

# Title 12—Banks and Banking

(This book contains parts 900 to 1099)

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# CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

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## SUBCHAPTER A—GENERAL DEFINITIONS

### PART 900—GENERAL DEFINITIONS APPLYING TO ALL FINANCE BOARD REGULATIONS

Sec.

900.1 Basic terms relating to the Finance Board, the Bank System and related entities.

900.2 Terms relating to Bank operations, mission and supervision.

900.3 Terms relating to other entities and concepts used throughout 12 CFR chapter IX.

AUTHORITY: 12 U.S.C. 1422b(a).

SOURCE: 67 FR 12842, Mar. 20, 2002, unless otherwise noted.

#### **§900.1 Basic terms relating to the Finance Board, the Bank System and related entities.**

As used throughout this chapter, the following basic terms relating to the Finance Board, the Bank System and related entities have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section, or paragraph:

*Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

*Bank*, written in title case, means a Federal Home Loan Bank established under section 12 of the Act (12 U.S.C. 1432).

*Bank System* means the Federal Home Loan Bank System, consisting of the 12 Banks and the Office of Finance.

*Board of Directors*, written in title case, means the Board of Directors of the Federal Housing Finance Board; the term *board of directors*, written in lower case, has the meaning indicated in context.

*Chairperson* means the Chairperson of the Board of Directors of the Finance Board.

*Executive Secretary* means an employee within the Office of Management of the Finance Board who is responsible for records management.

*Finance Board* means the Federal Housing Finance Board established by section 2A of the Act (12 U.S.C. 1422a).

*Financing Corporation* or *FICO* means the Financing Corporation established and supervised by the Finance Board

under section 21 of the Act (12 U.S.C. 1441) and part 995 of this chapter.

*Housing associate* means an entity that has been approved as a housing associate pursuant to part 926 of this chapter.

*Member* means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§925.20 or 925.24(b) of this chapter.

*Office of Finance* or *OF* means the Office of Finance, a joint office of the Banks referred to in section 2B of the Act (12 U.S.C. 1422b) and established under part 985 of this chapter.

*Resolution Funding Corporation* or *REFCORP* means the Resolution Funding Corporation established by section 21B of the Act (12 U.S.C. 1441b) and addressed in parts 996 and 997 of this chapter.

*Secretary to the Board* means employees within the Office of General Counsel of the Finance Board who are responsible for issues concerning meetings of the Board of Directors.

[67 FR 12842, Mar. 20, 2002, as amended at 68 FR 38169, June 27, 2003]

#### **§900.2 Terms relating to Bank operations, mission and supervision.**

As used throughout this chapter, the following terms relating to Bank operations, mission and supervision have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section or paragraph:

*Acquired member assets* or *AMA* means those assets that may be acquired by a Bank under part 955 of this chapter.

*Advance* means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 950 of this chapter.

*Affordable Housing Program* or *AHP* means the Affordable Housing Program, the CICA program that each Bank is required to establish pursuant

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to section 10(j) of the Act (12 U.S.C. 1430(j)) and part 951 of this chapter.

*Capital plan* means the capital structure plan required for each Bank by section 6(b) of the Act, as amended (12 U.S.C. 1426(b)), and part 933 of this chapter, as approved by the Finance Board, unless the context of the regulation refers to the capital plan prior to its approval by the Finance Board.

*CIP* means the Community Investment Program, an advance program under CICA required to be offered pursuant to section 10(i) of the Act (12 U.S.C. 1430(i)).

*Community Investment Cash Advance* or *CICA* means any advance made through a program offered by a Bank under section 10 of the Act (12 U.S.C. 1430) and parts 951 and 952 of this chapter to provide funding for targeted community lending and affordable housing, including advances made under a Bank's Rural Development Funding (RDF) program, offered under section 10(j)(10) of the Act (12 U.S.C. 1430(j)(10)); a Bank's Urban Development Funding (UDF) program, offered under section 10(j)(10) of the Act (12 U.S.C. 1430(j)(10)); a Bank's Affordable Housing Program (AHP), offered under section 10(j) of the Act (12 U.S.C. 1430(j)); a Bank's Community Investment Program (CIP), offered under section 10(i) of the Act (12 U.S.C. 1430(i)); or any other program offered by a Bank that meets the requirements of part 952 of this chapter.

*Community lending* means providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions (as defined in §925.1 of this chapter), purchasing or funding small business loans, small farm loans or small agribusiness loans (as defined in §950.1 of this chapter).

*Consolidated obligation* or *CO* means any bond, debenture, or note authorized under part 966 of this chapter to be issued jointly by the Banks pursuant to section 11(a) of the Act, as amended (12 U.S.C. 1431(a)), or any bond or note issued by the Finance Board on behalf of all Banks pursuant to section 11(c) of the Act (12 U.S.C. 1431(c)), on which the Banks are jointly and severally liable.

*Data Reporting Manual* or *DRM* means a manual issued by the Finance Board and amended from time to time containing reporting requirements for the Banks.

*Excess stock* means that amount of a Bank's capital stock owned by a member or other institution in excess of that member's or other institution's minimum investment in capital stock required under the Bank's capital plan, the Act, or the Finance Board's regulations, as applicable.

