

## Federal Housing Finance Board

## § 904.9

not disclose the record pursuant to FOIA, the agency's regulations, or any other authority.

### §904.7 Records of financial regulatory agencies held by the Finance Board.

The Finance Board shall not disclose an examination, operating, or condition report, or other record prepared by, on behalf of, or for the use of a financial regulatory agency. Upon a receipt of a request for such records, the Finance Board shall promptly refer the request to the appropriate agency and notify the requester of the referral.

### §904.8 Appeals.

(a) *Procedure.* (1) If the Secretary to the Board has denied a request in whole or in part, the requester may appeal the denial by submitting a written application to the Secretary to the Board stating the grounds for the appeal within 30 working days of the date of the Finance Board's determination under §904.4.

(2) Subject to §904.9(f), within 20 working days of receipt of an application for appeal meeting the requirements of paragraph (a)(1) of this section and any extensions of time under paragraph (a)(3) of this section, the Finance Board shall determine whether to grant or deny the appeal and notify the requester in writing of the determination, the name and title or position of the person responsible for the determination, and the provisions for judicial review of this final action under 5 U.S.C. 552(a)(4).

(3) In unusual circumstances, the Secretary to the Board may extend the time limit in paragraph (a)(2) of this section for a period not to exceed 10 working days by notifying the requester in writing of the reasons for the extension and the date on which a determination is expected.

(b) *Appeal during pendency of judicial review.* If a requester files an action in a United States district court under 5 U.S.C. 552(a)(4) concerning a request for Finance Board records before exhausting the administrative appeals process for that request under paragraph (a) of this section, the Finance Board may:

(1) Initiate and process an administrative appeal; or

(2) Continue to process an administrative appeal previously filed under paragraph (a) of this section.

### §904.9 Fees.

(a) *Fees.* Except as otherwise provided in a statute specifically providing for setting fees for particular types of records or in this section, the Finance Board shall assess against each requester the direct costs of responding to a request for records.

(1) If the records are requested for a commercial use, the direct costs are limited to the reasonable operating costs the Finance Board incurs to search, review, and duplicate records.

(2) If the records are not requested for a commercial use and the requester is an educational institution, non-commercial scientific institution, or representative of the news media, the direct costs are limited to the reasonable operating costs the Finance Board incurs to duplicate records in excess of 100 pages.

(3) If neither the request nor the requester is described in paragraphs (a) (1) or (2) of this section, the direct costs are limited to the reasonable operating costs the Finance Board incurs to search in excess of two hours and duplicate records in excess of 100 pages.

(4) For purposes of this section, the term:

(i) *Commercial use request* means a request from, or on behalf of, a person who seeks records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(ii) *Educational institution* means a preschool, public or private elementary or secondary school, or institution of undergraduate, graduate, professional, or vocational higher education that operates a program of scholarly research.

(iii) *Non-commercial scientific institution* means a nonprofit institution operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media* means a requester who is actively gathering information that is about current events or would be of current interest to the public for an entity that

§ 904.9

12 CFR Ch. IX (1-1-99 Edition)

is organized and operated to publish or broadcast news to the public.

(b) *Fees when no records are provided.* The Finance Board may assess a fee for the direct costs of searching for a requested record the Finance Board cannot locate or if located, determines to be exempt from disclosure under § 904.5.

(c) *Interest.* The Finance Board may assess interest at the rate prescribed in 31 U.S.C. 3717 on any unpaid fees beginning 31 days after the earlier of the date of the Finance Board's determination under § 904.4 or the date a fee statement is mailed to a requester. Interest shall accrue from such date.

(d) *Exceptions.* Notwithstanding paragraphs (a) or (b) of this section, the Finance Board may determine not to assess a fee or to reduce a fee if:

(1) The routine cost of collecting and processing the fee is likely to equal or exceed the amount of the fee.

(2) The fee is equal to or less than 10 dollars.

(3) Disclosure of the record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(i) A requester may apply in writing to the Secretary to the Board for a waiver of fees under this paragraph (b)(3). A fee waiver request shall include the following:

(A) The requester's interest in and proposed use of the record;

(B) Whether the requester will derive income or other benefit from the record;

(C) An explanation of how the public will benefit from disclosure, including the requester's ability and intention to disseminate the information to the public; and

(D) The requester's expertise in the subject area of the record.

(ii) In determining whether disclosure of a record is in the public interest, the Finance Board shall consider whether the record:

(A) Concerns identifiable operations or activities of the Finance Board;

(B) Is meaningfully informative in relation to the subject matter of the request;

(C) Contributes to an understanding of the subject matter by the public at large, and the significance of that contribution; and

(D) Furthers, or is primarily in, the requester's commercial interest.

(e) *Aggregating requests.* If the Finance Board reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, it may aggregate such requests and assess fees in accordance with this section.

(f) *Collecting fees.* (1) The Finance Board shall deem any request for Finance Board records as an agreement by the requester to pay fees and interest assessed in accordance with this section.

(2) To pay fees and interest assessed under this section, a requester shall deliver to the Secretary to the Board a check or money order made payable to the "Federal Housing Finance Board."

(3) Prior to disclosing any record, the Finance Board may require a requester to agree in writing to pay actual fees and interest incurred in accordance with this section if the estimated fee will likely exceed \$25 but not \$250.

(4) The Finance Board may require a requester to pay an estimated fee in advance if:

(i) The Secretary to the Board determines that the fee will likely exceed \$250; or

(ii) The requester has previously failed to pay a fee assessed under this section within 30 days of the earlier of the date of the Finance Board's determination under § 904.4 or the date a fee statement was mailed to a requester.

(5) The Finance Board shall promptly refund to a requester any estimated advance fee paid under paragraph (f)(4) of this section that exceeds the actual fee. The Finance Board shall assess the requester for the amount by which the actual fee exceeds the estimated advance fee payment.

(g) *Fee schedule.* The Finance Board shall assess fees in accordance with the following schedule:

Federal Housing Finance Board

§ 906.2

Search:	
Manual: Supervisory/Professional Staff .....	\$34.00 per hour.
Manual: Clerical Staff .....	\$17.00 per hour.
Computer: Operator .....	\$34.00 per hour.
Computer output (PC) .....	actual cost.
Diskettes (3½ × 5¼) .....	\$5.00 per diskette.
Review .....	\$34.00 per hour.
Duplication:	
Photocopy .....	\$.10 per page.
Computer generated .....	\$.76 per 1000 lines.
Copy of microfiche .....	\$.30 per page.
Transcription of audio tape .....	\$4.50 per page.
Certification, seal and attestation by the Secretary to the Board ...	\$5.00 per document.
Delivery:	
Facsimile transmission (long distance) .....	Long distance charges plus \$.25 per page.
Facsimile transmission (local) .....	\$.25 per call plus \$.25 per page.
Express delivery service .....	Actual cost.

**PART 906—INFORMATION REGARDING MEETINGS OF THE BOARD OF DIRECTORS OF THE FEDERAL HOUSING FINANCE BOARD**

- Sec.
- 906.1 Purpose and scope.
- 906.2 Definitions.
- 906.3 Open meetings.
- 906.4 Closed meetings.
- 906.5 Procedures for closing meetings.
- 906.6 Notice of meetings.

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 58 FR 19202, Apr. 13, 1993, unless otherwise noted.

**§ 906.1 Purpose and scope.**

(a) This part is issued by the Federal Housing Finance Board pursuant to the Government in the Sunshine Act (5 U.S.C. 552b), that requires Federal agencies, headed by collegial bodies, to promulgate regulations to implement its provisions. The purpose of these regulations is to provide the public with access to information regarding the decisionmaking processes of the Board of Directors of the Finance Board, while protecting the privacy rights of individuals and the ability of the Board of Directors to carry out its responsibilities.

(b) The Board of Directors shall not jointly conduct or dispose of official Finance Board business other than in accordance with this part.

**§ 906.2 Definitions.**

For the purpose of this part:

*Board of Director* or *Director* means a member of the Board of Directors.

*Board of Directors* means the five member governing Board of Directors of the Federal Housing Finance Board.

*Chairperson* means the Chairperson of the Board of Directors and includes the Acting Chairperson.

*Executive Secretary* means the Executive Secretary to the Board of Directors, and includes the Acting Secretary in the event the Executive Secretary position is vacant.

*FHLBank* means a Federal Home Loan Bank.

*Finance Board* means the Federal Housing Finance Board.

*Meeting* means any deliberations of three or more Directors of the Board of Directors, that determines or results in the joint conduct or disposition of official Finance Board business, but does not include:

- (1) Discussions to determine whether meetings will be open or closed or whether information pertaining to closed meetings will be disclosed;
- (2) Discussions to determine whether to schedule a meeting with less than seven days notice, or to change the time, place or subject matter of a scheduled meeting; and
- (3) Disposition of Finance Board business by circulation of written materials on proposed actions to individual