

# Rules and Regulations

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 951 and 997

[No. 2000-15]

RIN 3069-AA92

#### Determination of Appropriate Present-Value Factors Associated With Payments Made by the Federal Home Loan Banks to the Resolution Funding Corporation

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending its regulations to implement provisions of the Gramm-Leach-Bliley Act (Gramm-Leach-Bliley) that changed the methodology for determining the amount of the payments to be made by the Federal Home Loan Banks (Banks) to the Resolution Funding Corporation (REFCORP). These payments are used to pay a portion of the interest owed on bonds issued by REFCORP. Gramm-Leach-Bliley requires each Bank to pay 20 percent of its net earnings each year to REFCORP and requires the Finance Board to adjust the final payment date so that the value of the payments made under the new methodology equals those that were to have been made under prior law. The Finance Board proposed to discount the Banks' payments using appropriate present-value factors selected by the Finance Board in consultation with the Secretary of the Treasury. After carefully considering the comments received on its proposal, the Finance Board has decided to adopt the proposed rule with the technical changes discussed below.

**EFFECTIVE DATES:** This final rule is effective on April 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. McKenzie, Deputy Chief Economist, Office of Policy, Research,

and Analysis, (202) 408-2845, [mckenziej@fhfb.gov](mailto:mckenziej@fhfb.gov); Austin J. Kelly, Senior Financial Economist, Office of Policy, Research, and Analysis, (202) 408-2541, [kellya@fhfb.gov](mailto:kellya@fhfb.gov); or Thomas E. Joseph, Attorney-Advisor, (202) 408-2512, [joseph@fhfb.gov](mailto:joseph@fhfb.gov). Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. A telecommunication device for deaf persons (TDD) is available at (202) 408-2579.

#### SUPPLEMENTARY INFORMATION:

##### I. Background Information

As discussed more completely in the proposed rule,<sup>1</sup> the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101-73, 103 Stat. 183 (Aug. 9, 1989), established REFCORP to provide funds for the Resolution Trust Corporation (RTC). 12 U.S.C. 1441b. To this end, as of September 20, 1999, REFCORP had issued and had outstanding \$29.9 billion in non-callable bonds with maturities ranging from October 15, 2019, to April 15, 2030. FIRREA also amended the Federal Home Loan Bank Act (Bank Act) to require the Banks to pay \$300 million annually toward the interest on those bonds. To the extent amounts available from the other statutorily specified sources and the Banks' \$300 million are insufficient to pay the annual interest on the REFCORP bonds, the Bank Act directs the United States Department of the Treasury (Treasury) to pay to REFCORP the additional amounts needed to pay the interest. 12 U.S.C. 1441b(f)(2)(E). Treasury has paid more than three-quarters of the annual interest owed on REFCORP bonds.

Gramm-Leach-Bliley changed the Banks' REFCORP assessment from a fixed-dollar \$300 million annual payment to an annual payment of 20 percent of each Bank's net earnings. See 12 U.S.C. 1441b(f)(2)(C). Gramm-Leach-Bliley also contains provisions intended

<sup>1</sup> The proposed rule was published in the *Federal Register* at 65 FR 5447 (Feb. 4, 2000). In that proposal the Finance Board described in some detail the analysis underlying the proposed methodology for adjusting the date of the Banks' final REFCORP payment. As the final rule largely adopts the proposed methodology, the description is not repeated here. Interested parties should read the proposed rule for more complete background information on and the analysis underlying this final rule.

to assure that the change in the method of assessing the Banks' REFCORP obligation does not increase or decrease the burden of paying interest on the REFCORP bonds either for the Banks or the Treasury. To implement these provisions of Gramm-Leach-Bliley, the Finance Board proposed a methodology for adjusting the date of the final REFCORP payment due from the Banks. The methodology entails the simulated purchase or sale each quarter of zero-coupon Treasury bonds.<sup>2</sup> As discussed below, after considering the comments received on its proposal, the Finance Board has decided to adopt the methodology for adjusting the final REFCORP payment due from the Banks substantially as proposed. The Finance Board is also adopting the technical amendment to § 951.1 of its regulations, 12 CFR 951.1, as proposed.<sup>3</sup>

