the aggregate principal amount of the debt obligations issued by the Funding Corporation. Under the Act, the Funding Corporation may not issue any new obligations unless there are amounts in the Principal Fund sufficient to defease the principal amount of the new obligations. The Principal Fund currently contains non-marketable zero-coupon Treasury bonds with total face amounts sufficient to defease fully the aggregate principal amount of outstanding Funding Corporation obligations.

As discussed above, the Funding Corporation used all but \$4.82 million of its debt issuance authority by 1991. Therefore, since 1991, the Funding Corporation has needed no new capital for the Principal Fund. Furthermore, since it is unlikely that the Funding Corporation will issue any additional obligations, the Secretary is removing provisions in the operations regulation relating to capitalization of the Funding Corporation. These provisions currently appear in § 1510.9, entitled "Capitalization of Funding Corporation" and § 1510.10, entitled "Funding Corporation Principal Fund Reserve Account".

Existing § 1510.9 generally requires the Funding Corporation to make quarterly projections of the amount of funds necessary to capitalize the Principal Fund and pay interest on outstanding Funding Corporation obligations, as well as projections on

how it will raise those funds from the Banks. Section 1510.9 also contains a procedure for the collection of capital payments from the Banks, SAIF members, and the FSLIC Resolution Fund.

Existing § 1510.10 implements statutory provisions governing the situation where one or more “deficient” Banks are unable to provide the Funding Corporation with the amounts required to capitalize the Principal Fund. The Act and the regulation require that the “remaining” Banks provide funds on behalf of the “deficient” Banks and later receive reimbursement.

The interim final rule removes the provisions in existing § 1510.9 requiring the Funding Corporation to project amounts required to capitalize the Principal Fund and to raise those funds. The interim final rule retains and transfers to a new section the provisions in § 1510.9 requiring the Funding Corporation to make quarterly projections of amounts available to cover interest payments on Funding Corporation obligations. The interim final rule removes in its entirety § 1510.10, regarding the Principal Fund Reserve Account.

As in the case of the Funding Corporation’s debt issuance authority, the elimination of regulatory provisions governing capitalization of the Funding Corporation does not affect the Funding Corporation’s underlying statutory authority to raise capital or the Secretary’s authority to regulate this activity. Moreover, much of existing §§ 1510.9 and 1510.10 merely repeat or cross reference provisions of the Act. Consequently, removal of these regulatory provisions will not deprive the Funding Corporation, the Banks, or the public of interpretive guidance that elaborates on the provisions of the Act.

C. Section-by-Section Analysis of the Interim Final Rule

1. Section 1510.1—Authority, Purpose, and Scope

Section 1510.1 of the interim final rule cites the statutory authority under which the Secretary may issue the operations regulation and explains the purpose and scope of the regulation. Interim § 1510.1(b) makes clear that the operations regulation does not implement all aspects of the Funding Corporation’s statutory authority. It states that the purpose of Part 1510 is to provide direction to the Funding Corporation in carrying out its statutory mandate to make interest payments on its obligations and to provide guidance to the Funding Corporation in paying its

administrative expenses. Interim § 1510.1 also makes clear that the Secretary may provide any necessary direction to the Funding Corporation in carrying out any of its other statutory authorities.

Interim § 1510.1(c) carries forward the substance of existing § 1510.2, entitled “General authority”. Existing § 1510.2 generally provides that the Funding Corporation may exercise the authority granted under the Act and its bylaws, whether or not that authority is implemented by regulation, subject to the direction of the Board. Interim § 1510.1(c) similarly makes clear that the absence of specific regulations implementing the Funding Corporation’s statutory authority does not diminish the Funding Corporation’s ability to exercise that authority in accordance with its bylaws, subject to the oversight of the Secretary.

2. Section 1510.2—Definitions

Section 1510.2 of the interim final rule largely carries forward the definitions in existing § 1510.1 of the operations regulation, with some exceptions. The interim final rule eliminates the definition referring to the now abolished Thrift Deposit Protection Oversight Board. It also eliminates definitions related to the capitalization of the Funding Corporation and the issuance of Funding Corporation obligations, including: “Deficient bank”, “Excess amount”, “Remaining bank”, “Financing Corporation”, and “Issuance costs”. Although the term “Issuance costs” is defined in the Act to include the ongoing expenses associated with servicing Funding Corporation obligations, the Funding Corporation has prepaid its fiscal agent for these expenses. Therefore, the Funding Corporation currently has no issuance costs and will not incur issuance costs absent a new debt issuance.