*Financial Management Policy* or *FMP* means the Financial Management Policy For The Federal Home Loan Bank System approved by the Finance Board pursuant to Finance Board Resolution No. 96–45 (July 3, 1996), as amended by Finance Board Resolution No. 96–90 (Dec. 6, 1996), Finance Board Resolution No. 97–05 (Jan. 14, 1997), and Finance Board Resolution No. 97–86 (Dec. 17, 1997).

[67 FR 12842, Mar. 20, 2002, as amended at 71 FR 35499, June 21, 2006; 71 FR 78050, Dec. 28, 2006]

### § 900.3 Terms relating to other entities and concepts used throughout 12 CFR chapter IX.

As used throughout this chapter, the following terms relating to other entities and concepts used throughout 12 CFR chapter IX have the meanings set forth below, unless otherwise indicated in a particular subchapter, part, section or paragraph:

*Appropriate Federal banking agency* has the meaning set forth in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) and, for federally-insured credit unions, means the NCUA.

*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 particular institution.

*Fannie Mae* means the Federal National Mortgage Association established under authority of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716, *et seq.*).

*FDIC* means the Federal Deposit Insurance Corporation.

*FRB* means the Board of Governors of the Federal Reserve System.

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*Freddie Mac* means the Federal Home Loan Mortgage Corporation established under authority of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451, *et seq.*).

*Generally Accepted Accounting Principles* or *GAAP* means accounting principles generally accepted in the United States.

*Ginnie Mae* means the Government National Mortgage Association established under authority of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716, *et seq.*).

*GLB Act* means the Gramm-Leach-Bliley Act (Pub. L. 106-102 (1999)).

*HUD* means the United States Department of Housing and Urban Development.

*NCUA* means the National Credit Union Administration.

*NRSRO* means a credit rating organization regarded as a Nationally Recognized Statistical Rating Organization

by the Securities and Exchange Commission.

*OCC* means the Office of the Comptroller of the Currency.

*OTS* means the Office of Thrift Supervision.

*SBIC* means a small business investment company formed pursuant to section 301 of the Small Business Investment Act (15 U.S.C. 681).

*SEC* means the United States Securities and Exchange Commission.

*State* means a state of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands.

*1934 Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

[67 FR 12842, Mar. 20, 2002, as amended at 69 FR 38811, June 29, 2004]

## SUBCHAPTER B—FEDERAL HOUSING FINANCE BOARD ORGANIZATION AND OPERATIONS

### PART 905—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

#### Subpart A—Functions and Responsibilities of Finance Board

- Sec.  
905.1 [Reserved]  
905.2 General statement and statutory authority.  
905.3 Location and business hours.  
905.4 Duties of the Finance Board.

APPENDIX A TO SUBPART A OF PART 905—FEDERAL HOME LOAN BANKS

#### Subpart B—General Organization

- 905.10 Board of Directors.  
905.11 Office of Inspector General.  
905.12 Office of Management.  
905.13 Office of Supervision.  
905.14 Office of General Counsel.

#### Subpart C—Miscellaneous

- 905.25 Forms.  
905.26 Official logo and seal.  
905.27 OMB control numbers assigned under the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 1422b(a) and 1423; 44 U.S.C. 3507; 5 CFR 1320.5 and 1320.8.

SOURCE: 56 FR 67155, Dec. 30, 1991, unless otherwise noted. Redesignated at 65 FR 8256, Feb. 18, 2000.

#### Subpart A—Functions and Responsibilities of Finance Board

##### § 905.1 [Reserved]

##### § 905.2 General statement and statutory authority.

(a) The Finance Board is an independent, executive agency in the Federal Government, responsible for regulating the Bank System. It is funded through assessments levied upon the Banks. These funds are not considered Government Funds or appropriated monies. The Finance Board is governed by a five-member Board of Directors and administered by a full-time staff.

(b) The members of the Board of Directors individually are referred to as Directors. Other than the Office of Inspector General and the Office of Gen-

eral Counsel, the heads of the administrative units, called offices, also are called Directors. The head of the Office of Inspector General is called the Inspector General and the head of the Office of General Counsel is called the General Counsel.

(c) The Finance Board administers the Act and is authorized to issue rules, regulations and orders affecting the Bank System. The Finance Board performs all such duties and responsibilities as may be required by statute. As required by section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)), it also conducts a monthly survey of all major lenders to calculate a national average for interest rates on mortgages for one-family homes, on behalf of the Fannie Mae. As required by section 305(b) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(b)), it conducts a similar survey for the Freddie Mac.

[56 FR 67155, Dec. 30, 1991, as amended at 65 FR 8256, Feb. 18, 2000; 67 FR 12843, Mar. 20, 2002; 68 FR 38169, June 27, 2003]

##### § 905.3 Location and business hours.

(a) *Location.* All office units of the Finance Board are located at 1777 F Street, NW., Washington, DC 20006.

(b) *Hours of operation.* The regular hours of operation of the Finance Board are from 8:30 a.m. to 5:30 p.m., Monday through Friday.