##### II. Comparison of Proposed and Final Rules

###### A. Comments Received

The Finance Board received five comment letters on its proposed methodology: four from Banks, and one from a national trade association of community banks. All the comments were generally supportive of the Finance Board's proposed methodology. Each of the four Banks, however, proposed that the Finance Board use a zero-coupon bond rate other than that for Treasury instruments in performing the present value calculations. The trade

<sup>2</sup> Under the terms of this rule, the Finance Board will obtain from the Treasury's Office of Market Finance interest rates based on estimated market yields on zero-coupon Treasury bonds whose maturities coincide with and bracket the date of the last non-defeased \$75 million quarterly payment and apply these rates to Banks' excess or deficit quarterly payments as required by § 997.2 and § 997.3. Because Treasury does not issue marketable zero coupon bonds, the interest rate provided by the Treasury's Office of Market Finance will be based on the current market yield on marketable STRIPS (the principal or interest component of Treasury Separate Trading of Registered Interest and Principal of Securities program). As the yields on marketable STRIPS are quoted on a semiannually compounding basis, the Office of Market Finance will convert the semi-annual yields to their quarterly equivalents when necessary. The Treasury's Office of Market Finance will certify these rates to the Finance Board, as it does for different interest rates for a number of other agencies.

<sup>3</sup> The Finance Board recently renumbered and reorganized its regulations, effective February 18, 2000. See 65 FR 8253 (Feb. 18, 2000). Prior to the effective date of this change, § 951.1 of the Finance Board's regulations was designated as § 960.1, 12 CFR 960.1.

association requested that the Finance Board publish the results of its quarterly determination. No comments were received on the proposed technical amendment to § 951.1 of the Finance Board regulations.

Each of the four Banks suggested that the Finance Board modify the calculation set forth in § 997.2 and § 997.3 by replacing the referenced Treasury zero-coupon interest rate with a different, and higher, interest rate. The use of a higher interest rate would have the effect of reducing the present value of the Banks' total REFCORP obligation whenever the Banks' actual quarterly REFCORP payments exceed \$75 million.<sup>4</sup> The suggested alternative interest rates were: the rate on REFCORP bonds, the Bank System's cost of funds, and an average of Treasury and agency zero-coupon bond rates. The various arguments made by the Banks to support the requested change can be generally summarized as follows: (1) The alternative rates better reflect the Banks' cost of funds or are more appropriate for discounting the Banks' obligation to pay on the REFCORP bonds; (2) use of the Treasury rate would raise the burden of the REFCORP payment if the Banks' aggregate annual REFCORP payments were to exceed \$300 million, as is expected at least in the near future; and (3) the expected reduction in Treasury's issuance of government debt and the recently announced plans by Treasury to retire outstanding government debt will result in artificially low Treasury rates, relative to other rates, or will make it difficult to find accurate Treasury rates to use as the referenced zero-coupon rate for the purposes of making the calculations set forth in this rule.

The Finance Board has considered the arguments made by the commenters but continues to believe that the zero-coupon Treasury rate remains the most appropriate rate for the use in the calculation set forth in § 997.2 or § 997.3. Although the Banks have paid \$300 million annually to REFCORP in the past, and are likely to pay well in excess of \$400 million in 2000, the total annual interest obligation to REFCORP bondholders exceeds \$2.5 billion, of which the Treasury pays in excess of \$2.0 billion. Therefore, the effect of an excess or deficit quarterly payment by the Banks, as those terms are defined in § 977.1, will be to decrease, in the case

of an excess quarterly payment, or increase, in the case of a deficit quarterly payment, the payment due from Treasury in the current quarter, but to have the opposite effect on payments made by Treasury in future quarters. For example, an excess quarterly payment can be viewed, in effect, as the Banks "lending" to Treasury to reduce Treasury's current expenditures for interest on REFCORP bonds, and as Treasury "paying back" the Banks by paying amounts that would have been due from the Banks for interest on the REFCORP bonds in the future. Similarly, a deficit quarterly payment can be viewed, in effect, as the Banks "borrowing" from Treasury to meet current REFCORP obligations and then "paying back" Treasury in the future by extending the term of the REFCORP obligation.<sup>5</sup> Given the overall effects of excess or deficit quarterly payments on Treasury's residual obligation to REFCORP, the Finance Board believes that the Treasury rates are the most appropriate discount rates to use in the calculations set forth in § 997.2 and § 997.3.