The interim final rule revises the definition of “Administrative expenses” by deleting a reference to issuance costs, which are no longer incurred, as well as a reference to redemption premiums, which would be incurred only through a refunding of existing obligations.

The interim final rule also revises the definition of the “Net earnings” of a Bank by deleting the reference to payments made for the purchase of Funding Corporation capital stock. In addition, the interim final rule deletes the reference to purchases of Financing Corporation stock because the Banks no longer undertake such purchases. The interim final rule adds language regarding deductions for operating expenses and expenses related to the Banks’ Affordable Housing Programs,

pursuant to section 607 of the GLBA, which clarifies the definition of “net earnings” for purposes of determining the amount of each Bank’s payment to cover the interest on Funding Corporation obligations.

Interim § 1510.2 adds a definition referring to the Secretary of the Treasury, consistent with transfer of the oversight authority for the Funding Corporation to the Secretary. The interim final rule also adds a definition referring to the Federal Housing Finance Board, which, as discussed further below, now has a statutory role in determining the availability of funds from the Banks for payment of interest on Funding Corporation obligations. In order to simplify the language of the regulation, the interim final rule adds definitions of two new terms: “obligations”, which refers to Funding Corporation obligations, and “interest payment due date”, which refers to the date on which the next quarterly interest payments on such obligations are due.

3. Section 1510.3—How Does the Funding Corporation Pay Administrative Expenses?

Section 1510.3 of the interim final rule requires the Funding Corporation to develop an annual budget for its administrative expenses, submit the budget by November 15 to the Secretary for approval, and collect funds from the Banks in order to pay the administrative expenses. Interim § 1510.3 largely carries forward and streamlines the requirements of existing § 1510.6, entitled “Budget and expenses”, and § 1510.7, entitled “Billing of administrative expenses”.

The dollar amount of the Funding Corporation’s administrative budget has changed little or not at all from year to year. In order to streamline the budget approval process, interim § 1510.3(b) provides that the administrative budget submitted to the Secretary by the Funding Corporation is deemed to be approved by the Secretary unless the Secretary disapproves it within 45 days of the date submitted.

Interim § 1510.3(d) carries forward requirements in existing § 1510.7 that provide for each Bank to pay a portion of the Funding Corporation’s administrative expenses, calculated according to the formula set forth in section 21B(c)(7)(B) of the Act. For purposes of increased clarity, the interim final rule replaces the reference to the Act with a description of the formula. It provides that the amount of each Bank’s payment must be pro rated according to the percentage of the total

outstanding Funding Corporation capital stock owned by the Bank.

4. Section 1510.4—Who May Act as the Depositary and Fiscal Agent for the Funding Corporation?

Section 1510.4 of the interim final rule carries forward and consolidates the provisions in existing § 1510.5 of the operations regulation, entitled “Federal Reserve banks to be depositaries and fiscal agents”. Interim § 1510.4(b) adds new language clarifying that the Funding Corporation may use a demand deposit account at a federally insured depository institution only as a means of managing funds used to pay administrative expenses. This change conforms the operations regulation to the Funding Corporation’s current practice, as approved by the former Board.

5. Section 1510.5—How Does the Funding Corporation Make Interest Payments on Its Obligations?

The payment of interest on outstanding Funding Corporation obligations is now the Funding Corporation’s primary activity. Under section 21B(f) of the Act, the Funding Corporation is to make interest payments with funds obtained from the following sources: (1) Earnings on Funding Corporation assets not invested in the Principal Fund; (2) certain funds of the RTC; (3) a portion of the net earnings of the Banks; (4) any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund; and (5) the Secretary. The Funding Corporation is to tap these sources in succession, to the extent that funds from the previous source or sources are insufficient to cover the entire amount of the interest payment due.

Interest on the Funding Corporation’s obligations comes due quarterly. Consequently, the operations regulation sets forth a procedure under which the Funding Corporation makes quarterly projections of the funds available from these sources and then collects the funds on a quarterly basis.

