

Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236, NEOB, Washington, D.C. 20503, (202) 395-0651. For further information, contact Dorothy Conway, Federal Communications Commission, (202) 418-0217.

Please note: The Commission has requested emergency review of this collection by September 12, 1996, under the provisions of 5 CFR Section 1320.13.

**Title:** Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order.

**Form No.:** N/A.

**OMB Control No.:** 3060-0710.

**Action:** Revised Collection.

**Respondents:** Business or other for-profit entities.

**Estimated Annual Burden:** 12,500 respondents; 122 hours per response (avg.); 1,529,620 hours total annual burden.

**Needs and Uses:** In the First Report and Order in CC Docket 96-98, the Commission adopted rules and regulations to implement parts of Section 251 and 252 that effect local competition. Specifically, the Order requires incumbent local exchange carriers ("LECs") to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for retail services to new entrants; that incumbent LECs price such services at rates that are cost-based and just and reasonable; and that they provide access to rights-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, D.C. 20554.

Federal Communications Commission  
William F. Caton,  
*Acting Secretary.*

[FR Doc. 96-22196 Filed 8-29-96; 8:45 am]

BILLING CODE 6712-01-P

# **Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested**

August 26, 1996.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

**DATES:** Written comments should be submitted on or before October 29, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

## **SUPPLEMENTARY INFORMATION:**

**OMB Approval Number:** 3060-0397.

**Title:** Special Temporary authority, Section 15.7(a).

**Form No.:** None.

**Type of Review:** Extension of existing collection.

**Respondents:** Business/For Profit Institutions.

**Number of Respondents:** 2.

**Estimated Time Per Response:** 6 hours.

**Total Annual Burden:** 12 hours.

**Needs and Uses:** The information gathered is used to determine if the Commission should issue a special temporary authorization to operate an incidental, intentional or unintentional radiation device that does not conform to the provisions of Part 15. The proposed operation of the equipment must be in the public interest, be a unique type of station, or must be incapable of being established as a regular service; and the proposed operation cannot feasibly be conducted under the general provisions of Part 15. Information describing the intended operation of the proposed equipment is required to determine if the applicant should be issued a special temporary authorization.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96-22197 Filed 8-29-96; 8:45 am]

BILLING CODE 6712-01-P

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **General Counsel's Opinion No. 9; FICO Funding Sources**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC or Corporation).

**ACTION:** Notice of FDIC General Counsel's Opinion No. 9.

**SUMMARY:** The FDIC has received inquiries on the availability of funding from FSLIC Resolution Fund (FRF) receiverships for Financing Corporation (FICO) to pay interest on its obligations. Specifically, one inquiry has questioned the availability of potential recoveries in the "goodwill" litigation currently pending against the government by some of the former RTC receiverships. This General Counsel Opinion sets forth the Legal Division's conclusions on the issues involved in determining the availability of funding for FICO interest payments from FSLIC Resolution Fund receiverships.

**FOR FURTHER INFORMATION CONTACT:** Pamela A. Shea, Assistant General Counsel, (202) 898-3521 or Linda L. Stamp, Counsel, Legal Division, (202)

898-7310, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

#### Text of General Counsel's Opinion

#### General Counsel's Opinion No. 9—FICO Funding Sources

By: William F. Kroener, III, General Counsel

#### Background

FICO is a mixed-ownership government corporation created in 1987 to recapitalize the Federal Savings and Loan Insurance Corporation (FSLIC) by issuing bonds to purchase capital stock or capital certificates issued by the FSLIC.<sup>1</sup> FICO was created in 1987 pursuant to the Competitive Equality Banking Act (CEBA), Pub. L. 100-86, as a way to augment the resources of the FSLIC, which had effectively been declared insolvent by the Federal Home Loan Bank Board (FHLBB) earlier that year. FICO is managed by a three-member directorate composed of the Director of the Office of Finance of the Federal Home Loan Banks and the presidents of two Federal Home Loan Banks (FHLBs).<sup>2</sup> FICO was authorized to issue bonds in an amount of up to \$10.825 billion with an annual net borrowing limit of \$3.75 billion.<sup>3</sup> FICO issued 30-year noncallable bonds in a principal amount of approximately \$8.1 billion that mature in 2017 through 2019. FICO's authority to issue bonds ended on December 12, 1991.<sup>4</sup> Under the terms of FICO's contracts with its bondholders, FICO's bonds are not redeemable before maturity.<sup>5</sup> The FHLBs were required to invest in nonvoting capital stock to capitalize FICO.<sup>6</sup> FICO was required to invest in and hold in a segregated account noninterest bearing (zero coupon) securities having a total principal payable at maturity approximately equal to the aggregate amount of principal due at the maturity of the FICO bonds.<sup>7</sup> The FICO bonds bear interest at a fixed rate of 8.60% or higher depending on the series and date of issue.<sup>8</sup>

The FHLBs pay the administrative expenses of FICO according to a statutory formula and the term administrative expenses is defined to exclude interest, issuance costs and custodian fees.<sup>9</sup> FICO has limited sources of funding available to pay its interest and principal obligations because the obligations of the FICO and the interest payable on such obligations are not obligations of, or guaranteed as to principal or interest by the FHLBs, the United States, or the FSLIC Resolution Fund (FRF).<sup>10</sup> The FICO statute, as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), establishes the following as sources of funding for the interest, issuance costs and custodian fees on the FICO obligations:

(1) FICO assessments made prior to FIRREA;<sup>11</sup>

(2) FICO assessments on SAIF member Savings associations with the approval of the FDIC;<sup>12</sup>

(3) Liquidating dividends and payments made on claims received by FRF (as established under section 11A of the Federal Deposit Insurance Act) from receiverships, subject to the priority claim of the Resolution Funding Corporation (REFCORP) for the Funding Corporation Principal Fund (Principal Fund);<sup>13</sup>

(4) Exit fees paid on "conversion transactions" in which the resulting or surviving institution is not a SAIF member.<sup>14</sup>

The statute clearly provides that funds from a higher priority source are to be used to the extent available before

moving to the next lower priority source.<sup>15</sup>

#### Priority of Claims to Liquidating Dividends and Payments

Today, the FRF consists of two distinct pools of assets and liabilities:<sup>16</sup> one composed of the assets and most of the liabilities of the FSLIC transferred to the FRF upon the dissolution of the FSLIC on August 9, 1989 (FRF-FSLIC) and the other composed of the assets and liabilities of the RTC transferred to the FRF upon the dissolution of the RTC on December 31, 1995 (FRF-RTC). The assets transferred from the RTC consist chiefly of the subrogated depositors' claims that the RTC acquired as it resolved the institutions within its jurisdiction, that is, thrifts that failed on or after January 1, 1989 through June 30, 1995.

The Legal Division interprets the language in section 21(f)(3) of the Federal Home Loan Bank Act ("FHLB Act") concerning FICO's access to "liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (established under section 11A of the Federal Deposit Insurance Act) from receiverships" [emphasis added] to encompass only the FRF-FSLIC. Although a facial reading of section 21(f)(3) of the FHLB Act does not explicitly distinguish between FRF-FSLIC and FRF-RTC, it is the Legal Division's view that the italicized language should be read as defining the FRF as established at the date of FIRREA's passage, which did not include any assets or liabilities of RTC. This reading fits squarely with the general statutory design established by FIRREA to resolve the thrift crisis by assigning responsibilities for failed and failing thrift institutions (pre-FIRREA and post-FIRREA) to each of two entities, RTC and FRF.

RTC was to resolve thrifts that failed after January 1, 1989, using \$31.2 billion in off-budget funding provided to the RTC by the REFCORP and \$18.8 billion from appropriations.<sup>17</sup> Congress created REFCORP in 1989 to provide funding for the RTC as a part of FIRREA.<sup>18</sup> RTC

<sup>1</sup> Competitive Equality Banking Act (CEBA), Pub. L. 100-86, Title III, amending § 21 of the Federal Home Loan Bank Act. 12 U.S.C. § 1441.

<sup>2</sup> Federal Home Loan Bank Act § 21(b), 12 U.S.C. § 1441(b).

<sup>3</sup> Federal Home Loan Bank Act § 21(e), 12 U.S.C. § 1441(e).

<sup>4</sup> Resolution Trust Corporation Refinancing, Restructuring and Improvement Act of 1991, § 104.

<sup>5</sup> See FICO Information Statement Supplement dated September 19, 1989.

<sup>6</sup> Federal Home Loan Bank Act § 21(d), 12 U.S.C. § 1441(d).

<sup>7</sup> Federal Home Loan Bank Act § 21(g), 12 U.S.C. § 1441(g).

<sup>8</sup> See FICO Information Statement Supplement dated September 19, 1989.

<sup>9</sup> Federal Home Loan Bank Act § 21(b)(7), 12 U.S.C. § 1441(b)(7).

<sup>10</sup> Federal Home Loan Bank Act § 21(e)(6), 12 U.S.C. § 1441(e)(6).

<sup>11</sup> Federal Home Loan Bank Act § 21(f)(1), 12 U.S.C. § 1441(f)(1). Under the statute, FICO's initial source of funds were pre-FIRREA assessments, but those funds are exhausted.

<sup>12</sup> Federal Home Loan Bank Act § 21(f)(2), 12 U.S.C. § 1441(f)(2).

<sup>13</sup> Federal Home Loan Bank Act § 21(f)(3), 12 U.S.C. § 1441(f)(3) states:

Receivership proceeds To the extent the amounts available pursuant to paragraphs (1) and (2) are insufficient to cover the amount of interest payments, issuance costs, and custodial fees, and if the funds are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund under section 1441b of this title, the Federal Deposit Insurance Corporation shall transfer to the Financing Corporation, from the liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (established under section 1821a of this title) from receiverships, the remaining amount of funds necessary for the Financing Corporation to make interest payments.

<sup>14</sup> Federal Deposit Insurance Act § 5(d)(2)(E), 12 U.S.C. § 1815(d)(2)(E).

<sup>15</sup> Federal Home loan Bank Act § 21(f), 12 U.S.C. § 1441(f).

<sup>16</sup> Separate accounting for each pool is maintained by the FDIC.

<sup>17</sup> Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub.L. 101-73, §§ 501 and 511.

<sup>18</sup> FIRREA amending § 21B of the Federal Home Loan Bank Act. 12 U.S.C. § 1441b. In a manner similar to the FICO, the administrative expenses of REFCORP are paid by the Federal Home Loan Banks (FHLBs) according to a statutory formula. 12 U.S.C. § 1441b(c)(7). The Principal Fund is fully

acquired no assets of the FSLIC and assumed liability only for certain guarantees of FHLBs' advances issued by the FSLIC, relating to thrifts that had not failed as of the date of passage of FIRREA.<sup>19</sup> RTC never had access to any funds provided by FICO to resolve the institutions within RTC's jurisdiction.<sup>20</sup> However, to the extent all other funding sources are insufficient to cover the amount of interest payments on its obligations, REFCORP is authorized to obtain the additional amount needed from the Secretary of the Treasury, which authorization was NOT granted to FICO.<sup>21</sup>

By comparison, FIRREA provided that all other liabilities of the FSLIC and all of the assets of the FSLIC were transferred to the FRF.<sup>22</sup> The FDIC succeeded the FSLIC as receiver or conservator for any thrift taken over by the government before January 1, 1989.<sup>23</sup> The liabilities to which the FRF succeeded consisted chiefly of the FSLIC's obligations under transactions resolving thrifts that failed prior to January 1, 1989, and the FSLIC's direct liability to depositors in thrifts that

funded with zero coupon Treasury bonds purchased by REFCORP through capitalization from the FHLBs' mandatory stock purchases. See 12 U.S.C. § 1441b(e) and the audited financial statements confirming the existence of the zero coupon Treasury bonds. (Section 21B(e)(7) of the FHLB Act also required that SAIF assessment income be used, if necessary, to fund REFCORP's Principal Fund. *Id.* At 1441b(e)(7). Because REFCORP's Principal Fund is fully funded, assessment income from SAIF member institutions is no longer required for REFCORP purposes.) The statutes provide separate funding for interest payments on the bonds, notes, debentures and similar obligations issued by REFCORP. 12 U.S.C. § 1441b(f). REFCORP collects the funding for interest from its earnings on assets not invested in Principal Fund; certain proceeds from the RTC to the extent available during its existence; from the FHLBs according to a statutory formula; through the net proceeds from the sale of assets transferred to the FRF by the RTC; and to the extent the other sources are insufficient, the Secretary shall pay the additional interest. In addition, when the FRF satisfies all of the liabilities of RTC, then the net proceeds of RTC asset sales are to be returned to REFCORP.

<sup>19</sup> Federal Home Loan Bank Act § 21A(h), 12 U.S.C. § 1441a(h), as added by § 501 of FIRREA.

<sup>20</sup> See generally Federal Deposit Insurance Act, § 11A (b)(3), 12 U.S.C. § 1821a(b)(3)) and Federal Home Loan Bank Act, § 21, 12 U.S.C. § 1441. Under section 1441(f)(3) and 1441b(7)(B), the Principal Fund could have received assets from FRF-FSLIC, if its other sources of funding had been insufficient. This appears to have been an isolated instance of "seed money" provided by what remained of the former FSLIC to the entity (RTC) created to resolve formerly FSLIC-insured institutions going forward. In contrast, there are no instances in the FIRREA statutory framework where funding flows from the RTC to the FRF-FSLIC.

<sup>21</sup> Federal Home Loan Bank Act § 21B(f)(2)(D), 12 U.S.C. § 1441b(f)(2)(D).

<sup>22</sup> Federal Deposit Insurance Act § 11A(a)(2)(A), 12 U.S.C. § 1821a(a)(2)(A).

<sup>23</sup> Federal Deposit Insurance Act § 11A(a)(5)(A), 12 U.S.C. § 1821a(a)(5)(A).

failed before that date. A further divergence in the treatment of the two FRF pools is illustrated by the fact that the FRF-FSLIC was given access to any funds borrowed by FICO beginning with the date of the enactment of FIRREA.<sup>24</sup>

If section 21(f)(3) of the FHLB Act were read to encompass liquidating dividends and payments on claims from RTC receiverships, the result would contradict the remaining statutory design. Under that interpretation, RTC assets would be used to pay for that portion of the thrift crisis that was expressly excluded from the RTC's jurisdiction. This view seems inconsistent with a Congressional intent that RTC's assets would not be used to pay for the portion the thrift crisis that Congress expressly excluded from the RTC's jurisdiction. Likewise, it would be inconsistent with Congressional intent to impose liability to pay the interest on the FICO obligations on the RTC assets, since the RTC received no FICO funding.

The Legal Division's view that payment of FICO's interest, issuance costs and custodian fees is limited to liquidating dividends from former FSLIC receiverships is consistent with the language in section 21B(f)(2)(D) of the FHLB Act, which contains the language that Congress used when it intended to have the FRF-RTC assets flow directly to REFCORP. This subsection states as follows:

(D) Proceeds from sale of assets. To the extent the amounts available pursuant to subparagraphs (A), (B), and (C) are insufficient to cover the amount of interest payments, the FSLIC Resolution Fund shall transfer to the Funding Corporation any net proceeds from the sale of assets received from the Resolution Trust Corporation, which shall be used by the Funding Corporation to pay such interest.<sup>25</sup>

This subsection shows that Congress intended to separate the FRF-FSLIC from the FRF-RTC and that Congress identified the FRF-RTC as proceeds from the sale of a separate pool of assets intended to be used for different purposes than the FRF-FSLIC assets. Thus, although the assets and the liabilities of the RTC were transferred to the FRF when the RTC terminated, the RTC dissolution provisions require that after all outstanding liabilities of the RTC have been paid, the FRF is to transfer the net proceeds from the sale of the RTC assets to the REFCORP,<sup>26</sup>

<sup>24</sup> Federal Deposit Insurance Act § 11A(b)(3), 12 U.S.C. § 1821a(b)(3).

<sup>25</sup> Federal Home Loan Bank Act § 21B(f)(2)(D), 12 U.S.C. § 1441b(f)(2)(D).

<sup>26</sup> Federal Home Loan Bank Act § 21A(m)(2), 12 U.S.C. § 1441a(m)(2); and Federal Deposit Insurance

which provided \$31.2 billion in initial funding to the RTC.<sup>27</sup> In addition, on a periodic basis, the net proceeds of former RTC asset sales are available to service REFCORP periodic interest obligations.<sup>28</sup> These provisions are consistent with the statutory pattern whereby the RTC received its primary funding from REFCORP, to which net proceeds of any excess RTC assets are to return.