Several of the comment letters raised technical issues about the use of Treasury interest rates, indicating that certain factors in the bond market may cause the yield on a particular Treasury issue to be temporarily or "artificially" high or low. For example, "on-the-run" issues (*i.e.*, the most recently auctioned bond of a particular standard maturity such as the 10-year or 30-year Treasury bond) can trade at a rate significantly lower rate than an adjacent issue, as one Bank noted occurred recently in the 30-year Treasury market.

In response to this comment, there are three observations. First, temporary technical factors may either increase or decrease the interest rates on Treasury issues, and it is impossible to predict the net effect these technical factors will have over the life of the REFCORP obligation. Second, technical factors that have an effect on the Treasury bond market are likely to have a larger effect on non-Treasury bonds because such instruments are far less liquid and

<sup>5</sup> As discussed in the preamble to the proposed rule, the use of zero-coupon Treasury bonds is consistent with Office of Management and Budget (OMB) Circular A-11, which implements the Federal Credit Reform Act of 1990 (FCRA). Under the FCRA, cash flows stemming from direct government loans and government loan guarantees are discounted by the interest rate on zero-coupon Treasury securities with the same maturity as each quarter's projected cash flow. Thus, the approach adopted by this rule is consistent with the budgetary treatment of government loan activities. Finance Board staff have informally discussed this methodology with staff from OMB and the Treasury, and they generally supported the overall approach.

potentially subject to widening and narrowing credit spreads. Third, "on-the-run" Treasury issues, the rates of which may be artificially low, will seldom be used in the calculations set forth in this rule. For example, if the benchmark quarterly payment to be "defeased" and the maturity date for the applicable zero-coupon Treasury bond used for that purpose are exactly thirty years from the date of the Banks' actual quarterly payment date, an "on-the-run" Treasury bond would be used in the calculation. However, the interest rate used to discount the next outstanding benchmark quarterly payment would necessarily be for a Treasury bond with a term of less than 30 years, and therefore would not be an "on-the-run" issue. The next "on-the-run issue" is the 10-year Treasury bond, which will not be the appropriate benchmark to use in the calculations set forth in this rule for some time.

Several comments raise the issue about the potential refunding of the United States government debt. Specifically, commenters expressed concern that if the United States budget surpluses occur as projected, the publicly held debt would disappear around 2015, and there would be no Treasury bonds to use as a benchmark. The Finance Board does not believe that this argument requires it to use a different interest rate, as even under somewhat conservative assumptions, the Banks' REFCORP obligation would be fully satisfied between 2013 and 2015, which roughly coincides with the projected date of the elimination of the publicly held debt.

Furthermore, the use of Treasury zero-coupon rates is not unique to the REFCORP calculation. There are other programs and agencies that use these rates. If the Treasury retires publicly held debt, then the Finance Board along with these other agencies and programs would have to determine successor discount factors. Gramm-Leach-Bliley provides the Finance Board with sufficient authority to determine successor discounting factors in consultation with the Secretary of the Treasury. Thus, the Finance Board could reconsider the use of the zero-coupon Treasury rate, if and when it appears imminent that a benchmark Treasury rate would not be available, or would not provide an accurate reference interest rate for the REFCORP calculations.

More generally, the Finance Board believes that the actual effects of the planned reduction of outstanding government debt on the Treasury bond market remain uncertain at this time. In addition, although reduced issuance by

<sup>4</sup> By contrast, use of one of the higher, alternative interest rates rather than the Treasury rate would increase the present value of Treasury's share of the interest payments paid on REFCORP bonds, if the Banks total quarterly REFCORP payments were to exceed \$75 million.