##### § 905.4 Duties of the Finance Board.

(a) *Bank System.* The Finance Board supervises and regulates the Banks and the Office of Finance. Specifically, its duties are:

(1) To ensure that the Banks operate in a safe and sound manner;

(2) To supervise all business operations of the Banks, which may include:

(i) Prescribing conditions upon which Banks may advance funds to their members and housing associates;

(ii) Prescribing rules and conditions under which a Bank may borrow funds,

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## Pt. 905, Subpt. A, App. A

pay interest on those funds, or issue obligations;

(iii) Requiring examinations of the Banks; and

(iv) Appointing the public interest members of the boards of directors of the Banks;

(3) To ensure that the Banks fulfill their housing finance and community lending mission;

(4) To ensure that the Banks remain adequately capitalized; and

(5) To ensure that the Banks are able to raise funds in the capital markets.

(b) *Financing Corporation.* The Finance Board also oversees the operations of the Financing Corporation, including its issuance of obligations.

[67 FR 12843, Mar. 20, 2002]

### APPENDIX A TO SUBPART A OF PART 905—FEDERAL HOME LOAN BANKS

#### FEDERAL HOME LOAN BANK DISTRICT 1

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

##### *Federal Home Loan Bank of Boston*

111 Huntington Avenue, 24th Floor, Boston, MA 02199-7614

#### FEDERAL HOME LOAN BANK DISTRICT 2

(New Jersey, New York, Puerto Rico, Virgin Islands)

##### *Federal Home Loan Bank of New York*

101 Park Avenue, New York, NY 10178-0599

#### FEDERAL HOME LOAN BANK DISTRICT 3

(Delaware, Pennsylvania, West Virginia)

##### *Federal Home Loan Bank of Pittsburgh*

601 Grant Street, Pittsburgh, PA 15219-4455

#### FEDERAL HOME LOAN BANK DISTRICT 4

(Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia)

##### *Federal Home Loan Bank of Atlanta*

1475 Peachtree Street, NE., Atlanta, GA 30309

#### FEDERAL HOME LOAN BANK DISTRICT 5

(Kentucky, Ohio, Tennessee)

##### *Federal Home Loan Bank of Cincinnati*

221 East Fourth Street, Suite 1000, Cincinnati, OH 45202

#### FEDERAL HOME LOAN BANK DISTRICT 6

(Indiana, Michigan)

##### *Federal Home Loan Bank of Indianapolis*

8250 Woodfield Crossing Boulevard, Indianapolis, IN 46240

#### FEDERAL HOME LOAN BANK DISTRICT 7

(Illinois, Wisconsin)

##### *Federal Home Loan Bank of Chicago*

111 East Wacker Drive, Suite 700, Chicago, IL 60601

#### FEDERAL HOME LOAN BANK DISTRICT 8

(Iowa, Minnesota, Missouri, North Dakota, South Dakota)

##### *Federal Home Loan Bank of Des Moines*

907 Walnut Street, Des Moines, IA 50309

#### FEDERAL HOME LOAN BANK DISTRICT 9

(Arkansas, Louisiana, Mississippi, New Mexico, Texas)

##### *Federal Home Loan Bank of Dallas*

8500 Freeport Parkway South, Suite 100, Irving, TX 75063-2547

#### FEDERAL HOME LOAN BANK DISTRICT 10

(Colorado, Kansas, Nebraska, Oklahoma)

##### *Federal Home Loan Bank of Topeka*

One Security Benefit Place, Suite 100, Topeka, KS 66606-2444

#### FEDERAL HOME LOAN BANK DISTRICT 11

(Arizona, California, Nevada)

##### *Federal Home Loan Bank of San Francisco*

600 California Street, San Francisco, CA 94108

#### FEDERAL HOME LOAN BANK DISTRICT 12

(Alaska, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Montana, Oregon, Utah, Washington, Wyoming)

##### *Federal Home Loan Bank of Seattle*

1501 Fourth Avenue, 19th Floor, Seattle, WA 98101-1693

[56 FR 67155, Dec. 30, 1991, as amended at 63 FR 3455, Jan. 23, 1998; 67 FR 12843, Mar. 20, 2002; 68 FR 38170, June 27, 2003]

## Subpart B—General Organization

SOURCE: 68 FR 38170, June 27, 2003, unless otherwise noted.

## § 905.10

### § 905.10 Board of Directors.

(a) *Board of Directors*—(1) *General*. The Bank Act vests management of the Finance Board in a five-member Board of Directors consisting of four members appointed by the President with the advice and consent of the Senate to serve staggered seven-year terms, and one *ex-officio* member, the Secretary of the U.S. Department of Housing and Urban Development. The four appointed directors must have backgrounds in housing finance or a demonstrated commitment to providing specialized housing credit and at least one appointed director must have a background with an organization with a two-year record of representing consumer or community interests on either banking services, credit needs, housing or financial consumer protections. Not more than three of the five directors may belong to the same political party.

(2) *Responsibilities*. The Board of Directors is responsible for setting agency policy and issuing resolutions, rules, regulations, orders and policies as necessary.

(b) *Chairperson*—(1) *General*. The President designates an appointed director as chairperson of the Board of Directors.

(2) *Responsibilities*. The responsibilities of the chairperson include:

(i) Presiding over the meetings of the Board of Directors;

(ii) Effecting the overall management, functioning and organization of the Finance Board;

(iii) Ensuring effective coordination and communication with the Congress and interest groups on legislative issues pertaining to the Finance Board, the Bank System, and the Financing Corporation; and

(iv) Disseminating information about the Finance Board to other government agencies, the public and the news media.