Section 1510.5 of the interim final rule carries forward provisions relating to funding projections in existing § 1510.9(a), entitled “Capitalization of Funding Corporation”; provisions relating to the payment of interest in existing § 1510.11, entitled “Interest payments and interest reserve account”; and provisions in existing § 1510.12, entitled “Request for funds for interest payments”. In addition, interim § 1510.5 adds new provisions to reflect statutory and other changes discussed below.

Section 1510.5(a) of the interim final rule carries forward existing provisions that direct the Funding Corporation to obtain funds for interest payments from sources designated in section 21B(f)(2) of the Act. Interim § 1510.5(a) also reflects two changes from the existing operations regulation.

First, interim § 1510.5(a) removes reference to certain funds of the RTC as a funding source for interest payments (although, as explained below, proceeds from assets once held by the RTC remain available for interest payments). Section 21B(f)(2)(B) of the Act designates the RTC as the second of the five funding sources for interest payments on Funding Corporation obligations. The Act provides that to the extent that amounts from the first funding source—earnings on assets of the Funding Corporation not invested in the Principal Fund—are insufficient to cover interest payments due, the RTC must pay to the Funding Corporation: (i) The liquidating dividends and payments made on claims received by the RTC from receiverships to the extent such proceeds are determined by the Board to be in excess of funds presently necessary for resolution costs; and (ii) any proceeds from warrants and participations acquired by the RTC.

Pursuant to section 21A(m)(2) of the Act, the RTC ceased to exist on December 31, 1995. Upon its termination, all the RTC’s assets and liabilities were transferred to the FSLIC Resolution Fund, including the RTC’s claims on receiverships as well as any warrants and participations it held. Furthermore, after the RTC terminated, the Board’s authority with respect to the RTC terminated. The Board no longer had the authority described in section 21B(f)(2)(B) of the Act to direct the RTC—defunct after 1995—to transfer to the Funding Corporation any liquidating dividends and payments made on receivership claims. Nor did the Board have any authority to direct the FSLIC Resolution Fund to make payments to the Funding Corporation, including payments from assets of the former RTC. Finally, the Board was abolished in 1998, and the Secretary succeeded to the Board’s remaining programmatic function: oversight of the Funding Corporation.

In sum, the funds described in section 21B(f)(2)(B) of the Act are no longer held by the RTC and both the RTC and the regulatory agency that would direct RTC to make payments to the Funding Corporation have ceased to exist. For these reasons, section 21B(f)(2)(B) is no longer operative. Therefore, interim § 1510.5(a), which lists the funding sources for interest payments on

Funding Corporation obligations, does not make reference to the RTC funds described in section 21B(f)(2)(B).

Nonetheless, the former RTC’s assets remain available to fund interest payments on the Funding Corporation’s obligations. Section 21B(f)(2)(D) of the Act designates the net proceeds from the sale of these assets—now held by the FSLIC Resolution Fund—as the fourth designated funding source for the Funding Corporation’s interest payments. Interim § 1510.5(a)(3) makes reference to this funding source.

Second, interim § 1510.5(a)(2) revises the language describing the amount of the payments the Funding Corporation must obtain from the Banks. Prior to the enactment of the GLBA, the Act required the Banks as a group to pay an aggregate amount of \$300,000,000 per year to fund interest on Funding Corporation obligations. This aggregate amount was allocated among the Banks pursuant to a requirement that each Bank pay an equal percentage of its annual net earnings up to 20 percent. If the Banks were required to pay more than 20 percent in a given year to reach the aggregate \$300,000,000 payment, the amounts over 20 percent were allocated among the Banks according to a statutory formula.

Section 607 of the GLBA amended the Act by eliminating the \$300,000,000 cap on the Banks’ annual payment and requiring each Bank to pay the Funding Corporation a fixed 20 percent of its annual net earnings after deducting expenses related to the Banks’ Affordable Housing Programs and operating expenses. Section 607 also added a new provision requiring the Banks’ regulator, the Finance Board, to extend or shorten the period during which the Banks must continue to make payments to the Funding Corporation, based on a method described in section 607. Interim § 1510.5(a)(2) reflects these statutory changes.

Section 1510.5(b) of the interim final rule requires the Funding Corporation on a quarterly basis to obtain information on the Banks’ net earnings as well as projections from the FSLIC Resolution Fund in order to determine amounts that the Funding Corporation can expect to obtain from those entities to fund the next four quarterly interest payments.

Section 1510.5(c) of the interim final rule requires the Funding Corporation to submit to the Secretary for approval a report showing the amounts of the next four quarterly interest payments due and the amounts projected to be available to make those payments from earnings on Funding Corporation assets not invested in the Principal Fund,

payments from the Banks, and amounts transferred from the FSLIC Resolution Fund.

Section 1510.5(d) of the interim final rule carries forward provisions in existing § 1510.11 and § 1510.12 of the operations regulation regarding the coordination of payments from the Banks, the FSLIC Resolution Fund, and the Secretary to the Funding Corporation to cover interest on its obligations.

Interim § 1510.5(d) also adds new provisions dealing with funds transferred from the FSLIC Resolution Fund. The existing regulation does not specifically address the procedure under which the Funding Corporation is to obtain funds from the FSLIC Resolution Fund. In the past, specific procedures were not necessary because the FSLIC Resolution Fund had no funds to transfer. Now that the FSLIC Resolution Fund has received the assets and liabilities from the former RTC, there may be net proceeds from the sale of those assets available to fund interest payments on Funding Corporation obligations. Consequently, the Funding Corporation must have a procedure in place under which it requests any funds available from the FSLIC Resolution Fund after requesting funds from the Banks but before requesting funds from the Secretary.

Under an existing arrangement with the Secretary, the Funding Corporation must request funds from the Secretary at least five business days before the Funding Corporation's quarterly interest payments are due. As part of its request, the Funding Corporation must certify as to the amounts available from the prior funding sources. Consequently, the Funding Corporation must have a process in place that allows it to meet the timing requirements of its arrangement with the Secretary while having a relatively high degree of certainty as to the amounts available from the other funding sources. Interim § 1510.5(d) establishes a procedure for this process.

Amounts available from the first statutorily designated funding source—earnings on Funding Corporation assets not invested in the Principal Fund—are under the direct control of the Funding Corporation. Therefore, interim § 1510.5(d) does not provide a procedure for obtaining funds from this source.

As to the second funding source—the Banks—interim § 1510.5(d)(1) provides that as soon as practicable after the end of each quarter, the Funding Corporation must obtain from each Bank a report of its actual net earnings for that quarter. Not less than six business days

prior to the interest payment due date, the Funding Corporation must notify each Bank in writing of the interest payment due date and the amount of the payment due from the Bank.

Interim § 1510.5(d)(2) provides that on the day the Funding Corporation notifies the Banks of the payments due from them, the Funding Corporation must notify the FSLIC Resolution Fund of: (1) The interest payment due date; (2) the aggregate amount of the quarterly interest payment due on that date; and (3) the amount of the quarterly interest payment that will be funded by the two prior funding sources. In addition, the Funding Corporation must request that the FSLIC Resolution Fund transfer available funds to the Funding Corporation by noon on the fifth business day prior to the interest payment due date.

Section 1510.5(d)(3) of the interim final rule provides that no less than five business days prior to the interest payment due date, the Funding Corporation must request any payment that may be necessary from the Secretary by providing a certification, in a form satisfactory to the Secretary, stating the total amounts of the quarterly interest payment to be paid by the Funding Corporation from sources other than the Secretary and the amounts necessary to make up the deficiency. Consistent with section 21B(f)(2)(E) of the Act, the interim final rule provides that any amount paid by the Secretary becomes a liability of the Funding Corporation to be repaid to the Secretary upon the dissolution of the Funding Corporation, to the extent of its remaining assets.

6. Section 1510.6—What Must the Funding Corporation Do With Surplus Funds?

Section 1510.6 of the interim final rule streamlines and carries forward without substantive change the provisions in existing § 1510.3 of the operations regulation, entitled “Authorization of establishment of investment policies and procedures”.