Treasury of government debt may result in declining yields on Treasury bonds, these rates remain market rates and are not "artificial." The fact that some commenters believe that the rates on Treasury bonds may be declining does not alter the Finance Board's underlying economic rationale for viewing the Treasury zero-coupon bond rate as the most appropriate present value factor to use for the purposes of this rule. Moreover, Treasury staff has generally endorsed the Finance Board's use of the zero-coupon Treasury bond rate for these calculations.

The trade association requested that the Finance Board regularly publish the results of the calculation and its determination of the new termination date for the REFCORP obligation. The issue of publishing the determination made pursuant to the Gramm-Leach-Bliley requirements was not directly addressed in the proposed rule. However, the Finance Board expects that, after it has reviewed the results of the calculations made in accordance with § 997.4, it will publish its determination as to the new termination date for the Banks' REFCORP obligation in the quarterly and annual combined financial report of the Bank System.<sup>6</sup>

#### B. Consultations With Treasury

Gramm-Leach-Bliley provides that the Finance Board shall select appropriate present-value factors for making the statutorily required determination in "consultation with the Secretary of the Treasury." 12 U.S.C. 1441b(f)(2)(C)(ii). Before proposing this rule, Finance Board staff met with staff from OMB and Treasury. The Finance Board also provided a copy of the proposed rule to the Secretary of the Treasury. In response, staff from Treasury has informally suggested clarifications to certain aspects of the Finance Board's proposed rule. Primarily, Treasury staff wished to make clear its general approach to estimating the rates that it will provide to the Finance Board, *see* n. 2, *supra.*, and also asked that the final rule clarify the nature of the REFCORP's role in performing the calculations described in § 997.2 and § 997.3. On this latter point, the Finance Board reiterates that REFCORP has agreed to conduct the ministerial task of performing the calculations specifically described in § 997.2 and § 997.3, which will form the basis of the quarterly present value

determination. The Finance Board will make the actual quarterly present value determination, after reviewing the results of REFCORP's calculation, as required by § 997.2 and § 997.3. *See* 65 FR at 5451.

In addition, the Finance Board has made a slight change to the wording of § 997.4(c) concerning the maintenance of the official record of the quarterly present value determinations, because the proposed wording could be read to imply that REFCORP would make the present value determination required by Gramm-Leach-Bliley. As proposed, the provisions stated that the Finance Board will keep the official records of all quarterly present value determinations "made under this part by either the REFCORP or the Finance Board." To avoid any confusion, the Finance Board has deleted the phrase "by either the REFCORP or the Finance Board" from the final version of § 997.4(c). This change does not alter the purpose of the provision, which is to make clear that the Finance Board will maintain the official record relating to the quarterly present value determinations. *See id.*

Treasury staff also commented that the maturity date for zero-coupon bonds maturing after 2006 will not always correspond to the date of the benchmark quarterly payment. In such a situation, the Finance Board expects that Treasury will provide an estimated interest rate on a zero-coupon bond with a maturity date that is closest to that of the benchmark quarterly payment. The effect of this change on the present value calculation should be minimal. The Finance Board has also added a definition of "estimated interest rate" to § 997.1 that makes clear that the estimated interest rate will be for a zero-coupon Treasury bond that matures on the date of the quarterly benchmark payment that is being defeased or, if there is no zero-coupon Treasury bond that matures on that date, then on the date that is closest to the date of the quarterly benchmark payment being defeased. In addition, after adding this definition, the repetitive descriptions of the estimated interest rate that had appeared elsewhere in the rule, especially in § 997.2 and § 997.3, are no longer necessary and have been deleted.

#### C. Effective Date

This rule is effective immediately on publication so that the new methodology may be applied without delay to the first REFCORP payment that will be made by the Banks under the new Gramm-Leach-Bliley provisions on April 17, 2000. Moreover, the implementation of this final rule requires no action or change in activity

on the part of the Banks or other parties. The rule merely sets forth a methodology that will be used by the Finance Board in determining the new end date of the Banks' REFCORP obligation as required by Gramm-Leach-Bliley. Thus, the Finance Board finds that it has good cause to adopt this rule with an effective date that is immediate upon publication in the **Federal Register**. *See* 5 U.S.C. 553(d).

