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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 950 and 952

[No. 2001-19]

RIN 3069-AA99

Amendment of Community Investment Cash Advance Programs Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation on Community Investment Cash Advance (CICA) Programs (CICA Regulation) to make certain technical revisions clarifying CICA Program requirements and improving the operation of CICA Programs. The final rule clarifies that the Federal Home Loan Banks (Banks) may offer grants, in addition to advances, under certain CICA Programs, and amends the definition of “median income for the area” to include additional sources of median income data that may be used to determine income eligibility for projects and households funded under CICA programs.

EFFECTIVE DATE: The final rule shall be effective on November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, (202) 408-2537, or Melissa L. Allen, Program Analyst, (202) 408-2524, Program Assistance Division, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, Office of General Counsel, (202) 408-2930, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(10) of the Federal Home Loan Bank Act (Bank Act) authorizes the Banks to establish CICA Programs to

support community investment. *See* 12 U.S.C. 1430(j)(10). In order to facilitate and encourage targeted community lending under section 10(j)(10), in 1998, the Finance Board adopted a final regulation providing the Banks with parameters for the establishment of CICA Programs. *See* 63 FR 65536, Nov. 27, 1998; 12 CFR part 952 (formerly 12 CFR part 970).

In the course of implementing CICA Programs under the new CICA Regulation, the Banks and Finance Board staff have identified several technical issues, the resolution of which would clarify CICA Program requirements and improve the effectiveness of CICA Programs. Accordingly, on July 13, 2001, the Finance Board published a proposed rule requesting comment on proposed amendments to the CICA Regulation. *See* 66 FR 36715, July 13, 2001. The proposed rule provided for a 30-day comment period, which closed on August 13, 2001.

The Finance Board received five comment letters on the proposed rule. Commenters included: three Banks; one trade association; and one lender. The comments are discussed in the Analysis of Final Rule section below.

II. Analysis of Final Rule

A. Providing Grants under Certain CICA Programs—§§ 950.1, 952.2, 952.3, 952.5, 952.7

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a number of Banks have asked whether the CICA Regulation does or could authorize the Banks to provide grants, in addition to advances, to members under certain CICA Programs. The current CICA Regulation defines an “RDA program or Rural Development Advance program” and a “UDA program or Urban Development Advance program” as a program offered by a Bank for community lending in rural or urban areas, respectively. *See* 12 CFR 952.3. Even though these programs are styled as “advance” programs in the CICA Regulation, the definitions do not specify the types of financing, such as advances or grants, that a Bank may offer under such programs nor do they limit financing to advances.

Accordingly, the Finance Board has interpreted these definition provisions to mean programs under which a Bank offers advances or grants to members.

See Finance Board Regulatory Interpretation 2000-RI-2 (April 10, 2000).

The proposed rule would amend the definitional provisions and terminology in § 950.1 of the Finance Board’s Advances Regulation and §§ 952.2, 952.3, 952.5 and 952.7 of the CICA Regulation to incorporate the Finance Board’s interpretation, thereby specifying and clarifying the grant authority in the rule.¹ Specifically, references to the authority to provide grants under RDA and UDA Programs would be added, and the word “funding,” which incorporates the concept of grants, would be substituted for the word “advance,” where applicable. Thus, the “RDA program or Rural Development Advance program” would be renamed the “RDF program or Rural Development Funding program,” and the “UDA program or Urban Development Advance program” would be renamed the “UDF program or Urban Development Funding program.” The definitions of “RDA or Rural Development Advance” and “UDA or Urban Development Advance” would be deleted as redundant. Certain other technical amendments would be made to provide greater clarity to the language.

Under the current CICA Regulation, members receiving grants from a Bank must use the proceeds of such grants to “provide financing” to targeted beneficiaries, which is defined to include certain types of financing, including making loans to targeted beneficiaries. *See* 12 CFR 952.3. If a Bank chooses to provide grants under its RDF or UDF Programs, the Bank may establish requirements with which members must comply in order to obtain and use the grants.

Commenters generally supported the proposed clarification of grant authority. Accordingly, the final rule adopts amendments clarifying the Bank’s grant authority in §§ 950.1, 952.2, 952.3, 952.5, and 952.7.