### § 905.11 Office of Inspector General.

(a) *General*. The Inspector General reports directly to the chairperson of the Board of Directors and is subject to, and operates under, the provisions of the Inspector General Act of 1978, as amended (5 U.S.C. app. 3).

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(b) *Responsibilities*. The responsibilities of the Office of Inspector General under the Inspector General Act include:

(1) Conducting and supervising audits and investigations relating to the programs and operations of the Finance Board;

(2) Providing leadership and coordination, and recommending policies for Finance Board activities designed to promote the economy, efficiency and effectiveness of programs and operations, and preventing and detecting fraud and abuse in programs and operations; and

(3) Providing a means for keeping the Board of Directors, agency managers and the Congress fully and currently informed regarding on-going investigations and, if needed, the necessity for and progress of corrective action.

### § 905.12 Office of Management.

(a) *General*. The Office of Management is the principal advisor to the chairperson and the Board of Directors on management and organizational policies and is responsible for the Finance Board's administrative management programs.

(b) *Responsibilities*. The responsibilities of the Office of Management include:

(1) Developing and managing agency policies and procedures governing employment and personnel action requirements, compensation and agency payroll requirements, travel, awards, insurance, retirement benefits and other employee benefits;

(2) Facilities and property management and supply requirements;

(3) Procurement and contracting programs;

(4) Agency financial management, budgeting and accounting;

(5) Records management; and

(6) Coordinating the design, programming, operation and maintenance of the Finance Board's technology and information systems.

### § 905.13 Office of Supervision.

(a) *General*. The Office of Supervision is responsible for conducting on-site examinations of the twelve Federal

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Home Loan Banks and the Office of Finance and conducting off-site monitoring and analysis. The Office of Supervision also is responsible for providing expert policy advice and analyzing and reporting on economic, housing finance, community investment and competitive environments in which the Bank System and its members operate.

(b) *Responsibilities.* The responsibilities of the Office of Supervision include:

(1) Conducting examinations, at least annually, of the Banks, the Office of Finance and the Financing Corporation and resolving outstanding examination issues;

(2) Monitoring Bank and Bank System market, credit and operational risks;

(3) Analyzing the financial performance of the Banks;

(4) Preparing the Monthly Survey of Rates and Terms of Conventional One-Family Nonfarm Mortgage Loans (MIRS) and determining the conforming loan limit for Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) purchases and guarantees;

(5) Analyzing the Banks' performance and policy issues arising under the Affordable Housing Program and the Community Investment Program; and

(6) Collecting and analyzing data on the housing and community and economic development activities of the Banks.

### § 905.14 Office of General Counsel.

(a) *General.* The General Counsel is the chief legal officer of the Finance Board and is responsible for advising the Board of Directors, the chairperson and other Finance Board officials on interpretations of law, regulation and policy.

(b) *Responsibilities.* The responsibilities of the Office of General Counsel include:

(1) Preparing all legal documents on behalf of the Finance Board such as opinions, regulations and memoranda of law;

(2) Representing the Finance Board in all administrative adjudicatory proceedings before the Board of Directors

and in all other administrative matters involving the agency;

(3) Representing the Finance Board in judicial proceedings involving the agency's supervisory or regulatory authority over the Federal Home Loan Banks;

(4) Administering the Finance Board's Ethics, Freedom of Information Act, Privacy Act, Paperwork Reduction Act, and Government in the Sunshine Act programs; and

(5) Secretary to the Board functions.

## Subpart C—Miscellaneous

### § 905.25 Forms.

The following forms are available at the Finance Board headquarters facility and shall be used for the purpose indicated:

#### FORM

10-91—Monthly Survey of Rates and Terms on Conventional 1 Family Nonfarm Mortgage Loans.

9102—Certificate of Nomination, Election of Federal Home Loan Bank Directors.

9103—Election Ballot, Election of Federal Home Loan Bank Directors.

A-1—Appointive Director Candidates—Personal Certification and Disclosure Form.

E-1—Elective Director Nominees—Personal Certification and Disclosure Form.

90-T04—Local Travel Claim.

[60 FR 49199, Sept. 22, 1995, as amended at 63 FR 65687, Nov. 30, 1998; 65 FR 8257, Feb. 18, 2000. Redesignated and amended at 67 FR 12843, Mar. 20, 2002]

### § 905.26 Official logo and seal.

This section describes and displays the logo adopted by the Board of Directors as the official symbol representing the Finance Board. It is displayed on correspondence and selected documents. This logo also serves as the official seal used to certify and authenticate official documents of the Board of Directors.

(a) *Description.* The logo is a disc with its center consisting of three polygons arranged in an irregular line partially overlapping—each polygon drawn in a manner resembling a silhouette of a pitched roof house and with distinctive eaves under its roof—encircled by a designation scroll having an outer and inner border of plain heavy lines and containing the words “FEDERAL

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HOUSING FINANCE BOARD” in capital letters with serifs, with two mullets on the extreme left and right of the scroll.

(b) *Display.* The Finance Board’s official seal and logo appears below:



[67 FR 12843, Mar. 20, 2002]

**§ 905.27 OMB control numbers assigned under the Paperwork Reduction Act.**

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements contained in Finance Board regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and OMB regulations (5 CFR 1320.5 and 1320.8). The Finance Board may not sponsor or conduct, and a person is not required to respond to, an information collection unless the agency displays a currently valid OMB control number.