After considering all the comments that it received, and for the reasons discussed above and in the preamble to the proposed rule, the Finance Board has decided to adopt new Part 997, with the changes discussed above, and the amendment to § 951.1 of the Finance Board's regulations as proposed.

### III. Regulatory Flexibility Act

The final rule applies only to the Finance Board and 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 a significant economic effect 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. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

### List of Subjects

#### 12 CFR Part 951

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

#### 12 CFR Part 997

Federal home loan banks, Resolution funding corporation.

For the reasons set forth in the preamble, the Finance Board hereby amends 12 CFR part 951 and adds 12 CFR part 997 to read as follows:

### PART 951—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 951 continues to read as follows:

**Authority:** 12 U.S.C. 1430(j)

2. Amend § 951.1 by removing the words "pro rata share of the" from the definition of the term "net earnings of a Bank".

3. Add part 997 to subchapter L to read as follows:

<sup>6</sup> On January 4, 2000, the Finance Board published a proposed rule for comment that would assign certain functions now performed by the Finance Board, including preparation of the Bank system's annual and quarterly financial reports, to the Office of Finance. *See* 65 FR 324,335 (Jan. 4, 2000) (proposed § 941.2(c)).

**PART 997—RESOLUTION FUNDING CORPORATION OBLIGATIONS OF THE BANKS**

Sec.

- 997.1 Definitions.  
 997.2 Reduction of the payment term.  
 997.3 Extension of the payment term.  
 997.4 Calculation of the quarterly present-value determination.  
 997.5 Termination of the obligation.

**Authority:** 12 U.S.C. 1422b(a) and 1441b(f).

**§ 997.1 Definitions.**

As used in this part:

*Actual quarterly payment* means the quarterly amount paid by the Banks to fulfill the Banks' obligation to pay toward interest owed on bonds issued by the REFCORP. The amount will equal the aggregate of 20 percent of the quarterly net earnings of each Bank, or such other amount assessed in accordance with the Act and the regulations adopted thereunder.

*Benchmark quarterly payment* means \$75 million, or such amount that may result from adjustments required by calculations made in accordance with §§ 997.2 and 997.3.

*Current benchmark quarterly payment* means the benchmark quarterly payment that corresponds to the date of the actual quarterly payment.

*Deficit quarterly payment* means the amount by which the actual quarterly payment falls short of the current benchmark quarterly payment.

*Estimated interest rate* means the interest rate provided to the Finance Board by the Department of the Treasury on a zero-coupon Treasury bond, the maturity of which is the same as the date of the benchmark quarterly payment that is being defeased, or if no bond matures on that date, then is the date closest to the date of the payment being defeased.

*Excess quarterly payment* means the amount by which the actual quarterly payment exceeds the current benchmark quarterly payment.

*Quarterly present-value determination* means the quarterly calculation that will determine the extent to which an excess quarterly payment or deficit quarterly payment alters the term of the Banks' obligation to the REFCORP. This determination will fulfill the requirements of 12 U.S.C. 1441b(f)(2)(C)(ii), *as amended* by Pub. L. 106-102, sec. 607, 113 Stat. 1456-57.

*REFCORP* means the Resolution Funding Corporation established in 12 U.S.C. 1441b.

**§ 997.2 Reduction of the payment term.**

(a) *Generally.* The Finance Board shall shorten the term of the obligation of the Banks to make payments toward the

interest owed on bonds issued by the REFCORP for each quarter in which there is an excess quarterly payment.

(b) *Excess quarterly payment.* Where there is an excess quarterly payment, the quarterly present-value determination shall be as follows:

(1) The future value of the excess quarterly payment shall be calculated using the estimated interest rate corresponding to the last non-defeased benchmark quarterly payment.

(2) The future value calculated in paragraph (b)(1) of this section shall be subtracted from the amount of the last non-defeased quarterly benchmark payment.

(3) If the difference resulting from the calculation in paragraph (b)(2) of this section is greater than zero, then the last non-defeased quarterly benchmark payment is reduced by the future value of the excess quarterly payment.