This interpretation is supported by FICO's own post-FIRREA disclosure document in conjunction with the sale of its bonds, which does not mention RTC assets as a potential source of funds to pay interest. The disclosure states that "the FDIC will transfer to FICO from the liquidating dividends and payments made on claims received by the FSLIC Resolution Fund (if any), the amount necessary for FICO to make interest payments, but only to the extent such funds are not required \* \* \* by REFCORP." <sup>29</sup> When defining the FSLIC Resolution Fund, FICO disclosed the following information:

The FSLIC Resolution Fund was established by FIRREA and has assumed all the assets and liabilities of FSLIC as of the date of enactment of FIRREA except for those expressly transferred to or assumed by RTC. These assets and liabilities primarily relate to FSLIC's case resolution activity prior to 1989, while RTC is responsible for the management and resolution of all cases involving the appointment of a conservator or receiver for an Insured Institution after January 1, 1989 and prior to August 9, 1992. To meet its obligations, the FSLIC Resolution Fund may use its assets, returns from receiverships, amounts borrowed by FICO, and insurance assessments on SAIF-Insured Institutions to the extent that they are not required for interest on Obligations of FICO and not required by REFCORP for defeasance of REFCORP's obligations. FIRREA authorizes the future appropriation from the U.S. Treasury of funds needed by the FSLIC Resolution Fund to satisfy its obligations. The FSLIC Resolution Fund will be managed by the FDIC as a separate fund and will terminate when its debts are paid and its assets are sold.<sup>30</sup>

Act § 11A(e), 12 U.S.C. § 1821a(e). 12 U.S.C. § 1441a (m)(2) states:

Case resolutions transferred Simultaneous with the termination of the Corporation as provided in paragraph (1), all assets and liabilities of the Corporation shall be transferred to the FSLIC Resolution Fund. Thereafter, if there are no liabilities of the Corporation outstanding, the FSLIC Resolution Fund shall transfer any net proceeds from the sale of assets to the Resolution Funding Corporation.

<sup>27</sup> Federal Home Loan Bank Act § 21B, 12 U.S.C. § 1441b.

<sup>28</sup> Federal Home Loan Bank Act § 21B(f), 12 U.S.C. § 1441b(f).

<sup>29</sup> FICO Information Statement dated September 19, 1989 at page 4.

<sup>30</sup> *Id.* at page 13.

FICO's disclosure document does not mention RTC assets transferred to FRF upon RTC dissolution as a source of funding for FICO.

Additional indications that proceeds from FRF-RTC receiverships were never intended to be a source of funding for FICO are found in subsection section 21A(i) of the FHLB Act as added by the Resolution Trust Corporation Completion Act in 1993 when Congress provided the final appropriation authority to the RTC. This subsection provides in part that "if the aggregate amount of funds transferred to the [RTC] pursuant to this subsection exceeds the amount needed [for RTC and certain SAIF purposes,] such excess amount shall be deposited in the general fund of the Treasury."

In the legislative history from the House Report showing the section-by-section analysis of section 21A(i) of the FHLB Act, Congress showed a clear intent that the money so provided be used for limited purposes. This report states as follows:

Such funding can only be used to protect insured depositors or for the administrative expenses of the RTC. Shareholders of insured institutions in default may not benefit in any manner from such funding. In addition, any funds transferred to the RTC that are not needed for such purposes or for the Savings Association Insurance Fund ("SAIF") must be deposited in the general fund of the Treasury.<sup>31</sup>

Finally, we note that in preparation for the transition when the RTC would cease to be a separate entity, the RTC and FDIC prepared a memorandum dated October 12, 1995 to the Thrift Depositor Protection Oversight Board (Oversight Board) addressing the future funding needs of the FDIC when it would succeed to the RTC's responsibilities.<sup>32</sup> In this memorandum, the FDIC and the RTC recognized that Congress had limited the uses of the money appropriated to the RTC. When the Oversight Board acceded to the request of the FDIC and RTC by its Resolution dated and effective October 18, 1995, the Oversight Board *inter alia* relied on the representations of the FDIC and RTC that there would be "separate accounting with respect to the former FSLIC and former RTC portions of the

FRF, the results for both of which would be contained in the FDIC's public quarterly financial statements, commencing in 1996" and that "the FDIC intends to return to the Treasury on an ongoing basis cash receipts that are over and beyond cash that is needed for operating purposes or cash that might be needed in the future to complete remaining disposition responsibilities." Neither FDIC nor RTC identified any possibility that any of these funds could be subject to a claim by FICO for its interest payments. The Oversight Board acceded to the request of the FDIC and RTC and in its Resolution relied on these representations. The FDIC has acted and continues to act in accordance with these representations.

Therefore for all of the reasons stated above, proceeds from RTC receiverships are not available to pay FICO's obligations. Consequently, recoveries by RTC receiverships in the "goodwill cases" (none of which arise out of former FSLIC receiverships) would not be available to FICO.

#### FRF Monies Subject to FICO Call

Next the meaning of the language, "liquidating dividends and payments made on claims received by [FRF] \* \* \* from receiverships," needs to be examined. This phrase on its face refers to the money that is distributed to the holders of claims against receiverships when the assets of the receiverships are sold, turned into cash proceeds and dividends are declared or payments are otherwise made to creditors.<sup>33</sup> For the reasons discussed above, FICO will have access only to liquidating dividends paid by former FSLIC receiverships to FRF-FSLIC.

It might be argued that the phrase "payments made on claims received by the [FRF] from receiverships" should also include, e.g., proceeds from the sale of assets acquired by the FRF-FSLIC through corporate purchase under assistance agreements or other amounts recovered by the FRF-FSLIC in connection with assistance transactions, such as upon the disposition of a warrant position in an assisted entity. This argument is flawed because the FRF did not receive the assets or amounts in question *from a receivership* but from the assisted entity, often long

after the time that the assisted transaction commenced (at the time of appointment of the receiver) and even after the receivership may have been terminated. Accordingly, it is our view that the phrase is meant to encompass only payments in the nature of liquidating dividends. Further, assets, such as stock warrants, that were owned by the FSLIC in its corporate capacity passed to the FRF, not any individual receivership, by operation of law under Section 11A. The proceeds from these assets will not be available to FICO because they do not derive from "liquidating dividends and payments made on claims received by [FRF] \* \* \* from receiverships." (emphasis added).

#### Current Payment Stream

The Legal Division views the language of section 21(f)(3) of the FHLB Act as only referring at any given time to the current payment stream from receiverships as collected by the FRF-FSLIC<sup>34</sup> and does not require that all proceeds from receiverships be accumulated for the contingent claim of REFCORP and FICO whenever either might need this source of funding. Several reasons support this reading of the provision. First, the contingent nature of FICO's claim to this source of funding as contrasted with FRF's primary need for this source of money to pay the immediate and ongoing liabilities of the FSLIC is inconsistent with a Congressional intent that the payment stream be held or escrowed for the contingent future needs of FICO. The legislative history seems to show that Congress intended that FRF spend the receivership proceeds to pay the liabilities of FSLIC.<sup>35</sup> Second, FRF has lawfully spent money from this source since its inception and its financial results have been regularly reported to Congress and audited by General Accounting Office (GAO) without any questions being raised. The money received by FRF from this source has been spent to pay operating expenses,

<sup>34</sup> Federal Home Loan Bank Act § 21(f)(3), 12 U.S.C. § 1441(f)(3).

<sup>35</sup> See discussion of FSLIC Resolution Fund:

To meet its obligations, this Fund may use its assets, returns from receiverships, amounts borrowed by FICO, and insurance assessments on SAIF members through 1991 that are not required for interest on FICO bonds and not required by REFCORP for defeasance of its bonds. Any additional funds needed will be provided by the Treasury. The Fund will terminate when its debts are paid and its assets are sold. 135 Cong. Rec. H5172 (A&P), 101st Congress, First Session, Arnold & Porter Legislative History: P.L. 101-73 Debate; Congressional Record—House Proceedings and Debates of the 101st Congress, First Session, Conference Report on H.R. 1278 Financial Institutions Reform, Recovery, and Enforcement Act, 1989, August 4, 1989; page 830.

<sup>31</sup> P.L. 103-204, Resolution Trust Corporation Completion Act, H.R. REP. 103-103(I), H.R. Rep. No. 103(I), 103RD Cong., 1ST Sess. 1993, 1993 U.S.C.C.A.N. 3040, 1993 WL 180206 (Leg. Hist.) in the Section-by-Section Analysis.

<sup>32</sup> Memorandum entitled Revised Funding Request and Recommendations to Dietra L. Ford, Executive Director, Thrift Depositor Protection Oversight Board, from Barry S. Kolatch, Vice President for Planning, Research, and Statistics, RTC, and William A. Longbrake, Deputy to the Chairman for Finance and Chief Financial Officer, FDIC, dated October 12, 1995.

<sup>33</sup> By statute since August 9, 1989, FRF has received funding from liquidating dividends and similar payments from receiverships. Section 215 of title II of FIRREA, 12 U.S.C. § 1821a(b)(2). FRF is partially funded through liquidating dividends and such payments, except to the extent that these funds are required by REFCORP or FICO pursuant to sections 1441b or 1441, respectively. Neither REFCORP nor FICO have required this money during FRF's existence.

assistance agreement liabilities, insured deposit claims, judgments, such amounts as were needed by SAIF for administrative and supervisory expenses from August 9, 1989 through September 30, 1992,<sup>36</sup> and any other liabilities to which FRF succeeded. Third, FRF is intended to dissolve when its assets are sold and liabilities paid.<sup>37</sup> FRF has no statutory requirement to continue to exist for speculative requirements of REFCORP or FICO. This factor seems to indicate that FRF had no duty to hold money for the requirements of REFCORP or FICO. Fourth, FRF is not directly liable for the FICO obligations, and the general assets of FRF are not available to FICO.<sup>38</sup> Section 21(f)(3) of the FHLB Act does not grant FICO a general claim to the assets of FRF.

The time relevant to the analysis in this instance is the date FICO's assessment revenues become insufficient to cover interest payments, issuance costs and custodial fees. Therefore, FICO only has access to the future payment stream from liquidating dividends of former FSLIC receiverships beginning on the date that FICO's assessments become insufficient to cover interest payments, issuance costs, and custodial fees. Accordingly, liquidating dividends paid to the FRF before the "shortfall date" could not generally be reached by FICO.

#### Conclusion

The determination of available funding sources for FICO cannot be made purely by reviewing the statutory provisions, rather the language must be interpreted in light of the entire statutory structure established to resolve the thrift crisis. The statutory scheme formed two separate entities—RTC and FRF. Later when the RTC terminated, two pools of assets and liabilities managed by the same entity remained—FRF-FSLIC and FRF-FRTC. The results of the arrangement Congress created shows the Congressional intent to separate the RTC and the FRF-FSLIC. Congress could have used only one agency and one fund but chose not to do so. Accordingly, we conclude that only the FRF-FSLIC is available to FICO under section 21(f)(3) of the FHLB Act. In addition, the phrase "liquidating dividends and payments made on claims received by FRF" includes only dividends paid to FRF from former FSLIC receiverships and not proceeds from the sale of assets acquired by FRF-

FSLIC through corporate purchase or other amounts recovered by the FLSIC-FRF in connection with assistance transactions. Further, the quoted language only refers to the current payment stream from receiverships as collected by the FRF-FSLIC and there is no requirement to escrow those payments in anticipation of a need for them by FICO.

By Order of the Board of Directors dated at Washington, D.C., this 21st day of August, 1996.

Federal Deposit Insurance Corporation

Jerry L. Langley,

*Executive Secretary.*

[FR Doc. 96-22213 Filed 8-29-96; 8:45 am]

BILLING CODE 6714-01-P

### FEDERAL RESERVE SYSTEM

#### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing,

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Oak Bancorporation*, Oakland, Iowa; to engage *de novo* in purchasing certain loans originated by affiliate banks and thereby make and service loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 26, 1996.

William W. Wiles

*Secretary of the Board*

[FR Doc. 96-22177 Filed 8-29-96; 8:45 am]

BILLING CODE 6210-01-F

#### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue

<sup>36</sup> Federal Deposit Insurance Act § 11A(a)(2)(B), 12 U.S.C. § 1821a(a)(2)(B).

<sup>37</sup> Federal Deposit Insurance Act § 11A(f), 12 U.S.C. § 1821a(f).

<sup>38</sup> See Federal Home Loan Bank Act, § 21(e)(6), 12 U.S.C. § 1441(e)(6).