B. Definition of “Median Income for the Area”—§ 952.3

Under the current CICA Regulation, economic development projects and

¹ This interpretation and the proposed amendments, however, would not apply to the Banks’ Community Investment Programs (CIP), which remain exclusively advance programs.

manufactured housing parks are eligible for CICA funding if they are located in areas or neighborhoods with a median income at or below the targeted income level of the specific CICA Program (e.g., 80% for CIP, 100% for UDA Programs, 115% for RDA Programs). *See id.*

§ 952.3. Section 952.3 defines “median income for the area” generally as one or more of the following, as determined by the Bank: (1) The median income for the area, as published annually by the Department of Housing and Urban Development (HUD); (2) the applicable median family income, as determined under 26 U.S.C. 143(f) and published by a state mortgage revenue bond program; (3) the median income for the area, as published by the U.S. Department of Agriculture; or (4) the median income for any definable geographic area, as published by a Federal, state or local government entity for purposes of that entity’s housing and economic development programs, and approved by the Finance Board, at the request of a Bank. *See id.* § 952.3. These are the same median income data sources as those adopted by the Finance Board in the revised Affordable Housing Program (AHP) Regulation in 1997. *See id.* § 951.1 (formerly 12 CFR 960.1). However, the AHP Regulation does not incorporate the concept of “neighborhood” in its median income standards. A “neighborhood” is defined in the CICA Regulation as a small geographic area, *i.e.*, a census tract, block numbering area (BNA), unit of local government with a population of 25,000 or less, rural county, or other geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographic designation that is within, but smaller than, a unit of general local government. *Id.* § 952.3.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board has determined that the median income data provided by the above sources for determining the median income for an area are not sufficient for the Banks to determine the median income for a neighborhood, as defined in the CICA Regulation. The sources provide current median income data on an annual basis for areas, such as counties, Metropolitan Statistical Areas (MSAs), non-metropolitan areas and states, but not for smaller geographical areas defined as “neighborhoods” in the CICA Regulation. HUD does publish annually the 1990 Census information for median income for census tracts, but this data is not updated from the 1990 figures.

The Finance Board believes that up-to-date income data will enhance the Banks’ capacity to implement effectively the “neighborhood” provisions of the CICA Regulation, an important tool in meeting local economic development needs. Consequently, the proposed rule would add a definition of “median income for the neighborhood” to the CICA Regulation to enable the Banks to obtain median income data for neighborhoods from: (1) The Federal Financial Institutions Examination Council (FFIEC); or (2) other public or private sources with the approval of the Finance Board. The proposed rule specified FFIEC because it is a Federal government source that publishes updated median income data for neighborhoods and other areas, based on existing HUD median income data. The proposed rule did not specify any of the possible private sources, but allowed the Banks to obtain Finance Board approval for the use of a source other than FFIEC if one can be identified.

The proposed rule would allow the use of these additional sources of median income data only for economic development projects and manufactured housing parks located in neighborhoods, as defined in the CICA Regulation, and only when current median income data for the applicable neighborhood is unavailable from the sources prescribed in the definition of “median income for the area” in the CICA Regulation.

Commenters generally supported allowing the Banks to use FFIEC and other sources of median income data for economic development projects and manufactured housing parks located in neighborhoods. One commenter recommended allowing FFIEC to be used as a primary source of median income data, even if current median income data for the applicable neighborhood is available from the sources already prescribed in the regulation. The commenter stated that the FFIEC data is readily available, objective information, and that the Banks should not have to verify for each project that median income data is not otherwise available from the sources listed in the regulation. The Finance Board believes that these points have merit, and, therefore, the final rule allows FFIEC to be used as a primary source for median income data for economic development projects and manufactured housing parks located in neighborhoods, regardless of the availability of other median income data sources.

In addition, because the updated FFIEC median income data is derived from existing HUD data, which is a

permissible source of area median income data for housing projects under the current CICA Regulation, the Finance Board believes that the Banks should be able to use such FFIEC data not only for economic development projects and manufactured housing parks, but also for housing projects. Therefore, instead of adding a separate definition of “Median income for the neighborhood,” the final rule adds new paragraphs (1)(ii) and (2)(ii) to the existing definition of “Median income for the area” in § 952.3 to include FFIEC as a primary data source, and renumbers the remaining paragraphs accordingly.

As noted above, under the current CICA regulation, a Bank may use median income data published by a government entity for purposes of that entity’s own housing and economic development programs, subject to Finance Board approval. *See id.* § 952.3 (definition of “Median income for the area” (paragraphs (1)(iv), (2)(ii))). The proposed rule would expand this authority by allowing the Banks to use other public or private median income data sources for economic development projects and manufactured housing parks located in neighborhoods, subject to Finance Board approval, without the requirement that such data be published for purposes of the entity’s own housing and economic development programs. Since these alternative public or private sources may also calculate area median income data for areas other than neighborhoods, the Finance Board believes that the Banks should be able to use such data not only for economic development projects and manufactured housing parks located in neighborhoods, but also for housing projects. Accordingly, the final rule replaces existing paragraphs (1)(iv) and (2)(ii) of the definition of “Median income for the area” with this new broader authority in renumbered paragraphs (1)(v) and (2)(iii).

A commenter suggested that the requirement for Finance Board approval of alternative sources of median income data be removed, on the basis that the Banks are in the best position to determine whether such a source of median income data is acceptable, subject to Finance Board review and examination. The Finance Board believes that Finance Board approval of alternative sources of median income data continues to be important for consistency and reliability in implementing CICA programs. Therefore, the commenter’s suggestion is not adopted in the final rule.

Another commenter stated that Finance Board approval should not be required for a Bank if an alternative

median income data source has been previously approved by the Finance Board for another Bank. The language of the proposed rule, which is adopted without change in the final rule, does not require additional Finance Board approval under such circumstances.

C. Technical Clarification of Definition of "Housing Projects"—§ 952.3

Section 952.3 of the current CICA Regulation defines "Housing projects" as projects or activities that involve the purchase, construction or rehabilitation of, or predevelopment financing for, certain types of housing. *See id.* § 952.3. Section 952.5(c) of the current CICA Regulation states that CICA funding other than AHP funding also may be used to refinance economic development projects and housing projects under certain conditions. *See id.* § 952.5(c). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the proposed rule would add refinancing (subject to the conditions in § 952.5(c)) to the definition of "Housing projects" in § 952.3 to clarify, consistent with § 952.5(c), that housing projects involving refinancing also are eligible projects for CICA funding. Commenters generally supported the proposed clarification.

Accordingly, the final rule adopts the proposed amendment to § 952.3 without change.

D. Technical Clarification of Definition of "Geographically Defined Beneficiaries"—§ 952.3 (par. (1)(ix))

A "Geographically defined beneficiary" is defined in the current CICA Regulation to include a "project [that] is located in a state declared disaster area, or qualifies for assistance under another Federal or state targeted economic development program, approved by the Finance Board." *Id.* § 952.3 (definition of "Targeted beneficiaries" (par. (1)(ix))). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the proposed rule would insert the words "other area that" before the word "qualifies" in this sentence to clarify that, to be a geographically defined beneficiary, it is not the project itself, but rather the area in which the project is located, that must qualify for such targeted economic development assistance. Commenters generally supported the proposed clarification.

Accordingly, the final rule adopts the proposed amendment to § 952.3 (par. (1)(ix)) without change.

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, *see id.* section 605(b), the Finance Board hereby certifies that the final rule will not have a 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. 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 950

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

12 CFR Part 952

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

Accordingly, chapter IX, title 12, Code of Federal Regulations, is hereby amended, as set forth below:

Subchapter G—Federal Home Loan Bank Assets and off-Balance Sheet Items

PART 950—ADVANCES

1. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

§ 950.1 [Amended]

2. Amend § 950.1 in the definition of *Community Investment Cash Advance* or *CICA* by:

a. Removing the words "advances for targeted community lending" and adding, in their place, the words "funding for targeted community lending"; and

b. Removing the words "Rural Development Advance (RDA)" and "Urban Development Advance (UDA)" and adding, in their place, the words "Rural Development Funding (RDF)" and "Urban Development Funding (UDF)", respectively.

PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

3. The authority citation for part 952 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

§ 952.2 [Amended]

4. Amend § 952.2 by:

a. Removing the words "Rural Development Advance (RDA)" and "Urban Development Advance (UDA)" and adding, in their place, the words "Rural Development Funding (RDF)" and "Urban Development Funding (UDF)", respectively; and

b. Adding a sentence at the end of the section to read as follows:

§ 952.2 Purpose.

* * * A Bank may provide advances or grants under its CICA programs except for CIP programs, under which a Bank may only provide advances.

§ 952.3 [Amended]

5. Amend § 952.3 by:

a. In the definition of *CICA program* or *Community Investment Cash Advance program*, in paragraph (3), removing the term "REA" and adding, in its place, the word "A", and removing the terms "RDA" and "UDA" and adding, in their place, the terms "RDF" and "UDF", respectively; and in paragraph (4), adding the words "advance or grant" between the words "other" and "program";

b. In the definition of *CIP*, removing the words "a CICA program" and adding, in their place, the words "an advance program under CICA";

c. In the introductory text of the definition of *Housing projects*, removing the words "purchase, construction or rehabilitation" and adding, in their place, the words "purchase, construction, rehabilitation or refinancing (subject to § 952.5(c) of this part)";

d. In the definition of "Median income for the area", redesignating paragraphs (1)(ii) through (1)(iv) and paragraph (2)(ii) as paragraphs (1)(iii) through (1)(v) and (2)(iii), respectively; adding new paragraphs (1)(ii) and (2)(ii); and revising newly redesignated paragraphs (1)(v) and (2)(iii);

e. In the definition of *Provide financing*, removing the words "an advance" in paragraphs (4) and (5) and the word "advance" in paragraph (6), and adding, in their place, the word "funding";

f. Removing the definition of *RDA* or *Rural Development Advance*;

g. In the definition of *RDA program* or *Rural Development Advance program*, removing the terms "RDA" and "Advance" and adding, in their place, the terms "RDF" and "Funding", respectively, and removing the words "a program" and adding, in their place, the words "an advance or grant program";

h. In paragraph (1)(ix) of the definition of *Targeted beneficiaries*, adding the words "other area that" between the words "or" and "qualifies";

i. In the definition of *Targeted income level*, amending the introductory text of paragraph (3) by removing the term "CICA"; and amending paragraph (4) by removing the words "CICA advances" and adding, in their place, the words "advances or grants";

j. Removing the definition of *UDA* or *Urban Development Advance*; and

k. In the definition of *UDA program* or *Urban Development Advance program*, removing the terms "UDA" and "Advance" and adding, in their place, the terms "UDF" and "Funding", respectively, and removing the words "a program" and adding, in their place, the words "an advance or grant program".

The additions and revisions read as follows:

§ 952.3 Definitions.

* * * * *

Median income for the area.

(1) * * *

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

* * * * *

(v) The median income for the area obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(2) * * *

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(iii) The median income for the area obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

* * * * *

§ 952.5 [Amended]

6. Amend § 952.5 by:

a. In paragraph (a)(3), removing the terms "RDA" and "UDA" and adding, in their place, the terms "RDF" and "UDF", respectively;

b. In paragraph (c), removing the word "advances" and adding, in its place, the word "funding";

c. In the heading of paragraph (d), and in paragraphs (d)(2) and (d)(3), removing the term "CICA" wherever it appears; and

d. In paragraphs (d)(5) and (d)(6)(i), removing the words "CICA advances" wherever they appear and adding, in their place, the words "advances made under CICA programs".

§ 952.7 [Amended]

7. Amend § 952.7 by:

a. In paragraph (a), removing the words "by a CICA advance" and adding, in their place, the words "under a CICA program"; and

b. In paragraph (c), removing the word "lending" and adding, in its place, the word "funding".

Dated: September 26, 2001.

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

J. Timothy O'Neill,
Chairman.

[FR Doc. 01-24587 Filed 10-2-01; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 951

[No. 2001-18]

RIN 3069-AB04

Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP) to improve the operation and effectiveness of the AHP. The changes include: increasing the maximum amount of money that may be set aside annually, in the aggregate, under a Federal Home Loan Bank's (Bank) homeownership set-aside programs to the greater of \$3.0 million or 25 percent of the Bank's annual required AHP contribution; removing one of the criteria for use of homeownership set-aside funds to pay for counseling costs in order to equalize the criteria with that of the competitive AHP application program; permitting members drawn from community and not-for-profit organizations actively involved in providing or promoting community lending in a Bank's district to serve on the Bank's Advisory Council; making the AHP outlay adjustment requirements applicable to any reduction or increase in the amount of AHP subsidy approved for a project, regardless of whether a direct subsidy writedown is involved; removing the requirement for annual project sponsor certifications on household income eligibility for owner-occupied projects; removing the requirements for project sponsor certifications to the member and member certifications to the Bank on tenant income and rent targeting

commitments and project habitability within the first year of completion of a rental project; and allowing projects modifications to be eligible for AHP funds that remain uncommitted or unused by the end of the year.

EFFECTIVE DATE: The final rule shall be effective on November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, (202) 408-2537, Melissa L. Allen, Program Analyst, (202) 408-2524, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish a program to subsidize the interest rate on advances to members of the Bank System engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. See 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the AHP. See *id.* The Finance Board's existing regulation governing the operation of the AHP, which made comprehensive revisions to the AHP, was adopted in August 1997 and became effective January 1, 1998. See 62 FR 41812 (Aug. 4, 1997) (*now codified at 12 CFR part 951*).

Various amendments have been made to the AHP regulation since 1998 in order to clarify AHP requirements and improve the operation and effectiveness of the AHP. Over the course of implementation of the AHP, the Banks and Finance Board staff have identified additional amendments that could improve the operation and effectiveness of the AHP. Accordingly, on May 10, 2001, the Finance Board published a proposed rule requesting comment on these proposed amendments to the AHP regulation. See 66 FR 23864 (May 10, 2001). The proposed rule provided for a 30-day comment period, which closed on June 11, 2001.

The Finance Board received 23 comment letters on the proposed rule. Commenters included: 5 Banks; 3 Bank Advisory Councils; 6 trade associations; and 9 nonprofit housing developers. Comments that raised issues beyond the scope of the proposed rule are not addressed in this final rule, but will be considered by the Finance Board in any future rulemaking under the AHP. The provisions of the proposed rule on