(4) If the difference resulting from the calculation in paragraph (b)(2) of this section is less than zero, then the last non-defeased quarterly benchmark payment shall be defeased and the payment term shall be shortened.

(5) The amount of the excess quarterly payment that has not already been applied to defeasing the payment under paragraph (b)(4) of this section shall be applied toward defeasing the last non-defeased quarterly benchmark payment using the applicable estimated interest rate.

**§ 997.3 Extension of the payment term.**

(a) *Generally.* The Finance Board will extend the term of the obligation of the Banks to make payments toward interest owed on bonds issued by the REFCORP for each calendar quarter in which there is a deficit quarterly payment.

(b) *Deficit quarterly payment.* Where there is a deficit quarterly payment, the quarterly present-value determination shall be as follows:

(1) The future value of the deficit quarterly payment shall be calculated using the estimated interest rate corresponding to the last non-defeased benchmark quarterly payment, or to the first quarter thereafter if the last non-defeased benchmark quarterly payment already equals \$75 million.

(2) The future value calculated in paragraph (b)(1) of this section shall be added to the amount of the last non-defeased quarterly benchmark payment if that sum is \$75 million or less.

(3) If the sum calculated in paragraph (b)(2) of this section exceeds \$75 million, the last non-defeased quarterly benchmark payment will become \$75 million, and the quarterly benchmark payment term will be extended.

(4) The extended payment will equal the future value of the amount of the deficit quarterly payment that has not already been applied to raising the quarterly benchmark payment to \$75 million under paragraph (b)(3) of this section, using the estimated interest rate corresponding to the date of the extended benchmark quarterly payment.

(c) *Term beyond maturity.* The benchmark quarterly payment term may be extended beyond April 15, 2030, if such extension is necessary to ensure that the value of the aggregate amounts paid by the Banks exactly equals the present value of an annuity of \$300 million per year that commences on the date on which the first obligation of the REFCORP was issued and ends on April 15, 2030.

**§ 997.4 Calculation of the quarterly present-value determination.**

(a) *Applicable interest rates.* The Finance Board shall obtain from the Department of the Treasury the applicable estimated interest rates and provide those rates to the REFCORP so that the REFCORP can perform the calculations required under §§ 997.2 and 997.3.

(b) *Calculation by the Finance Board.* If § 997.3 requires that the term for the Banks' actual quarterly payments extend beyond April 15, 2030 or if, for any reason, the REFCORP is unable to perform the calculations or to provide the Finance Board with the results of the calculations, the Finance Board shall make all calculations required under this part.

(c) *Records.* The Finance Board will maintain the official record of the results of all quarterly present-value determinations made under this part.

**§ 997.5 Termination of the obligation.**

(a) *Generally.* The Banks' obligation to the REFCORP, or to the Department of the Treasury if the term of that obligation extends beyond April 15, 2030, will terminate when the aggregate actual quarterly payments made by the Banks exactly equal the present value of an annuity that commences on the date on which the first obligation of the REFCORP was issued and ends on April 15, 2030.

(b) *Date of the final payment.* The aggregate actual quarterly payments made by the Banks exactly equal the present value of the annuity described in paragraph (a) of this section when the value of any remaining benchmark quarterly payment(s), after the benchmark quarterly payments have been adjusted as required by §§ 997.2 and 997.3, exactly equals the actual quarterly payment.

Dated: March 22, 2000.

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

**Bruce A. Morrison,**

*Chairman.*

[FR Doc. 00-8116 Filed 3-31-00; 8:45 am]

BILLING CODE 6725-01-P

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

#### Business Loan Program

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** This final rule would implement Public Law 106-22, enacted on April 27, 1999, which establishes new rules for the loan loss reserve fund which an intermediary must maintain to participate in SBA's microloan program.

**DATE:** This rule is effective on April 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jody Raskind, 202-205-6497.

