

(a) Identify, assess, and mitigate potential risks and establish prudent internal controls; and

(b) Implement security measures designed to ensure secure operations. Such measures must be adequate to:

(1) Prevent unauthorized access to your records and your customers' records;

(2) Prevent financial fraud through the use of electronic means or facilities; and

(3) Comply with applicable security devices requirements of part 568 of this chapter.

#### Subpart B—Requirements Applicable to All Savings Associations

##### § 555.300 Must I inform OTS before I use electronic means or facilities?

(a) *General.* A savings association ("you") are not required to inform OTS before you use electronic means or facilities, except as provided in paragraphs (b) and (c) of this section. However, OTS encourages you to consult with your Regional Office before you engage in any activities using electronic means or facilities.

(b) *Activities requiring advance notice.* You must file a written notice as described in § 555.310 before you establish a transactional web site. A transactional web site is an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services.

(c) *Other procedures.* If the OTS Regional Office informs you of any supervisory or compliance concerns that may affect your use of electronic means or facilities, you must follow any procedures it imposes in writing.

##### § 555.310 How do I notify OTS?

(a) *Notice requirement.* You must file a written notice with the appropriate Regional Office at least 30 days before you establish a transactional web site. The notice must do three things:

(1) Describe the transactional web site.

(2) Indicate the date the transactional web site will become operational.

(3) List a contact familiar with the deployment, operation, and security of the transactional web site.

(b) *Transition provision.* If you established a transactional web site after the date of your last regular onsite OTS safety and soundness examination but before January 1, 1999, you must file a notice describing your activity by February 1, 1999.

#### PART 559—SUBORDINATE ORGANIZATIONS

5. The authority citation for part 559 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

6. Section 559.3 is amended by revising paragraph (o)(2) to read as follows:

##### § 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of federal savings associations?

\* \* \* \* \*

(o) \* \* \*

(2) A service corporation is subject to examination by OTS.

\* \* \* \* \*

Dated: November 20, 1998.

By the Office of Thrift Supervision.

**Ellen Seidman,**

*Director.*

[FR Doc. 98-31746 Filed 11-27-98; 8:45 am]

BILLING CODE 6720-01-P

#### FEDERAL HOUSING FINANCE BOARD

##### 12 CFR Parts 900, 922, 931, 932, 933, 934, and 941

[No. 98-47]

RIN 3069-AA55

##### Election of Federal Home Loan Bank Directors

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending its regulations on the election of Federal Home Loan Bank (Bank) directors. The final rule devolves responsibility for determining the eligibility of elective directors and administering the election process from the Finance Board to the Banks. The final rule is part of the Finance Board's continuing effort to transfer management and governance responsibilities to the Banks and is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

**EFFECTIVE DATE:** The Final Rule will become effective on December 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Patricia L. Sweeney, Program Analyst, Compliance Assistance Division, Office of Policy, 202/408-2872, or Roy S. Turner, Jr., Attorney-Advisor, Office of General Counsel, 202/408-2512, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory and Regulatory Background

Pursuant to section 7 of the Federal Home Loan Bank Act (Act), which sets forth the eligibility requirements and the procedures for electing and appointing Bank directors, and regulations promulgated thereunder, the Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), determined the eligibility of all Bank directors, administered the Bank director elections, and appointed public interest directors. See 12 U.S.C. 1427 (1989); 12 CFR part 522 (1989). After Congress abolished the FHLBB in 1989, see Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub.L. 101-73, sec. 401, 103 Stat. 183 (Aug. 9, 1989), the Finance Board adopted the FHLBB regulations on Bank directors, without change. See 54 FR 36757 (Sept. 5, 1989), *codified at* 12 CFR part 932. The Finance Board subsequently amended its regulations to implement the changes FIRREA made to the eligibility requirements for, and to apply the conflicts of interest limitations FIRREA imposed on, Bank directors. 55 FR 1393 (Jan. 16, 1990); 56 FR 55205 (Oct. 25, 1991); see FIRREA, secs. 707, 710(b)(4), 103 Stat. 417, 418, *codified at* 12 U.S.C. 1427.

Since the enactment of FIRREA the Finance Board has determined the eligibility of all Bank directors, has administered the election of Bank directors, and has appointed public interest directors. As part of its policy of removing itself from the management and governance functions of the Banks and devolving those responsibilities to the Banks, the Finance Board is transferring the administration of the elections, including the responsibility to determine the eligibility of elective directors, to the Banks. This action does not affect the appointment of public interest directors for the Banks, who will continue to be appointed in the sole discretion of the Finance Board.

The final rule amends, redesignates, or eliminates various provisions of part 932, and includes conforming amendments to parts 900, 931, 933, 934, and 941. The Finance Board also is repealing the current conflict of interest and financial disclosure requirements established by part 922 of its regulations for the appointed members of the Board of Directors of the Finance Board. All of the changes are consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review. See E.O. 12861, 58 FR 48255 (Sept. 11, 1993).

## II. Analysis of the Public Comments and Final Rule

The Finance Board received seven comment letters in response to its proposal to devolve the management and administration of the election process to the Banks. The proposed rule was published in the **Federal Register**, with a 45-day period for public comment. 63 FR 26532 (May 13, 1998). Commenters included six Banks and one member. Most commenters supported the devolution of the election process to the Banks, though they also offered suggested revisions to the rule. Two commenters opposed the proposal, citing the potential administrative burden that could be placed on the Banks. One of these commenters also characterized the regulation as too detailed and restrictive and failing to devolve to the Banks any meaningful control over the election process.

Notwithstanding those concerns, the Board believes that the election of directors to serve on the board of a corporate entity is a responsibility more appropriately assigned to the entity than to its safety and soundness regulator. Accordingly, the Board is adopting the regulation largely as proposed, with revisions made to take into account a number of revisions proposed by the commenters. Those revisions are discussed below.

### A. Definitions—§ 932.1

#### 1. "Bona Fide Resident"—§ 932.1

The proposed definition of "bona fide resident" that appeared in the **Federal Register** included a typographical error, which prompted two commenters to question whether appointive directors need always have some residence within the district. The final rule corrects the error, making clear that an appointive director who does not maintain a principal residence within the district may, nonetheless, be a "bona fide resident" if he or she owns or leases in his or her own name a residence within the district and is employed within a voting state in the district. The same test applies to elective directors.

#### 2. "Voting State"—§ 932.1

Under the proposal, a member's "voting state" is the state in which the member's principal place of business, "as determined in accordance with part 933," is located on the record date. One commenter contended that the definition might bar a member from voting if its principal place of business were located outside the district of the Bank in which the institution is a member. Because that scenario could occur only in rare circumstances, which

would require Finance Board approval, and the existing regulations and statutes would address the matter, the final rule adopts the definition as proposed.

By statute, an institution must become a member of the Bank whose district includes the state in which the institution maintains its principal place of business, unless the institution requests membership in an adjoining district, which is permissible only if it is "demanded by convenience" and only if it is approved by the Finance Board. 12 U.S.C. 1424(b). Thus, a member could have its principal place of business outside of its normal Bank district only pursuant to the "demanded by convenience" provision. If such a transfer were to occur, it would be governed by the regulations of the Finance Board, principally Section 933.18(a) and (b). Those provisions authorize membership in another Bank under the "demanded by convenience" provision and provide that "[e]xcept as otherwise designated in accordance with this section" a member's principal place of business is the state in which it maintains its home office. The latter provision contemplates that the Finance Board may "otherwise designate" a state other than the one in which a member maintains its home office as its principal place of business, which the Finance Board would have to do if the home office were outside the district. As the regulations address the concern of the commenter, especially when read in conjunction with section 1427(c), which requires the Finance Board to designate the state in which each member is deemed to be located for voting purposes, the Finance Board does not believe it is necessary to revise this definition.

### B. Director Elections—§ 932.3

#### 1. Responsibilities of the Banks

Consistent with the proposed rule, the final rule transfers the responsibility for the conduct and administration of the director elections from the Finance Board to the Banks. Two commenters believed that the regulatory language should expressly permit the Banks to use staff and contractors to run the elections process, even though the preamble to the proposal indicated that Bank staff could be used. As it was never the Finance Board's intent to have the board of directors personally perform those tasks, the final rule clarifies that the disinterested members of the board of directors, or a committee of disinterested directors, may use staff or an outside contractor to perform the ministerial and administrative tasks associated with the elections process.

The final rule retains the language that the disinterested members, or committee of disinterested members, are responsible for overseeing the election process, which means that they must ensure that the persons administering the election are competent and act in accordance with these regulations.

Further, three commenters suggested that the Finance Board share information with, and offer the appropriate training to, the Banks as a part of its devolution of the election process. The Finance Board intends to provide the information and training necessary to ensure a smooth transition of the management of the election process from the Finance Board to the Banks and anticipates that it will do so in consultation with the Banks in advance of the 1999 election cycle. No regulatory changes are necessary to provide such assistance.

#### 2. Designation of elective directorships.

For any Bank district with five or more states, the Act authorizes the Finance Board to increase the number of elective directorships up to thirteen, and the number of appointive directorships up to three-fourths of the number of elective directorships. 12 U.S.C. 1427(a). The proposed rule had provided that in creating any additional appointive directorships under this authority the Finance Board may round up to the nearest whole number. Two Banks objected to the rounding provision, contending that it could result in a Bank having a number of appointive directors in excess of the three-fourths statutory limit.

The principal difficulty in applying the statutory limit is that it results in a whole number of appointive directors only when the number of elective directors is eight or twelve. If a Bank has nine, ten, or eleven elective directors, the formula results in a fractional cap on the number of appointive directors, *i.e.*, 6.75, 7.5, and 8.25, respectively. It is not clear from the statute how Congress intended the cap to be applied when it includes a fraction. The Finance Board could disregard all fractions altogether, meaning that it would have to "round down" to the nearest whole number in all cases. Alternatively, the Finance Board could follow standard rounding conventions and round to the nearest whole number in all cases. The Finance Board has determined that the most reasonable means of applying the limitation is to use standard rounding conventions whenever the "three-fourths" formula results in something other than a whole number. Thus, for any fraction of one-half or more the Finance Board will round up to the

nearest whole number, and for any fraction of less than one-half the Finance Board will round down to the nearest whole number.

The Finance Board believes that this interpretation is permissible and is in accord with the standards of statutory interpretation. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council Inc.*, 467 U.S. 837, 844 (1984). The final rule amends the proposed language by deleting the term "up," to make clear that fractions less than one-half will be rounded down, and adds a provision requiring the Finance Board to consult with the affected Banks prior to increasing the number of elective or appointive directorships.

One commenter suggested that the Finance Board establish separate seats on the board of directors of a Bank for co-operative banks and federal savings and loan associations, as those institutions are too small to have sufficient votes to elect their own representatives. The Finance Board cannot make such a change because it is not permitted by the statute. The Finance Board has no authority to set up separate classes of directors to represent different segments of the membership base.

#### C. Capital Stock Report—§ 932.4

The proposed rule would have required each Bank, by April 10 of each year, to submit to the Finance Board and to each member a capital stock report, which would indicate the minimum number of shares of Bank stock each member was required to hold at the end of the preceding calendar year. The proposal also would have allowed each member to obtain Finance Board review of the Bank's determination of its minimum stock holdings. Two commenters objected to this provision, contending that providing the capital stock report to the members would be confusing because the report would not indicate the number of votes each member would be entitled to cast in the election, and that the appeals process would delay the elections.

The Finance Board believes that there is some merit in the suggestion about member confusion, but also believes that it is important for each member to have the opportunity to review for itself and, if necessary, to obtain Finance Board review of the Bank's calculation of the member's minimum stock purchase requirement (which is used to determine the member's voting rights) and to confirm that the Bank has included the member in the appropriate voting state. To balance those concerns, the final rule relocates the reporting and review provisions from the election

regulation to the membership regulation, at section 933.22(b)(1).

Section 933.22(b)(1) currently directs the Banks annually to calculate each member's minimum stock purchase requirement and to notify the member of any required adjustment. The final rule amends section 933.22(b)(1) to require the Banks to include as part of the notice a statement informing the member that the Bank's minimum stock calculation will be used to determine the number of votes the member may cast in that year's election, and identifying the state in which the member will vote. If a member does not agree with the Bank's calculation of the minimum stock holdings or the Bank's identification of the voting state, the member may request the Finance Board to resolve either matter. The Finance Board must do so promptly and its determination is final.

By requiring the Bank to notify the member of its voting state the final rule affords each member the opportunity to confirm that the records of the Bank correctly indicate the location of its principal place of business. This should minimize the possibility that a member may be assigned to vote in the wrong state, which might occasionally occur as members merge, consolidate, or relocate across state lines. Although the Banks do not designate the state in which a member is deemed to be located for voting purposes (that is done by the Finance Board), they do need to know promptly whenever a member relocates its principal place of business (*i.e.*, its home office) to another state. Toward that end, the final rule also amends § 933.18(a)(1) to require that a member promptly notify its Bank whenever it relocates its principal place of business to another state. The Bank, in turn, must inform the Finance Board of any such relocation.

Section 7(c) of the Act requires the Finance Board to designate the state in which each member is deemed to be located for voting purposes and, if the member has its principal place of business in a state within the district, the Finance Board must designate that state as its voting state for purposes of the election. 12 U.S.C. 1427(c). The Finance Board has made such a designation in its current regulations, 12 CFR 932.11(a) (1998), and the final rule retains a comparable provision, amending Section 932.3(d) to provide that for purposes of director elections a member is deemed to be located in its voting state.

#### D. Determination of Member Votes—§ 932.5

Section 7(b) of the Act provides that in electing directors, each member may cast a number of votes equal to the number of shares of capital stock in the Bank the member was required to hold as of the record date (December 31 of the prior year), but the number of votes may not exceed the average number of shares required to be held by all of the members in that state as of the record date. 12 U.S.C. 1427(b).

Because the statute establishes voting rights as of the record date, the proposal would not have terminated those rights based on events occurring subsequent to the record date, such as a merger or consolidation into a nonmember, transfer to another Bank, or withdrawal from the Bank. Consequently, in the event of such a transaction the proposed rule would have allowed the legal successor to the member to exercise whatever voting rights the member possessed as of the record date, but only for the election occurring in the year of the merger or other transaction. In subsequent years the successor's right to vote, if any, would be determined by its own membership status.

Three commenters objected to any provision that might allow institutions that were not members at the time of the election to vote in the election for Bank directors. One commenter questioned whether a member that was subject to the maximum cap on the number of votes it may cast (*i.e.*, not to exceed the average stock purchase requirement for all members) would be permitted to cast the votes belonging to another member that had merged into the first member subsequent to the record date.

The final rule retains the provisions under which voting rights are to be determined as of the record date. The Finance Board has decided not to introduce a number of exceptions to this rule that would terminate a member's voting rights based on corporate transactions occurring after the record date. The Finance Board is mindful of the concerns expressed about entities that are not members being allowed to vote in the election of directors for the Banks, but is persuaded that the Banks should conduct their elections in the same manner as other corporate entities, which use a record date to determine which shareholders may vote for directors. If the concept of the record date is to be applied in a meaningful fashion, events occurring subsequently should not alter the voting rights that existed as of the record date. Thus, if a member merges into a nonmember subsequent to the record date but prior

to the election, or if a member relocates its home office to another Bank district or withdraws from the Bank System, the successor or the former member may vote those shares if it wishes to do so. Similarly, if a member that has reached the maximum number of votes that a single member may cast in an election acquires by merger or consolidation another member that was entitled to vote in the election, and in the same state, as of the record date, the resulting member would be entitled to cast its own votes, as well as those of the acquired member, but only in the election occurring in the year of the merger. Thereafter, the voting rights of the member would be determined by the number of shares it was required to hold as of the next following record date.

Moreover, as a practical matter the Finance Board is not persuaded that terminating the voting rights of members that merge, relocate, or withdraw from the System after the record date can be done in a manner that would treat each such member the same. At some point prior to the distribution of the ballots the Banks must finalize their lists of institutions that are entitled to vote in the election, even though there may be a period of several weeks "during which time other mergers could occur" before the balloting closes. Thus, there always could be some institutions receiving ballots that no longer would be members at the time of the election. In addition, terminating the voting rights of even a single member that has participated in such a transaction will affect the voting rights of every other member that is subject to the cap on the maximum number of votes that it may cast in the election, because the cap—the average stock holdings of all members—will increase or decrease depending on the size of the former member.

At some point, the voting membership and the number of votes per member must be fixed. To select any date other than the record date may result in disparate treatment of similarly situated members, hamper the ability of the Banks to administer the election process, and subject the election to challenge by some members. Given those difficulties, the Finance Board believes that reliance solely on the record date is consistent with general corporate practice and best ensures that all members having voting rights on the record date will be treated equitably in the election for the subsequent year.

One commenter suggested that the Finance Board be made the sole authority to resolve "voting determination disputes," such as vote

tabulation, principal residence requirement, and record date stock requirement. Aside from the determination of the number of shares of stock each member is required to maintain as of the record date and the state in which the member may vote, for which Finance Board review is available as noted previously, the Finance Board believes that these matters are best left to the Banks as a part of the devolution of the election process. The Banks may adopt dispute resolution procedures and make elective director eligibility and voting determinations, as they deem appropriate, consistent with the Act and these regulations.

#### *E. Eligibility Requirements for Elective Directors—§ 932.7*

The proposed rule, at § 932.7, would have required the Banks to verify that a director nominee meets the statutory and regulatory eligibility requirements before placing the name of the nominee on the ballot. One commenter suggested that the regulation be revised to require the Banks to rely on the director eligibility certification form ("Form E-1") and to refer as well to any successor forms, so that the Banks have clear guidance as to the source of information from which they are required to assess a potential nominee's eligibility. The final rule modifies the proposal to indicate that the Banks are required to determine eligibility based on the forms provided by the directors. It also amends the rule to refer to an executed "director eligibility certification" as prescribed by the Finance Board rather than to refer to the form by its current designation.

#### *F. Conflicts of Interest Policy for Bank Directors—§ 932.11*

To prevent conflicts of interest that may affect a Bank director in the performance of his or her official duties, the final rule includes a conflicts of interest provision that would replace the financial disclosure requirements and the prohibitions on service, financial interests, financial relationships, and gifts in the current regulation. See 12 CFR 932.18(b)-(d), 932.21(b)-(c)(1998). Like the proposal, the final rule requires each Bank to adopt a written conflicts of interest policy and specifies the minimum contents for the policy. The final rule also requires directors to disclose conflicts of interest to the board of directors and to refrain from voting on matters in which they have a financial interest.

One commenter suggested that § 932.11(a) (requiring the adoption of the policy and specifying its minimum

contents) be deleted as being duplicative of the Act and common law duties and lacking any practical enforcement mechanism. The commenter believed that the disclosure and recusal provisions in proposed § 932.11(b) to be sufficient. The Finance Board believes that the Banks, like other business corporations, are well served by having clear corporate policies on matters such as conflict of interests of their directors. The final rule includes only two provisions, § 932.11(a)(1) and (2), that parallel provisions of the Act, but does not otherwise duplicate the Act or common law. The Finance Board believes the inclusion of these provisions is appropriate to remind directors of the obligations imposed by the Act. Indeed, the provision relating to appointive directors was added to the final rule on the basis of comments received on the proposal. The remaining provisions in § 932.11(a) describe what the Finance Board believes to be minimal requirements for an effective conflict of interests policy, which the individual Banks are free to supplement as they believe appropriate.

Some commenters criticized various aspects of § 932.11(b), the disclosure and recusal provisions, which prompted the Finance Board to revise that paragraph in its entirety. The final rule requires full disclosure of any conflicts to the board of directors, applies to the personal financial interests of the director and those of certain family members and business associates, and requires recusal from consideration or voting on matters in which a director has such an interest. The interests of family members and business associates require disclosure only if they are known to the director and arise in connection with any matter to be considered by the board of directors or any matter in which the other party does, or proposes to do, business with the Bank. A director is required to disclose the full nature of his or her interest, and should provide whatever information that he or she has about the matter to the board. The definition of "financial interest" has been revised in the final rule to make clear that it does not include deposits or savings accounts maintained with a member or loans obtained in the ordinary course of business. This exception was added in order that the provision barring appointed directors from having any financial interest in a member not be read as prohibiting ordinary business transactions with the member in which there would be no real risk of conflict or abuse.

One commenter suggested that the disclosure requirements apply only to

financial interests that would materially affect board decisions. The definition of "financial interest" has been modified as noted above, to exclude certain ordinary business transactions.

One commenter suggested that the rule incorporate the conflict of interests provisions applicable to the Federal Reserve Banks. The Finance Board reviewed those provisions, as well as those of other corporate entities, in considering the proposed and final rules, but does not believe it necessary to adopt the same policies that apply to the Reserve Banks. If any Bank wishes to include provisions comparable to those applicable to the Reserve Banks in their own conflict policies they are free to do so.

**III. Regulatory Flexibility Act**

The final rule implements statutory requirements binding on all Banks, all Bank members, and all prospective and incumbent Bank directors. The Finance Board is not at liberty to make adjustments in those requirements to accommodate small entities. The Finance Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities. In addition, in an effort to reduce the reporting burden on prospective and incumbent Bank directors, the Finance Board has streamlined Form E-1, the Elective Director Eligibility Certification Form, and Form A-1, the Appointive Director Eligibility Certification Form, eliminated Forms E-2 and A-2, and will allow individuals to certify that no changes have occurred since they last submitted required information rather than completing anew the entire form. Thus, in accordance with the provisions of the Regulatory Flexibility Act, the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

**IV. Paperwork Reduction Act**

As part of the proposed rulemaking, the Finance Board published a request for comments concerning the collection of information contained in proposed rule. See 63 FR 26532 (May 13, 1998). The Finance Board received one comment in support of the Finance Board's efforts to reduce the burden of regulatory reporting requirements. The Finance Board submitted an analysis of the information collection to the Office of Management and Budget (OMB) for review in accordance with section 2507 of the Paperwork Reduction Act of 1995. See 44 U.S.C. 3507. OMB assigned a control number, 3069-0002, and

approved the information collection without conditions with an expiration date of June 30, 2001. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. See *id.* 3512(a). Although the final rule does not modify the approved information collection, the revised collection reduces the reporting and recordkeeping burden imposed on many respondents by streamlining Forms E-1 and A-1 and eliminating Forms E-2 and A-2 and permitting individuals to certify that no changes have occurred since they last submitted required information rather than completing anew the entire form.

The following table discloses the estimated annual reporting and recordkeeping burden:

a. Number of respondents .....	3442
b. Total annual responses .....	3442
Percentage of these responses collected electronically .....	0
c. Total annual hours requested .....	1,172
d. Current OMB inventory .....	376
e. Difference .....	796

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs .....	\$180,000.00
b. Total annual costs (O&M) .....	24,000.00
c. Total annualized cost requested .....	0
d. Current OMB inventory ..	0
e. Difference .....	\$204,000.00

Any comments concerning the information collection should be submitted to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F. Street, NW, Washington, DC 20006, and the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503.

**List of Subjects**

*12 CFR Part 900*

Organization and functions (Government agencies).

*12 CFR Part 922*

Conflict of interests.

*12 CFR Part 931*

Banks, Banking, Federal home loan banks.

*12 CFR Part 932*

Banks, Banking, Conflict of interests, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

*12 CFR Part 933*

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

*12 CFR Part 934*

Federal home loan banks, Securities, Surety bonds.

*12 CFR Part 941*

Federal home loan banks, Organization and functions (government agencies).

Accordingly, the Federal Housing Finance Board hereby amends chapter IX, title 12, parts 900, 922, 931, 932, 933, 934, and 941 of the Code of Federal Regulations as follows:

**PART 900—[Amended]**

1. The authority citation for part 900 continues to read as follows:

**Authority:** 5 U.S.C. 552;(12 U.S.C. 1422b(a).

**§ 900.51 [Amended]**

2. Amend § 900.51 by removing "A-2—Appointive Directors—Personal Certification and Disclosure Form" and "E-2—Elective Directors—Personal Certification and Disclosure Form."

**PART 922—[Removed]**

1. Under the authority in 12 U.S.C. 1422a and 1422b, remove part 922.

**PART 931—DEFINITIONS**

1. The authority citation for part 931 continues to read as follows:

**Authority:** 12 U.S.C. 1422a and 1422b.

**§§ 931.13 through 931.40 [Removed]**

2. Remove §§ 931.13 through 931.40.

**§§ 931.11 and 931.12 [Redesignated as §§ 931.5 and 931.6]**

3. Redesignate §§ 931.11 and 931.12 as §§ 931.5 and 931.6, respectively.

**PART 934—OPERATIONS OF THE BANKS**

1. The authority citation for part 934 continues to read as follows:

**Authority:** 12 U.S.C. 1422a, 1422b, 1431(g), 1432(a), and 1442.

**§ 932.3 [Redesignated as § 934.17]**

2. Redesignate § 932.3 as § 934.17.

**PART 932—DIRECTORS, OFFICERS, AND EMPLOYEES OF THE BANKS**

1. Revise the heading of part 932 to read as set forth above.

2. Revise the authority citation for part 932 to read as follows:

**Authority:** 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432; 42 U.S.C. 8101 *et seq.*

3. Revise the table of contents of part 932 to read as follows:

**Subpart A—Definitions**

Sec.

932.1 Definitions.

932.2 Dates.

**Subpart B—Bank Directors**

Sec.

932.3 Director elections.

932.4 Capital stock report.

932.5 Determination of member votes.

932.6 Elective director nominations.

932.7 Eligibility requirements for elective directors.

932.8 Election process.

932.9 Prohibition on actions to influence director elections.

932.10 Selection of appointive directors.

932.11 Conflict of interests policy for Bank directors.

932.12 Reporting requirements for Bank directors

932.13 Ineligible Bank directors.

932.14 Vacant Bank directorships.

932.15 Minimum number of elective directorships.

932.16 Site of board of directors and committee meetings.

932.17 Compensation and expenses of Bank directors.

**Subpart C—Selection of Bank Officers and Employees**

Sec.

932.18 Selection of Bank officer and employees

932.19 Compensation of Bank officers and employees

4. Designate §§ 932.1 and 932.2 as subpart A and add a subpart heading to read as follows:

**Subpart A—Definitions**

5. Revise § 932.1 to read as follows:

**§ 932.1 Definitions.**

For purposes of this part:

*Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

*Bank* or *Banks* means a Federal Home Loan Bank or the Federal Home Loan Banks.

*Bona fide resident* of a Bank district means an individual who:

(1) Maintains a principal residence within the Bank district; or

(2) If serving as an elective director, owns or leases in his or her own name a residence within the Bank district and is an officer or director of a member located in a voting state within the Bank district; or

(3) If serving as an appointive director, owns or leases in his or her own name a residence within the Bank district and is employed within a voting state within the Bank district.

*Docket number* means the number assigned to each member by the Finance Board and used by the Finance Board and the Banks to identify a particular member.

*Finance Board* means the agency established as the Federal Housing Finance Board.

*Member* means an institution admitted to membership and owning capital stock in a Bank.

*Record date* means December 31 of the calendar year immediately preceding the election year.

*Voting state* means the District of Columbia, Puerto Rico, or the state of the United States in which a member's principal place of business, as determined in accordance with part 933 of this chapter, is located as of the record date. The voting state of a member with a principal place of business located in the U.S. Virgin Islands as of the record date shall be Puerto Rico, and the voting state of a member with a principal place of business located in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands as of the record date shall be Hawaii.

6. Add § 932.2 to subpart A to read as follows:

**§ 932.2 Dates.**

If any date specified in this part, or specified by a Bank pursuant to this part, falls on a Saturday, Sunday, or federal holiday, the relevant time period shall be deemed to include the next business day.

7. Designate §§ 932.3 through 932.17 as subpart B and add a subpart heading to read as follows:

**Subpart B—Bank Directors**

8. Add § 932.3 to subpart B to read as follows:

**§ 932.3 Director elections.**

(a) *Responsibilities of the Banks.* Each Bank annually shall conduct an election the purpose of which is to fill all elective directorships designated by the Finance Board as commencing on January 1 of the calendar year immediately following the year of the election. Subject to the provisions of the Act and in accordance with the requirements of this part, the disinterested members of the board of directors of each Bank, or a committee of disinterested directors, shall administer and conduct the annual election of directors. In so doing, the disinterested directors may use Bank staff or independent contractors to perform ministerial and administrative functions concerning the elections process. The term of office of each

elective directorship shall be two years and shall commence on January 1 of the calendar year immediately following the year in which the election is held. Each Bank shall complete the election in sufficient time to allow newly elected directors to assume their seats on January 1 of the year immediately following the election.

(b) *Designation of elective directorships.* The Finance Board annually shall establish the number of elective directorships for each Bank, which are to be allocated as follows:

(1) One elective directorship shall be allocated to each state within the Bank district;

(2) If the total number of elective directorships allocated pursuant to paragraph (b)(1) of this section is less than eight, the Finance Board shall allocate additional elective directorships among the states, using the method of equal proportions, until the total allocated for the Bank equals eight;

(3) If the number of elective directorships allocated to any state pursuant to paragraphs (b)(1) and (2) of this section is less than the number allocated to that state on December 31, 1960, as specified in § 932.15, the Finance Board shall allocate such additional elective directorships to that state until the total allocated equals the number allocated to the Bank on December 31, 1960;

(4) Pursuant to section 7(e) of the Act, the Federal Home Loan Bank of New York is hereby allocated one additional elective directorship, which is designated as representing the members in the Commonwealth of Puerto Rico;

(5) Pursuant to section 7(a) of the Act, in any Bank district that includes five or more states, the Finance Board, after consultation with the affected Banks, may increase the number of elective directorships up to thirteen, and the number of appointive directorships up to three-fourths of the number of elective directorships. In determining the number of appointive directorships, the Finance Board may round to the nearest whole number.

(c) *Notification.* On or before June 1 of each year, the Finance Board shall notify each Bank in writing of the total number of elective directorships established for the Bank and the number of elective directorships designated as representing the members in each voting state in the Bank district. The annual designation of elective directorships shall not cause any incumbent director to surrender his or her directorship prior to the expiration of the full term of office.

(d) In accordance with section 7(c) of the Act, unless otherwise designated by the Finance Board, for purposes of election of directors a member shall be deemed to be located in its voting state.

(e) *Transition.* The term of office of each elective directorship existing on the effective date of this section shall continue to its scheduled expiration date, and the Banks may not thereafter alter the commencement or expiration date for any elective directorship in conducting the annual election of directors.

9. Add § 932.4 to Subpart B to read as follows:

**§ 932.4 Capital stock report.**

(a) On or before April 10 of each year, each Bank shall submit to the Finance Board, for its use in designating the elective directorships a capital stock report that indicates, as of the record date, the number of members in each voting state in the Bank's district, and the number of shares of capital stock required to be held by each member (identified by docket number), and the aggregate total number of shares of capital stock required to be held by all members in each voting state in the Bank's district. The Bank shall certify to the Finance Board that to the best of its knowledge the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holdings pursuant to § 933.22(b)(1) of this chapter.

(b) A Bank shall determine the number of shares of capital stock each member is required to hold as of the record date in the following manner:

(1) The number of shares of capital stock shall be equal to the greater of the advances-to-capital stock requirement under § 935.15(a) of this chapter, or the minimum capital stock requirement under § 933.20(a) of this chapter.

(2) If a member has elected to purchase its minimum required capital stock in installments under § 933.20(b)(2) of this chapter, the number of shares of capital stock required to be held as of the record date shall be the cumulative total of shares of capital stock actually purchased as of the record date.

10. Add § 932.5 to subpart B to read as follows:

**§ 932.5 Determination of member votes.**

(a) *Authority.* The Bank shall determine, in accordance with this section, the number of votes each member of the Bank may cast in the election of directors.

(b) *Determination.* The number of votes a member may cast for any

elective director nominee shall be the lesser of the number of shares of capital stock the member was required to hold as of the record date, as determined in accordance with § 932.4(b), or the average number of shares of capital stock required to be held by all of the members in its voting state as of the record date.

11. Add § 932.6 to subpart B to read as follows:

**§ 932.6 Elective director nominations.**

(a) *Election announcement.* Within a reasonable time in advance of an election, a Bank shall provide to each member in its district a written notice of the election that includes:

(1) The number of elective directorships designated as representing the members in each voting state in the Bank district;

(2) The name of each incumbent Bank director, the name and location of the member at which each elective director serves, and the name and location of the organization with which each appointive director is affiliated, if any, and the expiration date of each Bank director's term of office;

(3) An attachment indicating the name, location, and docket number of every member in the member's voting state, and the number of votes each such member may cast in the election, as determined in accordance with § 932.5(b); and (4) A nominating certificate.

(b) *Nominations.* (1) Any member that is entitled to vote in the election may nominate an eligible individual to fill each available elective directorship for its voting state by submitting to its Bank, prior to a deadline to be established by the Bank, a nominating certificate duly adopted by the member's governing body or by an individual authorized to act on behalf of the member's governing body.

(2) The nominating certificate shall include the name of the nominee and the name, location, and docket number of the member at which the nominee serves as an officer or director.

(3) The Bank shall establish a deadline for submitting nominating certificates, which shall be no earlier than 30 calendar days after the date on which the Bank mails the notice required by paragraph (a) of this section, and the Bank shall not accept certificates received after that deadline. The Bank shall retain all nominating certificates for at least two years after the date of the election.

(c) *Accepting nominations.* A Bank shall notify in writing any person nominated for an elective directorship promptly upon receipt of the

nominating certificate. A person may accept the nomination only by submitting an executed director eligibility certification, as prescribed by the Finance Board, to the Bank prior to the deadline established by the Bank. A Bank shall allow each nominee at least 30 calendar days after the date of the notice of nomination within which to submit the executed form. A nominee may decline the nomination by so advising the Bank in writing, or by failing to submit a properly executed director eligibility certification prior to the deadline. Each Bank shall retain all information received under this paragraph for at least two years after the date of the election.

12. Add § 932.7 to subpart B read as follows:

**§ 932.7 Eligibility requirements for elective directors.**

(a) *Eligibility verification.* Based on the information provided on the director eligibility certification form prescribed by the Finance Board, a Bank shall verify that each nominee meets all of the eligibility requirements for elective directors set forth in the Act and this part before placing that nominee on the ballot prepared by the Bank under § 932.8(a).

(b) *Eligibility requirements.* Each elective director, and each nominee, shall be:

(1) A citizen of the United States;

(2) A bona fide resident of the Bank district; and

(3) An officer or director of a member that is located in the voting state to be represented by the elective directorship, that was a member of the Bank as of the record date, and that meets all minimum capital requirements established by its appropriate federal regulator or appropriate state regulator. For purposes of this paragraph (b)(3), the term *appropriate federal regulator* has the same meaning as the term "appropriate Federal banking agency" in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and, for federally insured credit unions, shall mean the National Credit Union Administration, and the term *appropriate state regulator* means any state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a member.

(c) *Restrictions.* A nominee is not eligible if he or she:

(1) Is an incumbent elective director, unless:

(i) The incumbent director's term of office would expire before the new term of office would begin; and

(ii) The new term of office would not be barred by the term limit provision of section 7(d) of the Act.

(2) Is a former elective director whose service would be barred by the term limit provision of section 7(d) of the Act.

(3) Is an incumbent appointive director.

13. Revise § 932.8 to read as follows:

**§ 932.8 Election process.**

(a) *Ballots.* Promptly after verifying the eligibility of all nominees in accordance with § 932.7(a), a Bank shall prepare a ballot for each voting state for which an elective directorship is to be filled and shall mail the ballot to all members within that state that were members as of the record date. A ballot shall include at least the following provisions:

(1) An alphabetical listing of the names of each nominee for the member's voting state, the name, location, and docket number of the member at which each nominee serves, the nominee's title or position with the member, and the number of elective directorships to be filled by members in that voting state in the election;

(2) A statement that write-in candidates are not permitted; and

(3) A confidentiality statement prohibiting the Bank from disclosing how a member voted.

(b) *Lack of nominees.* If, for any voting state, the number of nominees is equal to or less than the number of elective directorships to be filled in the election, the Bank shall notify the members in the affected voting state in writing (in lieu of providing a ballot) that the directorships are to be filled without an election due to a lack of nominees. The Bank shall declare elected any eligible nominee, who shall be included as a director-elect in the report of election required under paragraph (e). If necessary, the board of directors shall fill, any elective directorship that has become vacant due to a lack of a nominee in accordance with § 932.14(a).

(c) *Voting.* For each directorship to be filled, a member may cast the number of votes determined by the Bank pursuant to § 932.5. A member may not split its votes among multiple nominees for a single directorship, nor, where there are multiple directorships to be filled for a voting state, may it cumulatively vote for a single nominee. Any ballots cast in violation of this subsection shall be void. To vote, a member shall:

(1) Mark on the ballot the name of not more than one of the nominees for each elective directorship to be filled in the member's voting state. Each nominee so

selected shall receive all of the votes that the member is entitled to cast.

(2) Execute the ballot by resolution of the member's governing body, or by an appropriate writing signed by an individual authorized to act on behalf of the governing body.

(3) Deliver the executed ballot to the Bank on or before the closing date that has been established by the Bank, which shall be no earlier than 30 calendar days after the date the ballots are mailed in accordance with paragraph (a) of this section. A member may not change a ballot after it has been delivered to the Bank.

(d) *Counting ballots.* A Bank shall not open any ballot until after the closing date, and may not include in the election results any ballot received after the closing date. Promptly after the closing date, each Bank shall tabulate, by each voting state, the votes cast in accordance with paragraph (c) of this section, and shall declare elected the nominee receiving the highest number of votes.

(1) If more than one elective directorship is to be filled in a voting state, the Bank shall declare elected each successive nominee receiving the next highest number of votes until all open elective directorships for that voting state are filled.

(2) In the event of a tie for the last available seat, the incumbent board of directors of the Bank shall, by a majority vote, declare elected one of the nominees for whom the number of votes cast was tied.

(3) The Bank shall retain all ballots it receives for at least two years after the date of the election, and shall not disclose how any member voted.

(e) *Report of election.* Promptly following the election, each Bank shall provide written notice to its members, to each nominee, and to the Finance Board of the following:

(1) The name of each director-elect, the name and location of the member at which he or she serves, and his or her title or position at the member;

(2) The voting state represented by each director-elect;

(3) The expiration date of the term of office of each director-elect;

(4) The number of members voting in the election and the total number of votes cast, both reported by state; and

(5) The number of votes cast for each nominee.

14. Revise § 932.9 to read as follows:

**§ 932.9 Prohibition on actions to influence director elections.**

(a) *Prohibition.* Except as provided in paragraph (b) of this section:

(1) No director, officer, attorney, employee, or agent of the Finance Board or of a Bank may:

(i) Communicate in any manner that a director, officer, attorney, employee, or agent of the Finance Board or of a Bank, directly or indirectly, supports the nomination or election of a particular individual for an elective directorship; or

(ii) Take any other action to influence votes for a directorship.

(2) No member may take any action prohibited by paragraph (a)(1)(i) of this section.

(b) *Exception for incumbent Bank directors.* A Bank director acting in his or her personal capacity may support the nomination or election of any individual for an elective directorship, provided that no Bank director shall purport to represent the views of the Bank, the Finance Board, any other director, or any officer, attorney, employee, or agent of the Bank or of the Finance Board concerning the nomination or election of a particular individual for an elective directorship.

15. Revise § 932.10 to read as follows:

**§ 932.10 Selection of appointive directors.**

(a) *Selection.* In accordance with the Act, the Finance Board, in its sole discretion, shall select all appointive directors.

(b) *Term of office.* The term of office of each appointive directorship shall commence on January 1.

16. Revise § 932.11 to read as follows:

**§ 932.11 Conflict of interests policy for Bank directors.**

(a) *Adoption of conflict of interests policy.* Each Bank shall adopt a written conflict of interests policy that shall apply to all Bank directors. At a minimum, the conflict of interests policy of each Bank shall:

(1) Require the directors to administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower;

(2) Prohibit appointed directors from serving as an officer of any Bank or as an officer or director of any member, and from owning any equity or debt security issued by a member or from having any other financial interest in a member;

(3) Prohibit the use of a director's official position for personal gain;

(4) Require directors to disclose actual or apparent conflict of interests and establish procedures for addressing such conflicts;

(5) Provide internal controls to ensure that reports are filed and that conflicts are disclosed and resolved in accordance with this section; and

(6) Establish procedures to monitor compliance with the conflict of interests policy.

(b) *Disclosure and recusal.* A director shall disclose to the board of directors any personal financial interests he or she has, as well as any financial interests known to the director of any immediate family member or business associate of the director, in any matter to be considered by the board of directors and in any other matter in which another person or entity does, or proposes to do, business with the Bank. A director shall fully disclose the nature of his or her interest in the matter and shall provide to the board of directors any information requested to aid in its consideration of the director's interest. A director shall refrain from considering or voting on any issue in which the director, any immediate family member, or any business associate has a financial interest.

(c) *Confidential Information.* Directors shall not disclose or use confidential information received by them solely by reason of their position with the Bank to obtain a financial interest for themselves or for any other person.

(d) *Gifts.* Directors shall not accept, and shall discourage their immediate family members from accepting, any substantial gift where the director has reason to believe that the gift is given in order to influence the director's actions as a member of the Bank's board of directors, or where acceptance of such gift gives the appearance of influencing the director's actions as a member of the board.

(e) *Compensation.* Directors shall not accept compensation for services performed for the Bank from any source other than the Bank for which the services are performed.

(f) *Definitions.* For purposes of this section:

(1) *Immediate family member* means parent, sibling, spouse, child, or dependent, or any other relative sharing the same residence as the director.

(2) *Financial interest* means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed. It does not include a deposit or savings account maintained with a member, nor does it include a loan or extension of credit obtained from a member in the normal course of business on terms that are generally available to the public.

(3) *Business associate* means any individual or entity with whom a

director has a business relationship, including, but not limited to:

(i) Any corporation or organization of which the director is an officer or partner, or in which the director beneficially owns ten percent or more of any class of equity security, including subordinated debt;

(ii) Any other partner, officer, or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and

(iii) Any trust or other estate in which a director has a substantial beneficial interest or as to which the director serves as trustee or in a similar fiduciary capacity.

(4) *Substantial Gifts* includes:

(i) Gifts of more than token value;

(ii) Entertainment or hospitality, the cost of which is in excess of what is considered reasonable, customary, and accepted business practices; or

(iii) Any other items or services for which a director pays less than market value.

17. Revise § 932.12 to read as follows:

**§ 932.12 Reporting requirements for Bank directors.**

(a) *Annual reporting.* On or before March 1 of each year, each director shall submit to his or her Bank the appropriate executed director eligibility certification, as prescribed by the Finance Board. (The forms are available pursuant to 12 CFR 900.51). The Bank shall promptly forward to the Finance Board a copy of the certification filed by each appointive director.

(b) *Report of noncompliance.* If an elective or appointive director knows or has reason to believe that he or she no longer meets the eligibility requirements set forth in the Act or this part, the director shall so inform the Bank in writing within 30 calendar days of first learning of the facts causing the loss of eligibility. An appointive director also shall inform the Finance Board in writing at the same time that he or she informs the Bank.

18. Revise § 932.13 to read as follows:

**§ 932.13 Ineligible Bank directors.**

(a) *Elective directors.* Upon a determination by the Finance Board or a Bank that an elective director no longer satisfies the eligibility requirements set forth in the Act or this part, or has failed to comply with the reporting requirements of § 932.12, the elective directorship shall immediately become vacant. Any elective director that is determined to have failed to comply with the eligibility or reporting requirements shall not continue to act as a Bank director.

(b) *Appointive directors.* Except as provided herein, upon a determination by the Finance Board that an appointive director no longer satisfies the eligibility requirements set forth in the Act, or has failed to comply with the reporting requirements of § 932.12, the appointive directorship shall immediately become vacant. Notwithstanding the vacancy, an appointive director may continue to serve until a successor assumes the directorship or the term of office expires, whichever occurs first, and the Finance Board, in its sole discretion, may allow an appointive director up to 90 calendar days to comply with the eligibility or reporting requirements.

19. Revise § 932.14 to read as follows:

**§ 932.14 Vacant Bank directorships.**

(a) *Vacant elective directorships.* (1) As soon as practicable after a vacancy occurs, a Bank shall fill the unexpired term of office of a vacant elective directorship by a majority vote of the remaining Bank directors regardless of whether the remaining Bank directors constitute a quorum of the Bank's board of directors.

(2) An individual so selected to fill a vacant elective directorship shall satisfy all of the eligibility requirements for elective directors set forth in the Act and this part, and shall provide to the Bank an executed director eligibility certification. The Bank shall verify the individual's eligibility in accordance with § 932.7(a) before allowing the individual to assume the directorship, and shall retain the information it receives in accordance with § 932.6(c).

(3) Promptly after verifying the individual's eligibility under paragraph (a)(2) of this section, a Bank shall notify the Finance Board and each member located in the Bank's district in writing of the following:

(i) The name of the new elective director, the name, location and docket number of the member at which the new director serves, and the new director's title or position with the member;

(ii) The voting state that the new elective director represents; and

(iii) The expiration date of the new elective director's term of office.

(b) *Vacant appointive directorships.*

(1) As soon as practicable after a vacancy occurs, the Finance Board shall fill the unexpired term of office of a vacant appointive directorship.

(2) Promptly after filling a vacant appointive directorship, the Finance Board shall notify the affected Bank in writing of the following:

(i) The name of the new appointive director, the name and location of the organization with which the new director is affiliated, if any, and the new

director's title or position with such organization; and

(ii) The expiration date of the new appointive director's term of office.

(3) Promptly after receiving the notice required by paragraph (b)(2) of this section, a Bank shall provide each of its members with the information described in paragraphs (b)(2)(i) and (ii) of this section.

**§§ 932.15 through 932.19 [Removed]**

20. Remove §§ 932.15 through 932.19.

**§§ 932.20 [Redesignated as § 932.15]**

21. Redesignate § 932.20 as § 932.15 and revise the second sentence and table to read as follows:

**§ 932.15 Minimum number of elective directorships**

\* \* \* The following list sets forth the states whose members held more than one (1) seat on December 31, 1960:

State	No. of elective directorships on December 31, 1960
California .....	3
Colorado .....	2
Illinois .....	4
Indiana .....	5
Iowa .....	2
Kansas .....	3
Kentucky .....	2
Louisiana .....	2
Massachusetts .....	3
Michigan .....	3
Minnesota .....	2
Missouri .....	2
New Jersey .....	4
New York .....	4
Ohio .....	4
Oklahoma .....	2
Pennsylvania .....	6
Tennessee .....	2
Texas .....	3
Wisconsin .....	4

**§§ 932.21 through 932.25 [Removed]**

22. Remove §§ 932.21 through 932.23.

**§ 932.26 [Redesignated as § 932.16]**

23. Redesignate § 932.26 as § 932.16 of subpart B.

**§ 932.27 [Redesignated as § 932.17]**

24. Redesignate § 932.27 as § 932.17 of subpart B.

**§§ 932.28 through 932.39 [Removed]**

25. Remove §§ 932.28 through and 932.39.

26. Designate §§ 932.18 and 932.19 as subpart C and add a subpart heading to read as follows:

**Subpart C—Selection of Bank Officers and Employees**

**§ 932.40 [Redesignated as § 932.18]**

27. Redesignate § 932.40 as § 932.18 of subpart C, remove paragraph (d), and revise the section heading and paragraph (a) introductory text to read as follows:

**§ 932.18 Selection of Bank officers and employees.**

(a) *Bank presidents.* The board of directors of each Bank may appoint a president, who shall be the chief executive officer of the Bank, subject to the following limitations:

\* \* \* \* \*

**§ 932.41 [Redesignated as § 932.19]**

28. Redesignate § 932.41 as § 932.19 of subpart C and revise the section heading to read as follows:

**§ 932.19 Compensation of Bank officers and employees.**

\* \* \* \* \*

**§§ 932.42 through 932.62 [Removed]**

29. Remove §§ 932.42 through 932.62.

**PART 933—MEMBERS OF THE BANKS**

1. The authority citation for part 933 continues to read as follows:

**Authority:** 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Part 933 is amended by removing “§ 932.3” wherever it appears and adding “§ 934.17” in its place in the following locations:

- a. 933.24(b)(3)
- b. 933.25(e)
- c. 933.26(d)
- d. 933.27(f)
- e. 933.28(c)

**§ 933.18 [Amended]**

3. Amend § 933.18 by adding a sentence to paragraph (a)(1) and revising paragraph (e) as follows:

**§ 933.18 Determination of appropriate Bank district for membership.**

(a) *Eligibility.* (1) \* \* \* A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another state and the Bank shall inform the Finance Board in writing of any such relocation.

\* \* \* \* \*

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the year of the transfer and shall not be subject to the provisions on termination of membership set forth in section 6 of the Act or §§ 933.26, 933.27, and 933.28, nor the restriction on reacquiring Bank

membership within 10 years set forth in § 933.30.

\* \* \* \* \*

4. Amend § 933.20 by revising paragraph (e) to read as follows:

**§ 933.20 Stock purchase.**

\* \* \* \* \*

(e) *Reports.* The Bank shall make quarterly reports to the Board setting forth purchases by institutions approved for membership of their minimum stock requirement pursuant to this section.

5. Amend § 933.22 by adding three sentences to paragraph (b)(1) as follows:

**§ 933.22 Adjustments in stock holdings.**

\* \* \* \* \*

(b)(1) *Annual Adjustment.* \* \* \* The notice shall clearly state that the Bank's calculation of each member's minimum stock holdings is to be used to determine the number of votes that the member may cast in that year's election of directors and shall identify the state within the district in which the member will vote. A member that does not agree with the Bank's calculation of the minimum stock requirement or with the identification of its voting state may request the Finance Board to review the Bank's determination. The Finance Board shall promptly determine the member's minimum required holdings and its proper voting state, which determination shall be final.

\* \* \* \* \*

**§ 933.24 [Amended]**

6. Amend § 933.24 by removing paragraph (b)(4).

**§ 933.25 [Amended]**

7. Amend § 933.25 by removing paragraph (f).

**§ 933.26 [Amended]**

8. Amend § 933.26 by removing paragraph (e).

**§ 933.27 [Amended]**

9. Amend § 933.27 by removing paragraph (g).

**§ 933.28 [Amended]**

10. Amend § 933.28 by removing paragraph (d).

**PART 941—OPERATIONS OF THE OFFICE OF FINANCE**

1. The authority citation for part 941 continues to read as follows:

**Authority:** 12 U.S.C. 1422b, 1431.

2. Amend § 941.7 by revising paragraph (f)(2) to read as follows:

**§ 941.7 Office of Finance Board of Directors.**

\* \* \* \* \*

(f) \* \* \*

(2) *Private Citizen member.* The Office of Finance shall pay compensation and expenses to the Private Citizen member of the OF board of directors in accordance with the requirements for payment of compensation and expenses to Bank directors set forth in § 932.17 of this chapter, except that, for these purposes:

(i) The Office of Finance policy on director compensation must be approved by the board of directors of the Finance Board;

(ii) Section 932.17(a)(3) and (c)(1)(ii) of this chapter shall not apply; and

(iii) The terms "average compensation per director" and "ACPD," as used in § 932.17 of this chapter, shall be deemed to mean "maximum compensation of the Private Citizen member".

Dated: October 28, 1998.

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

**Bruce A. Morrison,**

*Chairperson.*

[FR Doc. 98-31786 Filed 11-27-98; 8:45 am]

BILLING CODE 6725-01-P

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 938 and 943

[No. 98-49]

RIN 3069-AA61

#### Federal Home Loan Bank Standby Letters of Credit

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board is codifying its existing policy on Federal Home Loan Bank (FHLBank) standby letters of credit (LOCs) in a regulation and amending the policy to allow for broader use of standby LOCs by FHLBank members and eligible nonmember mortgagees. This final rule also eliminates or modifies some of the restrictions currently imposed on standby LOCs issued or confirmed by FHLBanks that limit the usefulness of these products to members and eligible nonmember mortgagees.

**DATES:** This final rule is effective on December 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Diane E. Dorius, Associate Director, Program Development, Office of Policy, (202) 408-2576; or Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, (202) 408-2932, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On May 8, 1998, the Federal Housing Finance Board (Finance Board) published, and requested public comments on, a proposed rule to add to its regulations a new part 938, governing the issuance and confirmation of standby LOCs by FHLBanks. See 63 FR 25726 (May 8, 1998). The rulemaking proposed to amend the Finance Board's existing policy on FHLBank standby LOCs to provide the FHLBanks with greater flexibility to respond to member needs for these products in a manner that would be consistent with the FHLBank System's housing and community investment mission, and to codify the amended policy into regulatory form.

The ninety day public comment period closed on August 6, 1998. The Finance Board received a total of 24 comments: eleven from FHLBanks, two from FHLBank Advisory Councils, eight from trade associations, and one each from an executive agency of the U.S. Government, a FHLBank member, and a private law firm. The FHLBanks that commented generally supported the proposed rule. The executive agency, FHLBank member and several trade associations opposed the rule.

The proposed rule established uniform standards for the issuance of standby LOCs that addressed eligible purposes, collateral requirements, nonmember use of LOCs, maturity limits, FHLBank capital stock, and other policy requirements. The purpose of the proposal, and of the final rule, is to provide the FHLBanks with greater flexibility and discretion, consistent with safe and sound operation, than exist under the Finance Board's current Interim Policy Guidelines for FHLBank Standby LOCs (Interim Guidelines).

Specifically, the Finance Board proposed that the enumeration of specific permissible uses for FHLBank LOCs that is set forth in the Interim Guidelines be replaced with a provision authorizing the FHLBanks to issue or confirm standby LOCs for any of four general purposes: to assist members in facilitating residential housing finance; to assist members in facilitating community lending (so-called in the final rule, this was referred to as "targeted economic development" in the proposed rule); to assist members with asset/liability management; and to assist members with liquidity and other funding.

The proposed rule permitted FHLBanks to issue and confirm standby LOCs on behalf of nonmember borrowers for the same purposes as

members if such LOCs were secured by Federal Housing Administration (FHA) insured loans or Government National Mortgage Association (GNMA) securities backed by FHA loans. Under the proposed rule, FHLBanks could issue or conform standby LOCs on behalf of nonmember borrowers that are state housing finance agencies (SHFAs) for residential or economic development lending that benefits individuals or families meeting the income requirements in sections 142(d) or 143(f) of the Internal Revenue Code, 12 U.S.C. 142(d), 143(f), if these LOCs were secured by collateral with which an SHFA may secure advances under section 10B(b) of the Federal Home Loan Bank Act (Bank Act). 12 U.S.C. 1430b(b).

Under the proposed rule, all LOCs were required to be fully collateralized at the time of issuance by collateral eligible to secure advances to members (or, as appropriate, nonmember mortgagees) and, in the case of standby LOCs issued or confirmed on behalf of members for housing or community lending purposes, also by certain other high-quality collateral. Unlike the existing Interim Guidelines, the proposed rule neither required nor permitted outstanding LOCs to be taken into account in the computation of a member's advances-to-FHLBank capital stock ratio.

Finally, the proposed rule required that: LOCs have a specific expiration date or be for a definite term; LOC renewals be conditioned upon the member/applicant meeting the FHLBank's credit criteria at the time of renewal; and the FHLBank issuing an LOC would approve any transfer of the LOC.

The final standby LOC regulation remains unchanged on most substantive points from the rule as proposed, although the Finance Board has made several amendments for purposes of clarity and in order to make the regulation conform to the final Community Investment Cash Advances (CICA) regulation, (published in the November 27, 1998 edition of the **Federal Register**), to which the community lending provisions of the rule are tied. These changes are described in detail below. Also provided below are clarifications of certain issues that were raised in the comment letters.

##### II. Statutory Basis for FHLBank Standby Letter of Credit Authority

Nine commenters explicitly addressed the statutory authority of FHLBanks to issue and confirm LOCs pursuant to the terms set forth in the proposed rule.