7. Section 1510.7—What Are the Funding Corporation's Reporting Requirements?

Section 1510.7 of the interim final rule consolidates provisions in existing § 1510.13, entitled “Reports to Board”, and § 1510.14, entitled “Reports to Congress”. Existing § 1510.13 requires the Funding Corporation to provide a quarterly report to the Board of specific items of information dealing with the capitalization of the Principal Fund and the issuance of Funding Corporation obligations. Most of the items required

to be in the report are no longer relevant to the ongoing oversight of the Funding Corporation. Therefore, the interim final rule removes the quarterly reporting requirement in existing § 1510.13, but adds a new provision in interim § 1510.7 under which the Funding Corporation must provide the Secretary such reports as the Secretary may require.

8. Section 1510.8—What Are the Audit Requirements for the Funding Corporation?

Existing § 1510.15 of the operations regulation provides that an office designated by the Board shall review the books and records of the Funding Corporation at least annually to determine whether the Funding Corporation is performing its functions in accordance with the provisions of section 21B of the Act and the operations regulation. The Funding Corporation currently complies with this provision by obtaining an annual audit by an independent external auditor. In addition, the Funding Corporation is audited annually as part of the internal audit of the Office of Finance. Under section 21B(h)(3) of the Act and section 105 of the Government Corporation Control Act, *see* 31 U.S.C. 9105, the Comptroller General reviews the workpapers associated with the annual external audit. Interim § 1510.8 carries forward and streamlines existing § 1510.15 and conforms its provisions to reflect the Funding Corporation's current practice of obtaining an annual external audit.

The Secretary requests comment on all aspects of the interim final rule.

III. Administrative Procedure Act

This rule makes technical amendments to the regulation governing the operations of the Funding Corporation that conform the regulation to changes in the law and that do not affect the general public. For this reason, it has been determined that publishing this rule with notice and an opportunity for public comment is unnecessary pursuant to 5 U.S.C. 553(b). The Treasury Department, however, will consider any public comments on the interim final rule received on or before April 7, 2000. For the same reasons, pursuant to 5 U.S.C. 553(d), it is determined that there is good cause for the interim final rule to become effective immediately upon publication.

IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

V. Executive Order 12866

This interim final rule is not a "significant regulatory action" for purposes of Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects

12 CFR Part 1510

Federal home loan banks, Federal Reserve System, Resolution Funding Corporation, Securities.

Authority and Issuance

For the reasons set out in the preamble 12 CFR part 1510 is revised to read as follows:

PART 1510—RESOLUTION FUNDING CORPORATION OPERATIONS

Sec.

§ 1510.1 Authority, purpose, and scope.

§ 1510.2 Definitions.

§ 1510.3 How does the Funding Corporation pay administrative expenses?

§ 1510.4 Who may act as the depository and fiscal agent for the Funding Corporation?

§ 1510.5 How does the Funding Corporation make interest payments on its obligations?

§ 1510.6 What must the Funding Corporation do with surplus funds?

§ 1510.7 What are the Funding Corporation's reporting requirements?

§ 1510.8 What are the audit requirements for the Funding Corporation?

Authority: 12 U.S.C. 1441b; Sec. 14(d), Pub. L. 105–216, 112 Stat. 910.

§ 1510.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the authority of section 14(d) of the Homeowners Protection Act of 1998 (Public Law 105–216, 112 Stat. 910) and section 21B(l) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(l)).

(b) *Purpose and scope.* The purpose of this part is to provide direction to the Funding Corporation in carrying out its statutory mandate to make interest payments on its outstanding debt obligations. This part also provides direction to the Funding Corporation regarding funding the administrative costs of its operations. This part does not provide direction to the Funding Corporation, however, on activities that the Funding Corporation is authorized to carry out under the Act, but that it previously has completed or is not likely to undertake in the future, such as raising capital and issuing obligations. Although the Funding Corporation continues to have statutory authority to undertake these activities, the circumstances under which it would do so are limited. If such circumstances

were to arise, the Secretary has the authority to provide any necessary direction to the Funding Corporation.

(c) *Authority of the Funding Corporation.* The Funding Corporation may exercise all authority granted to it by the Act in accordance with its bylaws, whether or not specifically implemented by regulation, subject to the requirements of this part and such other regulations, orders and directions as the Secretary may prescribe.

§ 1510.2 Definitions.

The following definitions apply to terms used in this part unless the context requires otherwise:

Act means the Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*).

Administrative expenses means costs incurred as necessary to carry out the functions of the Funding Corporation, including custodian fees, but does not include any interest on obligations.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Custodian fee means any fee incurred by the Funding Corporation in connection with the transfer of any security to, or the maintenance of any security in, the Funding Corporation Principal Fund and any other expense incurred in connection with the establishment or maintenance of the Funding Corporation Principal Fund.

Directorate means the Directorate of the Funding Corporation established pursuant to section 21B(c) of the Act (12 U.S.C. 1421b(c)).

FDIC means the Federal Deposit Insurance Corporation established pursuant to section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811, *et seq.*).

Finance Board means the Federal Housing Finance Board established pursuant to section 2A(a)(1) of the Act.

FSLIC Resolution Fund means the Federal Savings and Loan Insurance Corporation Resolution Fund established pursuant to section 11A(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1811, *et seq.*).

Funding Corporation means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

Funding Corporation Principal Fund means the separate account established under section 21B(g)(2) of the Act.

Interest payment due date means the date on which the next quarterly interest payments on obligations are due.

Net earnings means net earnings after deducting expenses relating to section 10(j) of the Act (Affordable Housing Program) and operating expenses, but

without reduction for chargeoffs and payments to fund interest payments on obligations.

Obligations means bonds issued by the Funding Corporation under section 21B(f) of the Act.

RTC means the Resolution Trust Corporation established pursuant to section 21A(b)(1)(A) of the Act and which terminated on December 31, 1995, pursuant to section 21A(m) of the Act.

Secretary means the Secretary of the Treasury or the designee of the Secretary of the Treasury.

§ 1510.3 How does the Funding Corporation pay administrative expenses?

(a) *The Directorate proposes a budget.*

By November 15 of each year, the Directorate must approve and submit to the Secretary a proposed budget for the administrative expenses of the Funding Corporation for the following year.

(b) *The Secretary approves the budget.* The Funding Corporation's budget is subject to the Secretary's prior approval. The proposed budget submitted by the Directorate shall be deemed to be approved by the Secretary unless the Secretary disapproves it within 45 days of the date submitted. The Funding Corporation must transmit a copy of the approved budget to each Bank.

(c) *Budget changes must be approved by the Secretary.* If the Funding Corporation projects or anticipates incurring expenses exceeding its approved budget, the Directorate must submit an amended budget to the Secretary for approval.

(d) *The Funding Corporation collects funds from the Banks to pay its administrative expenses.* At least semiannually, the Funding Corporation must request that each Bank submit within 10 business days of the request payment for a portion of the administrative expenses in the Funding Corporation's budget for the current calendar year. The amount of each Bank's payment must be pro rated according to the percentage of the total outstanding Funding Corporation capital stock owned by the Bank. The Funding Corporation must adjust the amount of each Bank's payment as necessary to reflect differences between aggregate projected and actual administrative expenses incurred during the calendar year and to reflect any changes in estimated aggregate administrative expenses for the coming period. The Funding Corporation must not request payments from the Banks that, in the aggregate, exceed the administrative expenses in the Funding Corporation's approved budget.

§ 1510.4 Who may act as the depository and fiscal agent for the Funding Corporation?

(a) *In general, the Federal Reserve Banks.* The Funding Corporation must use one or more Federal Reserve Banks as depositories for or fiscal agents or custodians of the Funding Corporation.

(b) *For administrative accounts, insured depository institutions.* Subject to approval by the Secretary, the Funding Corporation may establish demand deposit accounts at one or more federally insured depository institutions for the management of funds used to pay administrative expenses.

§ 1510.5 How does the Funding Corporation make interest payments on its obligations?

(a) *The Funding Corporation must obtain funds from up to four sources.* The Funding Corporation must pay the interest due on its obligations with funds it obtains from the following sources and in the following order:

(1) Earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund.

(2) To the extent funds identified in paragraph (a)(1) of this section are insufficient, the Funding Corporation must obtain from each Bank in each calendar year payments totaling 20 percent of the net earnings of the Bank. The Funding Corporation must not obtain funds from a Bank under this paragraph after the date upon which the term of the Bank's payment obligation has ended, as determined by the Finance Board pursuant to section 21B(f)(2)(C)(iii) of the Act.

(3) To the extent funds identified in paragraphs (a)(1) and (2) of this section are insufficient, the Funding Corporation must obtain from the FSLIC Resolution Fund amounts available from any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund.

(4) To the extent that funds from the sources identified in paragraphs (a)(1) through (3) of this section are insufficient, the Funding Corporation must obtain from the Secretary the additional amount due.

(b) *The Funding Corporation must obtain projections of funds availability from the Banks and the FSLIC Resolution Fund.* Not later than March 15, June 15, September 15, and December 15 of each year:

(1) The Funding Corporation must obtain from each Bank a statement signed by an officer of such Bank containing sufficient information on the Banks net earnings to enable the Funding Corporation to make quarterly projections of funds available from the

Bank for the current quarter and the next three quarters; and

(2) The Funding Corporation must obtain from an authorized representative of the FSLIC Resolution Fund projections of the amount of funds available in the current quarter and the next three quarters from the net proceeds from the sale of received from the RTC.

(c) *The Funding Corporation must report funding projections to the Secretary.* Not later than March 20, June 20, September 20, and December 20 of each year, the Funding Corporation must submit to the Secretary for approval a report containing:

(1) The aggregate amounts of each of the next four quarterly interest payments due on obligations; and

(2) The amounts projected to be available to fund such payments from:

(i) Earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund;

(ii) Payments from the Banks; and

(iii) Funds transferred from the FSLIC Resolution Fund.

(d) *The Funding Corporation must request funds from the Banks, the FSLIC Resolution Fund, and the Secretary—*(1) *Requests to the Banks.* As soon as practicable after the end of each quarter, the Funding Corporation must obtain from each Bank a report of its actual net earnings for that quarter. Not less than six business days prior to the interest payment due date, the Funding Corporation must notify each Bank in writing of the interest payment due date and the amount of the payment due from the Bank. To the extent funds identified in paragraph (a)(1) of this section are insufficient to pay the interest due, the amount of each Bank's payment must be 20 percent of the Bank's actual quarterly net earnings, taking into account any adjustment to the Bank's earnings for any previous quarters. The Funding Corporation must request the Bank to provide payment through wiring immediately available and finally collected funds to the Funding Corporation no later than the interest payment due date.

(2) *Request to the FSLIC Resolution Fund.* On the day the Funding Corporation notifies the Banks of the payments due from them under paragraph (d)(1) of this section, the Funding Corporation must:

(i) Notify the FSLIC Resolution Fund in writing of:

(A) The interest payment due date;

(B) The aggregate amount of the quarterly interest payment due on that date; and

(C) The amount of the quarterly interest payment that will be funded by

earnings on assets of the Funding Corporation not invested in the Funding Corporation Principal Fund and payments due from the Banks; and

(ii) Request that the FSLIC Resolution Fund transfer to the Funding Corporation by noon on the fifth business day prior to the interest payment due date any funds available from the net proceeds from the sale of assets received from the RTC, to the extent funds identified in paragraphs (a)(1) and (2) of this section are insufficient to pay the interest due.

(3) *Request to the Secretary.* No less than five business days prior to the interest payment due date, the Funding Corporation must request payment from the Secretary by providing a certification, in a form satisfactory to the Secretary, stating the total amounts of the quarterly interest payment to be paid by the Funding Corporation from sources other than the Secretary and the amounts necessary to make up the deficiency. Any amount paid by the Secretary becomes a liability of the Funding Corporation to be repaid to the Secretary upon the dissolution of the Funding Corporation, to the extent of its remaining assets.

§ 1510.6 What must the Funding Corporation do with surplus funds?

If the Funding Corporation has funds that are not needed for current interest payments on obligations, it must invest the funds in obligations of the United States issued by the Secretary, in accordance with an investment policy approved by the Secretary.

§ 1510.7 What are the Funding Corporation's reporting requirements?

In addition to the budget submission required by § 1510.3 and the funding projection reports required by § 1510.5, the Funding Corporation must prepare such reports as the Secretary may require, including reports necessary to assist the Secretary in making the annual report to Congress and the President on the Funding Corporation under section 21B(i) of the Act.

§ 1510.8 What are the audit requirements for the Funding Corporation?

The Funding Corporation must obtain an audit of its books and records by an independent external auditor at least annually.

Dated: February 11, 2000.

Gary Gensler,

Under Secretary of the Treasury.

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