**SUPPLEMENTARY INFORMATION:** Public Law 106-22, enacted on April 27, 1999, amended section 7(m) of the Small Business Act (15 U.S.C. 636(7)(m)) in order to change the requirements for the loan loss reserve fund (LLRF) which each intermediary in the SBA's microloan program must maintain. The LLRF is an interest-bearing deposit account at a bank. An intermediary must establish an LLRF to pay any shortage in its day-to-day revolving account caused by delinquencies or losses on microloans it makes to qualified small business borrowers. An intermediary must maintain the LLRF until it repays all obligations it owes to the SBA.

On July 26, 1999, SBA published a proposed rule in the **Federal Register** (64 FR 40310). Since SBA received no comments, it is publishing in final the rule as proposed and making it effective on the date of publication in the **Federal Register**.

Under the present rule, an intermediary, during its first year in the microloan program, must maintain its LLRF at a level equal to at least 15 percent of the total outstanding balance of notes receivable owed to it by its microloan borrowers (Portfolio). Thereafter, the minimum balance that an intermediary must maintain in its LLRF must be the percent of its Portfolio equal to its actual average loan loss rate after its first year in the microloan program. The maximum level of the LLRF, under the present rule, cannot

exceed 15 percent of the Portfolio. There is no prescribed minimum level.

Under the final rule, until the intermediary is in the microloan program for at least five years, it would be required to maintain a balance on deposit in its LLRF equal to 15 percent of its Portfolio. After an intermediary is in the microloan program for five years, it may request SBA's Associate Administrator for Financial Assistance (AA/FA) to grant the intermediary's request to reduce the percentage of its Portfolio which it must maintain in its LLRF to an amount equal to its actual average loan loss rate during the preceding five year period. The AA/FA would review the intermediary's annual loss rate for that five-year period and determine whether he or she should grant the intermediary's request. The AA/FA could not reduce the loan loss reserve to under ten percent of the Portfolio.

Under the final rule, to get a reduction in its loan loss reserve, an intermediary must demonstrate to the satisfaction of the AA/FA that (1) its average annual loss rate during the preceding five years is under fifteen percent, and (2) no other factors exist that might impair its ability to repay all obligations which it may owe to SBA under the microloan program.

#### **Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)**

This final rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA has determined that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. SBA estimates that there are a total of 130 microintermediaries who are small entities that will be affected by this rule. However, SBA does not believe that this rule will have a significant economic impact because this rule relates only to Microloan Program intermediaries' internal accounting procedures and is not expected to have any economic effect.

SBA has determined that this final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

For purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications.

For purposes of Executive Order 12988, SBA certifies that this final rule is drafted, to the extent practicable, to accord with the standards set forth in section 3 of that Order.

#### **List of Subjects in 13 CFR Part 120**

Loan programs—business.

For the reasons stated in the preamble, under the authority in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), the Small Business Administration amends 13 CFR part 120 as follows:

#### **PART 120—BUSINESS LOANS**

1. The authority citation for Part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Amend § 120.710 by revising paragraphs (b) and (c) and by adding paragraphs (d) and (e) to read as follows:

#### **§ 120.710 What is the Loan Loss Reserve Fund?**

\* \* \* \* \*

(b) *Level of Loan Loss Reserve Fund.* Until it is in the Microloan program for at least five years, an Intermediary must maintain a balance on deposit in its LLRF equal to 15 percent of the outstanding balance of the notes receivable owed to it by its Microloan borrowers ("Portfolio").

(c) *SBA review of Loan Loss Reserve Fund.* After an Intermediary has been in the Microloan program for five years, it may request SBA's Associate Administrator for Financial Assistance ("AA/FA") to reduce the percentage of its Portfolio which it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five-year period. Upon receipt of such request, the AA/FA will review the Intermediary's annual loss rate for the most recent five-year period preceding the request.

(d) *Reduction of Loan Loss Reserve Fund.* The AA/FA has the authority to reduce the percentage of an Intermediary's Portfolio that it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five-year period. The AA/FA can not reduce the LLRF to less than ten percent of the Portfolio.

(e) *What must an intermediary demonstrate to get a reduction in Loan Loss Reserve Fund?* To get a reduction in its LLRF, an Intermediary must demonstrate to the satisfaction of the AA/FA that: