PART 563c—ACCOUNTING REQUIREMENTS

21. The authority citation for part 563c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

22. Amend § 563c.14 by revising the first sentence of paragraph (a) to read as follows:

§ 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

(a) *General.* An insured institution, by resolution of its board of directors, may elect to defer and amortize all gains and losses net of related income taxes computed in accordance with generally accepted accounting principles on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities (as defined in § 563.17(a)(4) of this subchapter), preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets under § 523.10(g) (except those qualifying under § 523.10(g)(11)) of this chapter because of their maturities or that have remaining terms to maturity of at least five years.

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23. Amend § 563c.102 by revising Item I (7)(j)(ii) to read as follows:

§ 563c.102 Financial statement presentation.

* * * * *

I. Balance Sheet * * *

(7) * * *

(j) * * *

(ii) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to subparagraph (i)(A) of this paragraph (j) above relates to nonaccrual, past due, restructured, and potential problem loans (*see* Securities Exchange Commission's Securities Act Industry Guide 3, Section III C), so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions on the statements.

* * * * *

PART 570—BOARD RULINGS

24. The authority citation for part 570 continues to read as follows:

Authority: Secs. 552, 559, 80 Stat. 383, 388, as amended (5 U.S.C. 552, 559); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431(e)(2)(c)); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405, 407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728, 1730); sec. 414, as added by sec. 522, 94 Stat. 165, as amended (12 U.S.C. 1730g); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–48 Comp., p. 1071.

§ 570.8 [Removed and reserved]

25. Section 570.8 is removed and reserved.

PART 571—STATEMENTS OF POLICY

26. The authority citation for part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

27. Amend § 571.1 by adding the following after the last sentence in paragraph (b); and by removing and reserving paragraph (d).

§ 571.1 Appraisal of real estate securing assets of insured institutions.

* * * * *

(b) *Authority of Supervisory Agent to obtain appraisals.* * * * When the trend of the ratio of assets classified under § 561.16c of this chapter to total assets is such that it raises a serious question as to an institution's financial condition, when it is apparent that assets secured by real property are worth substantially less than the book value thereof, or when there are other indications of the need to evaluate appraisal practices and policies, the Supervisory Agent is authorized to obtain, as a part of and in connection with an examination, appraisals of the real estate securing the insured institution's loans and contracts.

* * * * *

(d) [Reserved]

* * * * *

28. Amend § 571.1a by revising the introductory text of the section to read as follows:

§ 571.1a Classification of certain assets.

This statement of policy provides guidance in the classification of assets pursuant to § 561.16c of this subchapter. Assets subject to this classification requirement may fall within more than one category, and a portion of an asset may remain unclassified.

* * * * *

29. Amend § 571.13 by revising the introductory text of paragraph (a) and paragraph (a)(3) to read as follows:

§ 571.13 Participation interests in pools of loans.

(a) When an insured institution purchases a participation interest in a pool of loans (in the nature of mortgage-backed securities), compliance with the documentation requirements of §§ 563.9 and 563.17 of this subchapter may be impractical.

* * * * *

(3) The originator/servicer has agreed to provide each insured institution investing in the pool a monthly report of loan delinquencies. The report shall separately indicate:

(i) The number and aggregate principal amount of loans delinquent one month and two or more months;

(ii) The book value of any collateral acquired by the pool through foreclosure, deed in lieu of foreclosure or other exercise of the originator/servicer's security interest in the collateral; and

(iii) The aggregate dollar amount of loans made by the pool, if any, on the security of the collateral acquired as described in paragraph (a)(3)(ii) of this section (other than insured loans, guaranteed loans, or contract or loans having the benefit of a guaranty by the Federal Savings and Loan Insurance Corporation) if such loans have remaining expiration periods in excess of maximum regulatory limitations, or 30 years when there is no maximum term limitation, or have unpaid principal balances in excess of maximum regulatory limitations or 90 percent of the security value when there is no maximum regulatory percentage of value limitation.

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-19174 Filed 8-17-89; 8:45 am]

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12 CFR Part 563

[No. 89-2345]

RIN 3068-AA76

Issuance and Use of Subordinated Debt Securities

Date: August 8, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation (the "FSLIC" or the "Corporation"), is amending its regulations relating to issuance and regulatory capital treatment of subordinated debt securities by insured institutions found at 12 CFR 563.8–1. The changes are intended to increase the use of delegations, to codify certain interpretations of the rule, to add conditions of approval, and to interpretations of the rule, to add conditions of approval, and to make technical revisions in the rule. In addition, the final rule modifies the bases for supervisory objection to approval of a subordinated debt application now found at 12 CFR 563.8–1(b)(2) by authorizing the Office of Regulatory Activities of the Federal Home Loan Bank System ("Office of Regulatory Activities") to develop guidelines in consultation with the Office of District Banks and the Office of General Counsel and to specify the bases for supervisory objection to the issuance of subordinated debt (the "Guidelines"). The Guidelines developed by the Office of Regulatory Activities will be issued before the effective date of this final rule. The Board expects to limit the imposition of non-standard conditions in subordinated debt approvals. Accordingly, the Board is deleting certain of the bases for supervisory objection currently specified in the regulation, some of which have become obsolete, and the Office of Regulatory Activities will issue shortly Guidelines that specify supervisory bases for objection to subordinated debt applications. The Guidelines will implement the general standards contained in the final regulation.

Further, the rule now includes a set of standard conditions that will be applicable to approvals of applications to include subordinated debt in regulatory capital. Except in highly unusual circumstances or where supervisory objections are raised based on the Guidelines in effect at that time, the Board expects that such standard conditions will be the only conditions imposed by the Board or its delegates in the approval of subordinated debt applications.

Finally, the final rule gives the Principal Supervisory Agents ("PSAs") authority to deny as well as to approve subordinated debt applications. Coupled with this new authority, the regulation includes an appeal process designed to provide "final agency action."

The Board is aware that under the pending Financial Institutions Reform, Recovery and Enforcement Act of 1989, inclusion of subordinated debt as a form of regulatory capital may become more limited than is the case today. Accordingly, to the extent that inclusion of subordinated debt as a form of regulatory capital is restricted, the revised regulatory provisions will apply to only that portion of an insured institution's subordinated debt that would be permitted to be treated as regulatory capital and to the extent such subordinated debt can be included in regulatory capital under the new legislation and new regulations issued pursuant thereto.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Paul D. Glenn, Attorney, (202) 906–6203, Corporate and Securities Division; Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906–6459, Office of General Counsel; Cindy Miller, Financial Analyst, (202) 906–7492, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Robyn Dennis, Financial Analyst, (202) 331–2660; or John F. Robinson, Managing Director for Surveillance and Oversight, (202) 331–4587, Office of Regulatory Activities, Federal Home Loan Bank System, 801 Seventeenth Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: On December 30, 1988, the Board proposed to amend its regulations concerning the issuance of subordinated debt by insured institutions found at 12 CFR 563.8–1. *See* Board Res. No. 88–1569, 54 FR 1379 (January 13, 1989). The Board invited comments on the proposed changes to the regulation at the time the proposed changes were issued. The comment period expired on March 15, 1989.

The Board has carefully studied the comments and the issues raised by the commentators in determining whether and in what manner to proceed in changing the subordinated debt regulation. As a result, while major elements of the final rule are substantially the same as the language proposed, some provisions have been changed in response to comments.

I. Background

Since 1973, the Board, as operating head of the FSLIC, has permitted insured institutions to include as part of their regulatory capital the proceeds of the sale of subordinated debt securities issued pursuant to 12 CFR 563.8–1. Initially, insured institutions were permitted to include as regulatory capital the principal amount of such debt securities up to a limit of 20 percent of their capital. In 1982, the Board amended its regulations to allow insured institutions to include the full amount of the proceeds of the sale of subordinated debt securities having a remaining maturity in excess of one year as part of their capital and statutory reserve.[1] On April 18, 1985, the Board further amended its regulations to require that the amount of qualifying subordinated debt with a remaining period to maturity of less than seven years that may be included as regulatory capital must be reduced annually pursuant to an amortization schedule set forth in § 561.13.[2] The principal rationale underlying the Board's decision to allow the inclusion in regulatory capital of the proceeds of the sale of subordinated debt securities issued under 12 CFR 563.8–1 is that subordinated debt meeting the requirements of the regulation has some of the characteristics of other types of permanent capital and reduces the risks to the FSLIC.

On August 10, 1987, the President signed into law the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100–86, 101 Stat. 552. The CEBA addresses a number of important issues relating specifically to the thrift industry, including recapitalization of the FSLIC, emergency acquisitions of troubled thrift institutions, and potential areas for improvement in the examination and supervisory process. As required by CEBA, the Board on October 9, 1987, promulgated Applications Processing Guidelines as part of 12 CFR 571.12. The present regulatory proposal seeks to promote more efficient processing of subordinated debt applications, consistent with the objectives of CEBA and the requirements of the Applications Processing Guidelines, and also reflects an additional four years of experience with the subordinated debt regulation since the regulation was last amended. The Board is aware, however, that under the pending Financial Institutions Reform, Recovery and Enforcement Act of 1989, inclusion of subordinated debt may be more limited than is the case today. Thus, the revised regulations will apply to only that

[1] See Resolution No. 82–581 (August 26, 1982). Under Generally Accepted Accounting Principles ("GAAP"), subordinated debt is treated as a liability.

[2] See Resolution No. 85–292, 50 FR 20550 (May 17, 1985).

portion of an insured institution's subordinated debt that is permitted to be treated as regulatory capital under the new legislation and new regulations issued thereunder.

The rule changes herein are effective September 18, 1989, and are applicable to subordinated debt applications in process but not yet deemed complete as well as those filed after the effective date of this rule.

The Board has followed the notice and comment procedure pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 by publishing the proposed rules for notice and comment. *See* 54 FR 1379, January 13, 1989. The Board has determined that the 30-day delay of effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is appropriate in this instance.

II. Summary of Comments and Discussion of the Rule

The Board received two letters of comment on the Board's rule proposal—one from an insured institution and one from a thrift industry trade association. The letters were generally supportive of the rule proposal. The following paragraphs address the concerns raised in those letters as well as further insights of the Board and its staff.

1. Issuance of Guidelines

One commentator objected to authorizing the Office of Regulatory Activities to issue Guidelines. While the Board has considered this objection, the Board is of the opinion that, on balance, the industry and the agency are better served by having guidelines that can be changed as opposed to having no guidelines and that up-to-date specific guidelines are preferable to out-of-date vague regulations.

Guidelines will provide a mechanism to clarify and keep current the bases for supervisory objection to applications to include subordinated debt in regulatory capital of insured institutions. The use of uniform Guidelines also should increase efficiency in approving applications to include subordinated debt issues as part of regulatory capital.[3]

The Office of Regulatory Activities will prepare such Guidelines in consultation with the Board's Office of District Banks and the Board's Office of General Counsel. These Guidelines will be published in the near future before the effective date of this rule. In keeping with the Board's desire to have uniform national supervisory policies, the Office of Regulatory Activities, under the Board's oversight, will administer and maintain the Guidelines on an on-going basis. The format of Guidelines will allow for increased flexibility in future modifications, as needed. The Guidelines are designed to identify supervisory factors that PSAs may use in considering whether to approve or deny an application. Some of the current bases for supervisory objections now set forth at 12 CFR 563.8–1(b)(2) are obsolete and have been revised and/or expanded into Guidelines. The Guidelines are illustrative but not exclusive bases for supervisory objection to subordinated debt applications. The Office of Regulatory Activities in consultation with the Office of District banks and the Office of General Counsel will be able in the future to change the Guidelines as circumstances warrant, without the necessity for notice and comment rulemaking.[4]

2. Defaults and Other Events Providing for Mandatory Prepayment of Principal

One of the factors considered in the processing of a subordinated debt application is whether the issuance of the subordinated debt securities and any related transactions will result in a transfer of risk from the FSLIC to parties other than insured institutions. See 12 CFR 563.8–1(b)(3). The Board, on the basis of this provision, has objected to the inclusion in subordinated debt instruments of terms that provide for mandatory redemption of the debt or for events of default (which could give rise to acceleration of maturity of the principal of the debt) based on changes in control of the obligor (known in anti-takeover parlance as a "poisoned put"), or a failure of the obligor to comply with maintenance and operating covenants that were believed to be unreasonable in the circumstances. In this connection, the Board notes that one of the bases for permitting an insured institution to include an amount equal to the proceeds of the sale of subordinated debt securities in its regulatory capital is that the issuance of such securities represents a relatively long term commitment of capital to the insured institution. For this reason, the Board has not approved subordinated debt applications where the subordinated debt securities (or the indentures pursuant to which they were proposed to be issued) included provisions that might unduly accelerate payment of the debt prior to scheduled maturities, because such provisions could subject the FSLIC to a significant risk of precipitous decline in an institution's regulatory capital. The Board recognizes, however, that to effect a successful offering of debt securities, the securities, or the indentures pursuant to which they are issued, must include provisions that investors have come to accept as customary in offerings of such type, to the extent such provisions can be included without frustrating the purpose of the subordinated debt regulation. Thus, although provisions that require acceleration of maturity (through declaration, mandatory prepayments, or otherwise) following a change of control of the obligor will continue to be objectionable, the Board will not object to subordinated debt applications solely because the terms of the securities (or related indentures) include events of default such as failure to make timely payment of interest and principal, failure to comply with reasonable and customary financial maintenance and operating covenants, and certain events of bankruptcy or insolvency, receivership, and similar events. The final rule has been revised appropriately to add clarifying language to 12 CFR 563.8–1(b)(3) to address these considerations.

3. Voluntary Prepayments

The subordinated debt regulation provides that payment of principal may not be accelerated without approval of the FSLIC, if, after giving effect to such accelerated payment, the insured institution obligor would fail to meet its regulatory capital requirement. 12 CFR 563.8–1(d)(1)(iv). The Board has consistently taken the position that if any mandatory prepayment (such as payment upon acceleration of maturity following an event of default) is restricted to this extent, *a fortiori*, any voluntary prepayment should be similarly restricted. Further, an institution obviously should not be permitted to make such payments if the institution is already failing to meet its regulatory capital requirements. 12 CFR 563.8–1(d)(1)(iv) now reflects these long-standing interpretive positions.

4. Issuance of Subordinated Debt Securities Pursuant to an Indenture

While the Board proposed for comment the proposition that all insured institutions be subject to requirements based upon standards of the Trust Indenture Act of 1939, as amended, ("TIA") 15 U.S.C. 77aaa–77bbbb, the Board has decided to take a more

[3] In its release No. 87–1296 dated December 22, 1987, the Board similarly authorized the Office of Regulatory Activities to develop guidelines for administering the Board's new rule providing for individual minimum capital requirements. See 12 CFR 563.14.

[4] Such Guidelines will not form the basis for assertions of violations of statutes and regulations, but may be part of a finding that an institution is engaged in unsafe or unsound practices.

limited approach. The Board considers the benefits of the use of an indenture in certain circumstances to be beneficial to the discipline of the institution and for the institution in dealing with its debt holders. Thus the Board has determined to require an issuer to issue its subordinated debt securities pursuant to an indenture in certain circumstances. Such an indenture must provide for the appointment of a trustee other than the obligor or an affiliate of the obligor and for the collective enforcement of the rights and remedies of the security holders, if the aggregate amount of debt securities "publicly offered" (sales in a non-public offering as defined in 12 CFR 563g.4 are excluded) and sold by a single obligor in any consecutive twelve month period exceeds $2,000,000 and/or exceeds $5,000,000 in any consecutive thirty-six month period.

One commentator suggested that the proposed trust indenture requirement should "grandfather" any subordinated offerings already approved by the Board. The Board has followed that suggestion. The indenture requirement will be applicable to subordinated debt applications in process but not yet deemed complete as well as those applications filed after the effective date of the rule.

Another commentator objected to the requirement that some subordinated debt offerings would be required to use an indenture. That commentator opposed the requirement of using an indenture because of the added cost to an insured institution for the trust indenture and the related costs of the trustee's expenses over the life of the obligations.[5] The Board has considered the objections of this commentator, but has determined to adopt the limited requirement outlined above.

The TIA, which by its terms is inapplicable to securities issued by insured institutions, and the Rules and Regulations under the TIA provide, generally, that any debt securities offered and sold to the public by a single obligor in an amount in excess of $2,000,000 in any consecutive twelve month period must be issued pursuant to an indenture and that debt securities that are publicly offered and sold by the same obligor in an amount exceeding $5,000,000 in any consecutive thirty-sixty month period must be issued pursuant to an indenture that is "qualified" under the TIA. See 17 CFR 260.4(a)(1) and 260.4(a)(2). Although the TIA specifies in considerable detail the provisions that must be included in a qualified indenture (which required provisions relate principally to the qualifications, duties and powers of the trustee, the duties of the obligor, and the rights of the holders of the debt securities), neither the TIA nor the rules promulgated thereunder set forth any requirements with respect to the provisions of a non-qualified indenture. The Securities and Exchange Commission, however, for many years has taken the position that any indenture must, at a minimum, provide for the appointment of a trustee other than the obligor or an affiliate of the obligor and provide some reasonable procedures for the collective enforcement of the rights of the holders of the debt securities.

The Board's experience has been that most publicly offered issues of subordinated debt securities of any significant size by insured institutions are offered and sold through underwriters, and in such cases the securities are invariably issued pursuant to an indenture that includes all or substantially all of the provisions that would be required to be included in an indenture qualified under the TIA. The use of an indenture in connection with the issuance of subordinated debt securities can be beneficial, since certain of the terms included in such an indenture may provide a framework of financial discipline for the obligor, which in some cases may further the interests of the Board and the FSLIC. Further, it may be more efficient and workable for the insured institution obligor to deal with a trustee (some actions may be subject to ratification by the holders of a specified majority in principal amount of the debt securities) if the debtor should desire to amend the terms of the securities or to obtain a waiver of any convenants provided therein, or in the related indenture, rather than to contend with a large number of individual security holders. The Board is aware that the requirement to use an indenture will result in additional expense to certain issuing institutions but has concluded that the additional expense is warranted by the benefit received.

5. Reports

One commentator noted that GAAP requires an institution to include as a balance sheet liability the entire amount of subordinated debt issued including any capitalized expenses and therefore this commentator argues that the Board should allow insured institutions to include as regulatory capital all subordinated debt, including the portion of the subordinated debt offset by the expenses of the debt offering. The Board agrees that GAAP requires the entire debt to be listed on the liability side of the balance sheet. However, under GAAP, no portion of debt is included as capital. The purpose of the Board's subordinated debt regulation is to specify the portion of subordinated debt the Board is willing to count as "capital" for regulatory purposes. Since capital is designed to provide protection for the FSLIC and since only net proceeds provide that protection, the Board is willing to give such credit for only the actual net amount of moneys raised by the issuer that are available for the insured institution's use and that meet the other requirements of 12 CFR 563.13 for inclusion as regulatory capital. Thus this aspect of the proposed regulation has not been changed.

To clarify this point, however, the Board has added the additional sentence to the requirement in 12 CFR 563.8–1(h) that an insured institution must file a report with the Board 30 days after completion of the sale of subordinated debt securities. This sentence clarifies that the amount to be included in regulatory capital is an amount net of all expenses incurred in connection with the sale of the subordinated debt securities. This revised provision requires the issuing institution to specify the actual amount of the proceeds from the sale of the subordinated debt securities that the insured institution initially intends to include in its regulatory capital.[6]

6. Delegations of Authority

Currently, PSAs are authorized to approve applications filed pursuant to 12 CFR 563.8–1 unless such applications involve significant issues of law or policy upon which the Board has not taken a formal position, or unless an offering circular will be required in connection with the public offering and sale of the securities that are the subject of any such application. The revised regulation eliminates the requirement that an application be forwarded to Washington solely because an offering circular is involved and gives the PSAs

[5] The Board notes that both bank holding companies and savings and loan holding companies would have to comply with all of the requirements of the TIA. Any related exemptions to the TIA would apply only to any debt securities issued by their subsidiary insured institutions and not to the holding company itself.

[6] On an ongoing basis, the insured institution must calculate the amount of subordinated debt including any unacreted premiums or unamortized discounts as required by GAAP. This concept means essentially that as the capitalized expenses of the debt offering are amortized over the life of the obligations, the net amount of subordinated debt to be counted as capital will increase. Similarly, as any premium on the sale of the debt is amortized over the life of the obligations, the net amount of subordinated debt that will be counted as capital will decrease.

authority to deny applications as well as to approve them, subject to an appeal process. Applicants must be aware, however, that even though the PSA under the proposed regulatory amendments could approve a subordinated debt application where securities are to be sold pursuant to an offering circular even if such offering circular has not yet been declared effective, PSA approval would be conditioned upon the offering circular in the form declared effective not disclosing any material adverse information concerning the applicant's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the subordinated debt application.

At the present time, the Board is concerned about so-called "retail" sales of subordinated debt securities by institutions on their own premises. Such sales present a variety of legal and policy concerns. Accordingly, where such sales of subordinated debt are proposed to be made by the institution itself in its offices or those of an affiliate, those applications will be carefully reviewed consistent with the guidance provided by the Office of Regulatory Activities (*see*, Thrift Bulletin 23, dated April 13, 1989) and the Corporate and Securities Division, Office of General Counsel. If such application fails to meet such standards, the PSA should deem the application to involve significant issues of law and policy and refer the application to Washington DC to be considered by the Board.

The revised regulation otherwise further delegates authority to approve or deny requests for extensions of time requested pursuant to 12 CFR 563.8–1(g) to whomever is authorized to approve an application. Such extensions of time could be granted for a period of time of up to six months. All such extensions of time taken together may not exceed one year from the date of the original approval of the subordinated debt application.

7. Appeals

The Board has considered an additional idea that the "appeal process" should include the right to appeal any non-standard conditions included in the approval of a subordinated debt application by the PSA pursuant to their newly delegated authority. While the Board does not expect the PSAs to be including non-standard conditions in their approvals of subordinated debt applications, the Board thinks that the idea is appropriate and has revised the final rule accordingly.

In connection with the delegation of authority to the PSA's to deny applications under 12 CFR 563.8–1, the Board is adopting an appeal process for the further consideration of denials of applications by the PSAs in the form originally proposed. In essence, the appeal process requires any applicant wishing to appeal a determination of the PSA to file with the Office of District Banks, within 30 days of the PSA's determination, a written request for review describing with specificity the action appealed from and the relief sought. The filing of such a request will be necessary to seek judicial review of an initial determination. Such appeals will be processed under the time-frames and other requirements of the Board's standard applications processing guidelines at 12 CFR 571.12.

The Director of the Office of District Banks, with the concurrence of the Executive Director of the Office of Regulatory Activities, and the General Counsel, or their respective designees shall consider appeals from denials by the PSAs unless the Director of the Office of District Banks in his or her sole discretion determines to refer the appeal to the Board on the basis that the appeal involves policy considerations that warrant resolution by the Board. In the event that the Director of the Office of District Banks fails to obtain the concurrence of the Executive Director of the Office of Regulatory Activities and the General Counsel, the Director of the Office of District Banks shall present the matter to the Board.

8. Standard Conditions of Approval

The Board has considered the concept that one of the "standard conditions" to be included in the regulation could require that before any offers or sales of the subordinated debt are made on the premises of the institution or any of its affiliates, the applicant shall submit to the Supervisory Agent a set of policies and procedures for such sale of the subordinated debt satisfactory to the supervisory agent. Such policies and procedures would address the considerations set forth by the Office of Regulatory Activities in its Thrift Bulletin 23 issued on April 13, 1989. The Board has considered such an idea to have substantial merit and has included such a provision in the final regulation.

With the foregoing addition, the Board is adopting the proposed set of standard conditions that will apply to all approvals of subordinated debt applications. The Board anticipates that such conditions will, except in rare cases, be the only conditions applied to subordinated debt approvals. Other conditions would be imposed only where one or more of the bases for supervisory objection specified in the Guidelines developed by the Office of Regulatory Activities in consultation with the Office of District Banks and the Office of General Counsel are present and where such non-standard conditions are necessary to address the areas of concern that would otherwise form a basis for denial of the application. These standard conditions of approval also will apply to any subordinated debt application that is approved automatically pursuant to the Board's Applications Processing Guidelines found at 12 CFR 571.12. For technical considerations, these conditions are now included in the text of the rule rather than in a separate appendix as proposed.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the proposed rule applies.* The final rule will apply to all FSLIC-insured institutions without regard to size. However, the Small Business Administration defines a small financial institution as a "commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a)(1987). Therefore, small entities to which the rule applies are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1987.

3. *Impact of the final rule on small entities.* The Board believes that the revision to procedures for processing subordinated debt securities applications will not have a disparate effect on small entities. To the extent that under the revised regulations small entities will more likely be able to file their applications at their district Federal Home Loan Bank, the impact of the proposal will be liberalizing.

4. *Overlapping or conflicting Federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this rule.

5. *Alternatives to the final rule.* There are no alternatives that would be less burdensome than the rule changes addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set for above.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.8–1 by revising paragraphs (b)(2), (b)(3), and (d)(1)(iv); by adding a new paragraph (d)(4); by revising paragraphs (e), (h), and (i); and by adding new paragraphs (j) and (k), to read as follows:

§ 563.8–1 Issuance of subordinated debt securities.

* * * * *

(b) *Eligibility requirements.* * * *

(2) Whether in the opinion of the Corporation, the overall policies, condition, and operation of the applicant do not afford a basis for supervisory objection to the application. The Office of Regulatory Activities in consultation with the Office of District Banks and the Office of General Counsel shall establish Guidelines for the Principal Supervisory Agents to apply in exercising authority delegated to them in considering applications under this section. These Guidelines shall identify supervisory bases that may be used to object to the inclusion of specific subordinated debt issues as regulatory capital. Such Guidelines shall constitute illustrative but not exclusive bases for supervisory objection to subordinated debt applications. The Office of Regulatory Activities in consultation with the Office of District Banks and the Office of General Counsel may modify such Guidelines from time to time as appropriate. Any such changes to the Guidelines shall be effective for those applications filed after the date of the changes to the Guidelines and for those applications submitted for approval but not yet deemed "complete."

(3) Whether the issuance of such securities by the applicant in the transaction and any related transactions will result in a transfer of risk from the Corporation to parties other than insured institutions. In this connection, the issuance of subordinated debt securities shall be deemed to result in an insufficient transfer of risk from the Corporation if such securities or any indenture or related agreement pursuant to which such securities are issued provide for events of default or include other provisions that could result in a mandatory prepayment of principal by declaration or otherwise, other than events of default arising out of (i) the obligor's failure to make timely payment of interest and principal, (ii) the obligor's failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures relating to publicly offered issues of debt securities, and (iii) events of default relating to certain events of bankruptcy or insolvency, receivership, and similar events.

* * * * *

(d) * * *

(1) * * *

(iv) State or refer to a document stating that no voluntary prepayment of principal shall be made and that no payment of principal shall be accelerated without the approval of the Corporation, if the institution is failing to meet its regulatory capital requirement or if after giving effect to such payment the institution would fail to meet its regulatory capital requirement; and

* * * * *

(4) *Indenture.* An issuer must use an indenture, as described herein, for subordinated debt securities offered pursuant to this section. Such an indenture must provide for the appointment of a trustee other than the obligor or an affiliate of the obligor (as defined in 12 CFR 583.15) and provide for the collective enforcement of the rights and remedies of the security holders, if the aggregate amount of debt securities "publicly offered" (sales in a private non-public offering as defined in 12 CFR 563g.4 are excluded) and sold by a single obligor in any consecutive twelve month period exceeds $2,000,000 and/or $5,000,000 in any consecutive thirty-six month period.

(e) *Filing of application.* Applications for approval of the issuance of subordinated debt securities under this section shall be filed by transmitting the original and three copies of the application and all supporting documents to the institution's Principal Supervisory Agent.

* * * * *

(h) *Reports.* Within 30 days after completion of the sale of the subordinated debt securities issued pursuant to prior approval under this section, the institution shall transmit a written report to the Supervisory Agent stating the number of purchasers, the total dollar amount of securities sold, and the amount of net proceeds received by the institution. The institution's report shall clearly state the amount of subordinated debt, net of all expenses, that the institution initially intends to be counted as regulatory capital.

(i) *Delegation of authority.* Unless a subordinated debt application involves a significant issue of law or policy or would establish a precedent of national significance, the Principal Supervisory Agent is authorized:

(1) To approve an application filed pursuant to this section, if the application is in compliance with regulatory requirements, and

(2) To deny a subordinated debt application.

Whoever is authorized to approve a subordinated debt application is also authorized to grant a request pursuant to paragraph (g) of this section for an extension of time for up to six months. All such approved extensions of time taken together may not exceed one year from the date of original approval of the subordinated debt application.

(j) *Appeals.* Denial of an application by a Principal Supervisory Agent pursuant to paragraph (i) of this section or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section in the approval of an application may be appealed to the Corporation under the following procedures: Within 30 days after notification of the Principal Supervisory Agent's decision as provided for in this section, the applicant must file a written request for review with the Office of District Banks stating the applicant's desire to appeal the Principal Supervisory Agent's decision. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial is contended to be erroneous. Three copies of such request for review must be submitted to the Office of District Banks, Applications Policy Division, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. One copy of such request should be

addressed to the attention of "Office of District Banks;" one copy to the attention of "Office of General Counsel, Corporate and Securities Division;" and one copy to the attention of "Office of Regulatory Activities, Corporate Activities Section." Also, one copy shall be sent to the appropriate Principal Supervisory Agent. The Principal Supervisory Agent shall thereupon forward to the Office of District Banks his record or a copy thereof used as a basis for his determination together with any other information believed by the Principal Supervisory Agent to be helpful in reviewing his determination. If an applicant does not file a request for review within the time permitted under this section, any objection to the initial determination by the Principal Supervisory Agent is waived. A timely filing of a request for review with the Office of District Banks in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination. With the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director of the Office of District Banks, or his or her designee shall decide each appeal from a denial of an application under 12 CFR 563.8–1 by a Principal Supervisory Agent or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section. With the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director of the Office of District Banks, or his or her designee, shall prepare and send to the applicant a written response to the applicant's request for review. Such written response shall be deemed to be a final agency action by the Corporation. If the Director of the Office of District Banks, or his or her designee, in his or her sole discretion is of the opinion that the appeal involves policy considerations that warrant resolution by the Corporation, the Director, or his or her designee, shall submit the application to the Corporation for its determination. In the event that the Director, or his or her designee, fails to obtain the concurrence of the Executive Director of the Office of Regulatory Activities, or his or her designee, and the General Counsel, or his or her designee, the Director, or his or her designee, shall present the matter to the Corporation for its determination.

(k) *Conditions of approval.* Approvals of subordinated debt applications shall be subject to the following conditions:

(1) Where securities are to be sold pursuant to an offering circular required to be filed with the Corporation pursuant to 12 CFR 563g.2, and where such offering circular has not yet been declared effective prior to the date of approval of the subordinated debt application, the offering circular in the form declared effective shall not disclose any material adverse information concerning the applicant's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the application;

(2) The applicant shall submit to the Supervisory Agent, no later than 30 days from the completion of the sale of the securities, evidence of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the subordinated debt securities;

(3) The applicant shall submit to the Supervisory Agent no later than 30 days from the completion of the sale of the securities, the report(s) required by § 563.8–1(h) of the Insurance Regulations and the following additional items:

(i) Three copies of an executed form of the securities issued pursuant to the subject application and a copy of any related agreement or indenture governing the issuance of the securities; and

(ii) A certificate from the principal executive officer of the applicant that states that to the best of his knowledge none of the securities issued pursuant to the subject application were sold to any institution whose accounts are insured by the FSLIC, or a corporate affiliate thereof, except as permitted by § 563.8–1 of the Insurance Regulations;

(4) That as of the date of approval, there have been no material changes with respect to the information disclosed in the application as submitted to the Principal Supervisory Agent;

(5) The applicant shall submit an application and receive prior written approval of the Principal Supervisory Agent for any post-approval amendment to the subordinated debt securities or any related indenture if:

(i) The proposed amendment modifies or is inconsistent with any provision of the securities, or the indenture, which is required to be included therein by the regulations as may then be in effect or would result in a transfer of risk to the applicant or the FSLIC; and

(ii) All or a portion of the proceeds from the issuance and sale of the securities would continue to be included in the regulatory capital of the applicant following adoption of the amendment;

(6) The applicant shall submit to the Supervisory Agent promptly after execution one copy of each post-approval amendment to the securities or the related indenture and, if prior approval of such amendment was not obtained, shall also state the reason(s) such prior approval was not required; and

(7) Before any offers or sales of the subordinated debt are made on the premises of the institution or its affiliates, the applicant shall submit to the Supervisory Agent a set of policies and procedures for such sale of subordinated debt satisfactory to the Supervisory Agent.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–19277 Filed 8–17–89; 8:45am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 122

RIN 1076–AB51

Management of Osage Judgment Funds for Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends part 122 of 25 CFR, Management of Osage Judgment Funds for Education and Socioeconomic Programs, by excluding all references to the "socioeconomic" provisions. At the request of the Osage Indian Tribe, on October 30, 1984, Congress enacted legislation which eliminated the numerous requests for an interpretation of the socioeconomic provision. In addition, this action assures the availability of funds for financial assistance to eligible Osage tribal members pursuing post secondary education degrees. Part 122 is retitled "Management of Osage Judgment Funds for Education."

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Reginald Rodriguez, Bureau of Indian Affairs, Office of Indian Education Programs, Main Interior Building, Mail Stop Room 3512, 18th & C Streets, NW., Washington, DC 20240, (202) 343–4871.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that this document is not a major rule and does not require regulatory analysis under Executive

Order 12291. This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. This regulation does not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These regulations will not have an impact on small entities as defined in the Act.

The primary author of this document is Reginald Rodriguez, Education Specialist, Post Secondary Education, Office of Indian Education Programs, Bureau of Indian Affairs, (202) 343–4871.

On October 30, 1984, Pub. L. 98–605 was enacted to clarify and to make technical amendments to the various acts pertaining to the Osage Indians. The amendment deletes the "socioeconomic" provisions.

Because of the time expended by the Osage Tribal Education Committee (OTEC) to resolve the numerous complaints and requests for interpretation of the "socioeconomic" provision, along with the limited availability of funds for both the "socioeconomic" programs and the educational demands of tribal members, the "socioeconomic" provision in § 122.7 of 25 CFR part 122, Management of Osage Judgment Funds for Education and Socioeconomic Programs, is removed. This removal will provide the Osage Tribal Education Committee the opportunity to concentrate its energies and monies on education, which the Osage Tribal members have established as a principal priority. Other deletions were made; i.e., the definitions of the point system and the ranking of applications. However, the Osage Tribal Education Committee is minimally obligated to obtain approval from the Assistant Secretary—Indian Affairs for proposed budget expenditures and for the overall program plan of operation.

On June 30, 1988, the Bureau of Indian Affairs published a proposed rule at 53 FR 24732, and the Bureau requested that interested persons submit written comments, suggestions, or objections on or before August 29, 1988. One commenter submitted three written recommendations. These recommendations reference § 122.6, Duties of the Osage Tribal Education Committee. The following is a summary of the recommended comments and the Bureau's responses are noted as follows:

Section 122.6 Duties of the Osage Tribal Education Committee

Comments. The commenter requested that this part limit the funding period for the pursuit of a Master's degree to "* * * six semesters, not to include summer sessions, * * *", and that Doctoral program candidates be considered on a case by case basis by the Osage Tribal Education Committee. In addition, it was recommended that the unused first and second semester funds be redistributed for summer school.

Response. The Bureau recommends that advanced degrees, i.e., Masters and Doctoral programs, be funded at the discretion of the Osage Tribal Education Committee contingent upon the availability of funds on a case by case basis; however, because the Bureau wishes to support tribal autonomy, the Bureau also declines to insert into the regulations the recommendation for the redistribution for summer school of unused first and second semester funds. This will remain a committee choice. The Bureau, therefore, has not incorporated the Commenter's recommendations.

Information Collection Statement

The information collection requirements contained in §§ 122.6 and 122.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1078–0098 and 1076–0106, respectively.

List of Subjects in 25 CFR Part 122

Indian-claims, Indian-education, and Indian-judgment funds.

For the reasons set out in the preamble, title 25, chapter I, part 122 of the Code of Federal regulations is revised to read as follows:

PART 122—MANAGEMENT OF OSAGE JUDGMENT FUNDS FOR EDUCATION

Sec.

122.1 Purpose and scope.
122.2 Definitions.
122.3 Information collection.
122.4 Establishment of the Osage Tribal Education Committee.
122.5 Selection/nomination process for committee members.
122.6 Duties of the Osage Tribal Education Committee.
122.7 Budget.
122.8 Administrative costs for management of the fund.
122.9 Annual report.
122.10 Appeal.
122.11 Applicability.

Authority: 86 Stat. 1295, 98 Stat. 3103 (25 U.S.C. 331 note).

§ 122.1 Purpose and scope.

(a) The purpose of this part is to set forth procedures and guidelines to govern the use of authorized funds in education programs for the benefit of Osage Tribal members, along with application requirements and procedures used by those eligible persons.

(b) The Osage Tribe by act of Congress, October 27, 1972 (25 U.S.C. 883, 86 Stat. 12950, as amended by Pub. L. 98–605) on October 30, 1984, provides that $1 million, together with other funds which revert to the Osage Tribe, may be advanced, expended, invested, or reinvested for the purpose of financing an education program of benefit to the Osage Tribe of Indians of Oklahoma, with said program to be administered as authorized by the Secretary of the Interior.

§ 122.2 Definitions.

Act means Osage Tribe by Act of Congress, October 27, 1972 (25 U.S.C. 883, 86 Stat. 1295), as amended by Pub. L. 98–605.

Allottee means a person whose name appears on the roll of Osage Tribe of Indians approved by the Secretary of the Interior on April 11, 1908, pursuant to the Act of June 28, 1906 (34 Stat. 539).

Assistant Secretary means the Assistant Secretary—Indian Affairs.

Osage Tribal Education Committee means the committee selected to administer the provisions of this part as specified by § 122.6.

Reverted funds means the unpaid portions of the per capita distribution fund, as provided by the Act, which were not distributed because the funds were:

(1) Unclaimed within the period specified by the Act; or

(2) For an amount totaling less than $20 due an individual from one or more shares of one or more Osage allottees.

Secretary means the Secretary of the Department of the Interior or his/her authorized representative.

§ 122.3 Information collection.

(a) The information collection requirements contained in §§ 122.6 and 122.9 have been approved by the Office of Management and Budget under U.S.C. 3501 *et seq.* and assigned clearance numbers 1076–0098 and 1076–0106, respectively. The information collected in § 122.6 is used to determine the eligibility of Osage Indian student applicants for educational assistance grants. The information collected in § 122.9 provides summary review for program evaluation and program planning. Response to the information collections is required to obtain a benefit in accordance with 25 U.S.C. 883.

(b) Public reporting burden for this information collection is estimated to average 30 minutes per response,

including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337 SIB, 18th & C Streets, NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1076–0106), Washington DC 20503.

§ 122.4 Establishment of the Osage Tribal Education Committee.

(a) The Osage Tribe, to maintain its right of Tribal autonomy, shall, at the direction of the Bureau of Indian Affairs, establish the Osage Tribal Education Committee (OTEC) to fulfill the responsibilities and provisions of this part as set out in § 122.6.

(b) This committee shall be composed of seven (7) members. Five (5) of the members shall be of Osage blood or descendents of Osage, and two (2) from the education staff of the Bureau of Indian Affairs.

(1) Of the five Osage members, at least three shall be legal residents and/or live within a 20-mile radius of one of the three Osage Indian villages. Of these, at least one member shall reside within the specified radius of the Pawhuska Indian village; at least one member shall reside within the specified radius of the Hominy Indian village; and at least one member shall reside within the specified radius of the Greyhorse Indian village.

(2) The two remaining Osage committee members will be members at large.

§ 122.5 Selection/nomination process for committee members.

(a) Selection of the five (5) OTEC members shall be made by the Assistant Secretary in accordance with the following:

(1) Any adult person of Osage Indian blood who is an allottee or a descendant of an allottee is eligible to serve on the Osage Tribal Education Committee.

(2) Nominees for committee membership shall include a brief statement of interest and qualifications for serving on the committee.

(b) Nominations may be made by any Osage organization, including the Osage village communities of Greyhorse, Hominy and Pawhuska, by requesting its candidates to follow procedures outlined in paragraph (a)(2) of this section.

(c) Nominations shall be delivered by registered mail to the following address: Osage Tribal Education Committee, c/o Area Education Programs Administrator, Bureau of Indian Affairs, Muskogee Area Office—Room 152, 5th & W, Okmulgee, Muskogee, Oklahoma 74401.

(d) A Nominee Selection Committee composed of OTEC members so designated by the Assistant Secretary will review all nominations. Upon completion of this process, the Nominee Selection Committee will forward its recommendations for final consideration to the Assistant Secretary.

(e) Each member shall be sworn in for a four year term. At the discretion of the Assistant Secretary, members may succeed themselves with a recommendation for reappointment from the Nominee Selection Committee.

(f) The Assistant Secretary may, until a vacancy is filled, appoint an individual to serve for a temporary period not to exceed 120 days.

§ 122.6 Duties of the Osage Tribal Education Committee.

(a) For the purpose of providing financial assistance to eligible Osage applicants for educational assistance, the Osage Tribal Education Committee shall maintain an office and retain all official records at the Bureau of Indian Affairs offices located at the Federal Building, Muskogee, Oklahoma.

(b) The Osage Tribal Education Committee shall be responsible for implementing an overall plan of operation consistent with the policy of Indian self-determination which incorporates a systematic sequential process whereby all student applications for financial aid are rated and ranked simultaneously to enable a fair distribution of available funds.

(1) All applicants shall be rated by a point system appropriate to applications for education assistance. After all applications are rated, the Osage Tribal Education Committee will rank the applications in a descending order for award purposes. No awards shall be made until all applications are rated against the point system.

(2) Monetary awards shall be for fixed amounts as determined by the Osage Tribal Education Committee. The fixed amounts shall be itemized in the committee's annual budgetary request, and the monetary award amounts shall be consistent with the fixed amounts itemized in the approved budget.

(3) Payment of the monetary awards shall be made directly to the student, with half of the amount payable on or before September 15 and the second half payable on or before February 15, provided the student is successfully enrolled in an accredited institution of higher education and meeting the institution's requirement for passing work.

(4) No student will be funded beyond 10 semesters or five academic years, not to include summer sessions, nor shall any student with a baccalaureate degree be funded for an additional undergraduate degree.

§ 122.7 Budget.

(a) By August 1 of each year, the Osage Tribal Education Committee will submit a proposed budget to the Assistant Secretary or to his/her designated representative for formal approval. Unless the Assistant Secretary or his/her designated representative informs the committee in writing of budget restrictions by September 1, the proposed budget is considered to be accepted.

(b) The investment principal, composed of the one million dollars appropriated by the Act and reverted funds, must be invested in a federally insured banking or savings institution or invested in obligations of the Federal Government. There are no provisions in this part which shall limit the right of the Osage Tribal Education Committee to withdraw interest earned from the investment principal; however, expenditures shall be made against only the interest generated from investment principal and reverted funds.

(c) All funds deposited will accumulate interest at a rate not less than that generally available for similar funds deposited at the same banking or savings institution or invested in the same obligations of the United States Government for the same period of time.

§ 122.8 Administrative costs for management of the fund.

Funds available for expenditures may be used by the Osage Tribal Education Committee in the performance of its duties and responsibilities. Recordkeeping is required and proposed expenditures are to be attached with the August 1 proposed annual budget to the Assistant Secretary or his/her designated representative.

§ 122.9 Annual Report.

The Osage Tribal Education Committee shall submit an annual report on OMB approved Form 1076–0106, Higher Education Annual Report, to the Assistant Secretary or his/her designated representative on or before November 1, for the preceding 12 month period.

§ 122.10 Appeal.

The procedure for appealing any decision regarding the awarding of funds under this part shall be made in accordance with 25 CFR Part 2, Appeals from Administrative Action.

§ 122.11 Applicability.

These regulations shall cease upon determination of the legal and appropriate body to administer the fund and upon the establishment of succeeding regulations.

W. P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 89-19340 Filed 8-17-89; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

28 CFR Part 74

[Order No. 1359-89]

Redress Provisions for Persons of Japanese Ancestry

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice hereby adopts rules for the enforcement of section 105 of the Civil Liberties Act of 1988, Pub. L. 100-383, 102 Stat. 903, codified at 50 U.S.C. app. 1989b-4, which authorizes the Attorney General to identify, locate, and when funds are appropriated, make payments of $20,000 to eligible individuals of Japanese ancestry who were evacuated, relocated or interned during World War II.

EFFECTIVE DATE: August 18, 1989.

ADDRESSES: Comments received on the Notice of Proposed Rulemaking will remain available for public inspection at the Office of Redress Administration facility at 1100 Connecticut Avenue NW., Washington, DC in Suite 825 from 9:30 a.m. to 5:30 p.m., Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Valerie O'Brian, Office of Redress Administration, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 633-5119 (Voice) or (202) 786-5986 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Civil Liberties Act of 1988 enacts into law the recommendations of the Commission on Wartime Relocation and Internment of Civilians established by Congress in 1980 (Pub. L. 96-317). This bipartisan Commission was established to review the facts and circumstances surrounding Executive Order 9066, issued February 19, 1942, and the impact of that Executive Order on American citizens and permanent resident aliens of Japanese ancestry; to review directives of United States military forces requiring the relocation, and in some cases, detention in internment camps of these American citizens and permanent resident aliens; and to recommend appropriate remedies. The Commission submitted to Congress in February, 1983, a unanimous report, *Personal Justice Denied,* which extensively reviewed the history and circumstances of the decisions to exclude, remove and then to detain Japanese Americans and Japanese resident aliens from the West Coast, as well as the treatment of the Aleuts during World War II. The final part of the Commission's report, *Personal Justice Denied Part 2: Recommendations,* concluded that these events were influenced by racial prejudice, war hysteria, and a failure of political leadership, and recommended remedial action to be taken by the Congress and the President.

On August 10, 1988, President Ronald Reagan signed the Civil Liberties Act of 1988 into law. The purposes of the Act are to acknowledge and apologize for the fundamental injustice of the evacuation, relocation, and internment of Japanese Americans and permanent resident aliens of Japanese ancestry, to make restitution, and to fund a public education program to prevent the recurrence of any similar event in the future.

Section 105 of the Act assigned the Attorney General the responsibility and duties for the restitution provisions. The Attorney General delegated the responsibilities and duties assigned him by the Act to the Assistant Attorney General for Civil Rights, who, in turn, established the Office of Redress Administration in the Civil Rights Division to carry out the execution of the responsibilities and duties under the Act.

The Office of Redress Administration (ORA) is charged with the responsibility of identifying and locating persons eligible under the Act, without requiring any application for payment, within twelve months after the date of enactment of the Act (August 10, 1988), or within twelve months after the appropriation of funds necessary to complete the identification process. To date no appropriations have been made. It was estimated by the Commission on Wartime Relocation and Internment of Civilians that approximately 120,000 American citizens and permanent resident aliens of Japanese ancestry were affected by the exclusion. Of these, an estimated 60,000 individuals survive and are eligible for redress payment.

In its efforts to identify and locate these individuals, the Office of Redress Administration has initiated a highly publicized outreach program to the Japanese American community to encourage those persons thought to be eligible to notify the Office with information concerning their eligibility and current residences. On September 19, 1988, the Office of Redress Administration announced the establishment of a toll free telephone number and a U.S. Post Office Box designed to accommodate individuals wishing to ask questions or volunteer information concerning their eligibility. This announcement also was publicized in Japanese American newspapers. The Office also placed its West Coast staff in San Francisco, California, for ninety days in order to establish close working relationships with the leaders of Japanese American organizations to ensure that the Office would reach as many eligible persons as possible.

Section 105 of the Act also requires the Attorney General to notify each eligible individual in writing as to a determination of eligibility, and to authorize the payment of $20,000 to each eligible individual. Payment will be made in the order of the date of birth pursuant to Section 105(b).

Therefore, when funds are appropriated, payment will be made to the oldest eligible individual living on the date of the enactment of the Act, August 10, 1988 (or his or her statutory heirs), who has been located by the Administrator at that time. Payments will continue to be made until all eligible persons have received payment. For this purpose, the Act specifies that a total of $1,250,000,000 is to be placed in the United States Civil Liberties Public Education Fund from which payments may be made. Because the Act specifies that no more than $500,000,000 may be appropriated in any one year, not all payments can be made at one time.

During the period of drafting the proposed regulations, many individuals and organizations in the Japanese American community contacted the Civil Rights Division to ask questions and express concern regarding the determination of eligibility. In response to these concerns the Division published a Notice in the **Federal Register**, 53 FR 41252 (October 20, 1988), inviting the public to submit comments during the proposed regulation's drafting period on three issues that seemed to be of major concern to the public. These issues pertained to the eligibility of minors who were relocated to Japan between