(b) *Display.*

12 CFR part or section where identified and described	OMB control No.	Expiration date
906.5 .....	3069-0001	July 2007.
915.3 .....	3069-0002	Nov. 2007.
915.4 .....	3069-0002	Nov. 2007.
915.5 .....	3069-0002	Nov. 2007.
915.6 .....	3069-0002	Nov. 2007.
915.7 .....	3069-0002	Nov. 2007.
915.8 .....	3069-0002	Nov. 2007.
915.10 .....	3069-0002	Nov. 2007.
915.12 .....	3069-0002	Nov. 2007.
925.2 .....	3069-0004	May 2007.
925.3 .....	3069-0004	May 2007.
925.5 .....	3069-0004	May 2007.
925.6 .....	3069-0004	May 2007.
925.7 .....	3069-0004	May 2007.
925.8 .....	3069-0004	May 2007.
925.9 .....	3069-0004	May 2007.
925.11 .....	3069-0004	May 2007.
925.12 .....	3069-0004	May 2007.
925.13 .....	3069-0004	May 2007.
925.15 .....	3069-0004	May 2007.

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12 CFR part or section where identified and described	OMB control No.	Expiration date
925.16 .....	3069-0004	May 2007.
925.17 .....	3069-0004	May 2007.
925.18 .....	3069-0004	May 2007.
925.22 .....	3069-0004	May 2007.
925.24 .....	3069-0004	May 2007.
925.26 .....	3069-0004	May 2007.
925.31 .....	3069-0004	May 2007.
926.1 .....	3069-0005	Nov. 2005.
926.2 .....	3069-0005	Nov. 2005.
926.3 .....	3069-0005	Nov. 2005.
926.4 .....	3069-0005	Nov. 2005.
926.5 .....	3069-0005	Nov. 2005.
926.6 .....	3069-0005	Nov. 2005.
931.3 .....	3069-0059	Feb. 2007.
931.7 .....	3069-0004	May 2007.
933.2 .....	3069-0059	Feb. 2007.
944.2 .....	3069-0003	Feb. 2006.
944.3 .....	3069-0003	Feb. 2006.
944.4 .....	3069-0003	Feb. 2006.
944.5 .....	3069-0003	Feb. 2006.
950.17 .....	3069-0005	Nov. 2005.
951.1 .....	3069-0006	July 2007.
951.3 .....	3069-0006	July 2007.
951.4 .....	3069-0006	July 2007.
951.6 .....	3069-0006	July 2007.
951.7 .....	3069-0006	July 2007.
951.8 .....	3069-0006	July 2007.
951.10 .....	3069-0006	July 2007.
951.11 .....	3069-0006	July 2007.
951.13 .....	3069-0006	July 2007.
951.15 .....	3069-0006	July 2007.
955.4 .....	3069-0058	Mar. 2007.

[70 FR 9508, Feb. 28, 2005]

**PART 906—OPERATIONS**

**Subpart A [Reserved]**

**Subpart B—Monthly Interest Rate Survey (MIRS)**

Sec.  
906.5 Monthly interest rate survey.

**Subpart C [Reserved]**

AUTHORITY: 12 U.S.C. 4516.

SOURCE: 70 FR 9509, Feb. 28, 2005, unless otherwise noted.

**Subpart A [Reserved]**

**Subpart B—Monthly Interest Rate Survey (MIRS)**

**§ 906.5 Monthly interest rate survey.**

The Finance Board conducts its Monthly Survey of Rates and Terms on Conventional One-Family Non-farm Mortgage Loans in the following manner:

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(a) *Initial survey.* Each month, the Finance Board samples savings institutions, commercial banks, and mortgage loan companies, and asks them to report the terms and conditions on all conventional mortgages (*i.e.*, those not federally insured or guaranteed) used to purchase single-family homes that each such lender closes during the last five working days of the month. In most cases, the information is reported electronically in a format similar to Finance Board Form FHFB 10-91. The initial weights are based on lender type and lender size. The data also is weighted so that the pattern of weighted responses matches the actual pattern of mortgage originations by lender type and by region. The Finance Board tabulates the data and publishes standard data tables late in the following month.

(b) *Adjustable-rate mortgage index.* The weighted data, tabulated and published pursuant to paragraph (a) of this section, is used to compile the Finance Board's adjustable-rate mortgage index, entitled the "National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders." This index is the successor to the index maintained by the former Federal Home Loan Bank Board and is used for determining the movement of the interest rate on renegotiable-rate mortgages and on some other adjustable-rate mortgages.

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## PART 907—PROCEDURES

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AUTHORITY: 12 U.S.C. 1422b(a)(1).

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### Subpart A—Definitions

#### § 907.1 Definitions.

As used in this part:

*Approval* means a written statement issued to a Bank or the Office of Finance approving a transaction, activity, or item that requires Finance Board approval under the Act or a Finance Board rule, regulation, policy, or order.

*Case-by-Case Determination* means a Final Decision concerning any matter that requires a determination, finding, or approval by the Board of Directors under the Act or Finance Board regulations, for which no controlling statutory, regulatory, or other Finance Board standard previously has been established, and that, in the judgment of the Board of Directors, is best resolved on a case-by-case basis by a ruling applicable only to the Petitioner and any Intervenor, and not by adoption of a rule of general applicability.

*Final Decision* means a decision rendered by the Board of Directors on issues raised in a Petition or Request to Intervene that have been accepted for consideration.

*Intervenor* means a Bank, Member, or other entity that has been granted leave to intervene in the consideration of a Petition by the Board of Directors.

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*Managing Director* means the Managing Director of the Finance Board.

*No-Action Letter* means a written statement issued to a Bank or the Office of Finance providing that Finance Board staff will not recommend supervisory or other action to the Board of Directors for failure to comply with a specific provision of the Act or a Finance Board rule, regulation, policy, or order, if a requester undertakes a proposed transaction or activity.

*Party* means a Petitioner, an Intervenor, or the Finance Board.

*Petition* means a Petition for Case-by-Case Determination or a Petition for Review of a Disputed Supervisory Determination.

*Petitioner* means the Office of Finance or a Bank that has filed a Petition.

*Regulatory Interpretation* means written guidance issued by Finance Board staff with respect to application of the Act or a Finance Board rule, regulation, policy, or order to a proposed transaction or activity.

*Requester* means an entity or person that has submitted an application for a Waiver or Approval or a request for a No-Action Letter or Regulatory Interpretation.

*Supervisory determination* means a Finance Board finding in a report of examination, order, or directive, or a Finance Board order or directive concerning safety and soundness or compliance matters that requires mandatory action by a Bank or the Office of Finance.

*Waiver* means a written statement issued to a Bank, a Member, or the Office of Finance that waives a provision, restriction, or requirement of a Finance Board rule, regulation, policy, or order, or a required submission of information, not otherwise required by law, in connection with a particular transaction or activity.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000; 67 FR 12844, Mar. 20, 2002]

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### Subpart B—Waivers, Approvals, No-Action Letters, and Regulatory Interpretations

#### § 907.2 Waivers.

(a) *Authority.* The Board of Directors reserves the right, in its discretion and in connection with a particular transaction or activity, to waive any provision, restriction, or requirement of this chapter, or any required submission of information, not otherwise required by law, if such waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination that application of the provision, restriction, or requirement would adversely affect achievement of the purposes of the Act, or upon a showing of good cause.

(b) *Application.* A Bank, a Member, or the Office of Finance may apply for a Waiver in accordance with § 907.6.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

#### § 907.3 Approvals.

(a) *Application.* A Bank or the Office of Finance may apply for an Approval of any transaction, activity, or item that requires Finance Board approval under the Act or a Finance Board rule, regulation, policy, or order in accordance with § 907.6, unless alternative application procedures are prescribed by the Act or a Finance Board rule, regulation, policy, or order for the transaction, activity, or item at issue.

(b) *Reservation.* The Finance Board reserves the right, in its discretion, to prescribe additional or alternative procedures for any application for Approval of a transaction, activity, or item.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

#### § 907.4 No-Action Letters.

(a) *Authority.* Finance Board staff, in its discretion, may issue a No-Action Letter to a Bank or the Office of Finance stating that staff will not recommend supervisory or other action to the Board of Directors for failure to comply with a specific provision of the

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Act or a Finance Board rule, regulation, policy, or order, if a requester undertakes a proposed transaction or activity. The Board of Directors may modify or supersede a No-Action Letter.

(b) *Requests.* A Bank or the Office of Finance may request a No-Action Letter in accordance with § 907.6.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

### § 907.5 Regulatory Interpretations.

(a) *Authority.* Finance Board staff, in its discretion, may issue a Regulatory Interpretation to a Bank, a Member, an official of a Bank or Member, the Office of Finance, or any other entity or person, providing guidance with respect to application of the Act or a Finance Board rule, regulation, policy, or order to a proposed transaction or activity. The Board of Directors may modify or supersede a Regulatory Interpretation.

(b) *Requests.* A Bank, a Member, an official of a Bank or Member, the Office of Finance, or any other entity or person may request a Regulatory Interpretation in accordance with § 907.6.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

### § 907.6 Submission requirements.

Applications for a Waiver or Approval and requests for a No-Action Letter or Regulatory Interpretation shall comply with the following requirements:

(a) *Filing.* Each application or request shall be in writing. The original and three copies shall be filed with the Secretary to the Board, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

(b) *Authorization—(1) Waivers and Approvals.* Applications for Waivers and Approvals shall be signed by an official with authority to sign such applications on behalf of the requester. Applications for Waivers and Approvals from a Bank or the Office of Finance shall be accompanied by a resolution of the board of directors of the Bank or the Office of Finance concurring in the substance and authorizing the filing of the application.

(2) *Requests for No-Action Letters.* The president of the Bank making a Request for a No-Action Letter shall sign the Request. Requests for a No-Action Letter from the Office of Finance shall be signed by the chairperson of the board of directors of the Office of Finance.

(3) *Requests for Regulatory Interpretations.* The requester or an authorized representative of the requester shall sign a request for a Regulatory Interpretation.

(c) *Information requirements.* Each application or request shall contain:

(1) The name of the requester, and the name, title, address, telephone number, and electronic mail address, if any, of the official filing the application or request on its behalf;

(2) The name, address, telephone number, and electronic mail address, if any, of a contact person from whom Finance Board staff may seek additional information if necessary;

(3) The section numbers of the particular provisions of the Act or Finance Board rules, regulations, policies, or orders to which the application or request relates;

(4) Identification of the determination or relief requested, including any alternative relief requested if the primary relief is denied, and a clear statement of why such relief is needed;

(5) A statement of the particular facts and circumstances giving rise to the application or request and identifying all relevant legal and factual issues;

(6) References to all relevant authorities, including the Act, Finance Board rules, regulations, policies, and orders, judicial decisions, administrative decisions, relevant statutory interpretations, and policy statements;

(7) References to any Waivers, No-Action Letters, Approvals, or Regulatory Interpretations issued to the requester in the past in response to circumstances similar to those surrounding the request or application;

(8) For any application or request involving interpretation of the Act or Finance Board regulations, a reasoned opinion of counsel supporting the relief or interpretation sought and distinguishing any adverse authority;

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(9) Any non-duplicative, relevant supporting documentation; and

(10) A certification by a person with knowledge of the facts that the representations made in the application or request are accurate and complete. The following form of certification is sufficient for this purpose: “I hereby certify that the statements contained in the submission are true and complete to the best of my knowledge. [Name and Title].”

(d) *Waiver of requirements.* The Managing Director may waive any requirement of this section for good cause. The Managing Director shall provide prompt notice of any such waiver to the Board of Directors. The Board of Directors may overrule any waiver granted by the Managing Director under this paragraph.

(e) *Withdrawal.* Once filed, an application or request may be withdrawn only upon written request. The Finance Board will not consider a request for withdrawal after transmission by the Secretary to the Board to the requester of a response in final form.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000; 67 FR 12844, Mar. 20, 2002]

### **§ 907.7 Issuance of Waivers, Approvals, No-Action Letters, and Regulatory Interpretations.**

(a) *Board of Directors review.* At least three business days prior to issuance to the requester, the Secretary to the Board shall transmit each Approval, No-Action Letter, or Regulatory Interpretation issued by the Chairperson or Finance Board staff to the Board of Directors for review.

(b) *Issuance and effectiveness.* A Waiver, Approval, No-Action Letter, or Regulatory Interpretation is not effective until the Secretary to the Board has transmitted it in final form to the requester.

(c) *Abbreviated form.* The Finance Board may respond to an application or request in an abbreviated form, consisting of a concise statement of the nature of the response, without re-statement of the underlying facts.

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### **Subpart C—Case-by-Case Determinations; Review of Disputed Supervisory Determinations**

#### **§ 907.8 Case-by-Case Determinations.**

(a) *Petition for Case-by-Case Determination.* A Bank or the Office of Finance may seek a Case-by-Case Determination concerning any matter that may require a determination, finding or approval under the Act or Finance Board regulations by the Board of Directors, and for which no controlling statutory, regulatory or other Finance Board standard previously has been established. The Office of Finance or a Bank seeking a Case-by-Case Determination shall file a Petition for Case-by-Case Determination in accordance with § 907.10.

(b) *Intervention.* A Member, a Bank, or the Office of Finance may file a Request to Intervene in the consideration of the Petition in accordance with § 907.11 if it believes its rights may be affected.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

#### **§ 907.9 [Reserved]**

#### **§ 907.10 Petitions.**

Each Petition brought pursuant to this subpart shall comply with the following requirements:

(a) *Filing.* The Petition shall be in writing. The original and three copies shall be filed with the Secretary to the Board, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

(b) *Information requirements.* Each Petition shall contain:

(1) The name of the Petitioner, and the name, title, address, telephone number, and electronic mail address, if any, of the official filing the Petition on its behalf;

(2) The name, address, telephone number, and electronic mail address, if any, of a contact person from whom Finance Board staff may seek additional information if necessary;

(3) The section numbers of the particular provisions of the Act or Finance Board rules, regulations, policies, or orders to which the Petition relates, and, if the Petition is for Review

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of a Disputed Supervisory Determination, identification of the disputed Supervisory Determination;

(4) Identification of the determination or relief requested, including any alternative relief requested if the primary relief is denied, and a clear statement of why such relief is needed;

(5) A statement of the particular facts and circumstances giving rise to the Petition and identifying all relevant legal and factual issues;

(6) A summary of any steps taken to date by the Petitioner to address or resolve the dispute or issue; or, in cases involving safety and soundness or compliance issues, a summary of any actions taken by the Petitioner in the interim to implement corrective action;

(7) The Petitioner's argument in support of its position, including citation to any supporting legal opinions, policy statements, or other relevant precedent and supporting documentation, if any;

(8) References to all relevant authorities, including the Act, Finance Board rules, regulations, policies, and orders, judicial decisions, administrative decisions, relevant statutory interpretations, and policy statements;

(9) A reasoned opinion of counsel supporting the relief or interpretation sought and distinguishing any adverse authority;

(10) Any non-duplicative, relevant supporting documentation; and

(11) A certification by a person with knowledge of the facts that the representations made in the Petition are accurate and complete. The following form of certification is sufficient for this purpose: "I hereby certify that the statements contained in the Petition are true and complete to the best of my knowledge. [Name and Title]."

(c) *Authorization*. Each Petition shall be accompanied by a resolution of the Petitioner's board of directors concurring in the substance and authorizing the filing of the Petition.

(d) *Request to Appear*. The Petition may contain a request that staff or an agent of the Petitioner be permitted to make a personal appearance before the Board of Directors at any meeting convened to consider the Petition pursuant to these procedures. A statement of the reasons a written presentation

would not suffice shall accompany a Request to Appear. The statement shall specifically:

(1) Identify any questions of fact that are in dispute;

(2) Summarize the evidence that would be presented at the meeting; and

(3) Identify any proposed witnesses, and state the substance of their anticipated testimony.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

### § 907.11 Requests to Intervene.

(a) *Filing*—(1) *Date*. Any Request to Intervene in consideration of a Petition under this subpart shall be in writing and shall be filed with the Secretary to the Board within 45 days from the date the Petition is filed.

(2) *Information requirements*. A Request to Intervene shall include the information required by § 907.10(b), where applicable, and a concise statement of the position and interest of the Intervenor and the grounds for the proposed intervention.

(3) *Authorization*. If the entity requesting intervention is a Bank or the Office of Finance, the Request to Intervene shall be accompanied by a resolution of the Petitioner's board of directors concurring in the substance and authorizing the filing of the Request. If the entity requesting intervention is not a Bank or the Office of Finance, the Request to Intervene shall be signed by an official of the entity with authority to authorize the filing of the Request, and shall include a statement describing such authority.

(4) *Request to Appear*. A Request to Intervene may include a Request to Appear before the Board of Directors in any meeting conducted under these procedures to consider a Petition. A Request to Appear shall be accompanied by a statement containing the information required by § 907.10(d), and, in addition, setting forth the likely impact that intervention will have on the expeditious progress of the meeting. A Request to Appear shall be filed with the Secretary to the Board either with the Request to Intervene or at least 20 days prior to the meeting scheduled to consider the Petition.

(5) *Intervenor is bound*. Any Request to Intervene shall include a statement

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that, if such leave to intervene is granted, the Intervenor shall be bound expressly by the Final Decision of the Board of Directors, as described in § 907.13(b), subject only to judicial review or as otherwise provided by law.

(b) *Grounds for approval.* The Managing Director may grant leave to intervene if the entity requesting intervention has complied with paragraph (a) of this section and, in the judgment of Managing Director:

(1) The presence of the entity requesting intervention would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; and

(2) The entity requesting intervention may be adversely affected by a Final Decision on the Petition.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

### § 907.12 Finance Board procedures.

(a) *Notice of Receipt of Petition or Request to Intervene.* No later than three business days following receipt of a Petition or Request to Intervene, the Secretary to the Board shall transmit a written Notice of Receipt to the Petitioner or Intervenor. In the case of a Petition for Case-by-Case Determination, the Finance Board shall promptly publish a notice of receipt of Petition, including a brief summary of the issue(s) involved, in the FEDERAL REGISTER.

(b) *Transmittal of filings.* The Secretary to the Board shall promptly transmit copies of any Petition, Request to Intervene, or other filing under this subpart to the Board of Directors and all other parties to the filing.

(c) *Opportunity to cure defects.* The Managing Director shall afford the Petitioner or Intervenor a reasonable opportunity to cure any failure to comply with the requirements of § 907.10.

(d) *Information request.* The Managing Director may request additional information from the Petitioner or Intervenor. No later than 20 calendar days after the date of a request under this paragraph, the Petitioner shall provide to the Secretary to the Board all information requested.

(e) *Supplemental information.* Upon good cause shown, the Managing Direc-

tor may grant permission to a Petitioner or Intervenor to submit supplemental written information pertaining to the Petition or Request to Intervene.

(f) *Consolidation and severance—(1) Consolidation.* The Managing Director may consolidate any or all matters at issue in two or more meetings on Petitions where:

(i) There exist common parties or common questions of fact or law;

(ii) Consolidation would expedite and simplify consideration of the issues; and

(iii) Consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(2) *Severance.* The Managing Director may order any meetings and issues severed with respect to any or all parties or issues.

(g) *Notice of Board Consideration.* Within 30 calendar days of receipt of a Petition deemed by the Managing Director to be in compliance with the requirements of § 907.10, or, if the Petition has been the subject of a request under paragraph (d) of this section, within 30 calendar days of receipt of a response from the Petitioner deemed by the Managing Director to complete the information necessary for the Board of Directors to consider the Petition, the Managing Director, after consultation with the Board of Directors, through the Secretary to the Board, shall provide all parties with a Notice of Board Consideration containing the following information:

(1) Identification of the issues accepted for consideration;

(2) Any decision to consolidate or sever pursuant to paragraph (f) of this section;

(3) Whether the Petition will be considered by the Board of Directors on the written record pursuant to § 907.13(a)(1), or at a meeting pursuant to § 907.13(a)(2); and

(4) If the Petition will be considered by the Board of Directors at a meeting:

(i) The date, time and place of the meeting; and

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(ii) A decision as to any Request to Appear filed pursuant to §§907.10(d) or 907.11(a)(4).

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

### § 907.13 Consideration and Final Decisions.

(a) *Consideration by Board of Directors.* The Board of Directors may consider a Petition and render a decision:

(1) Solely on the basis of the written record; or

(2) At a regularly scheduled meeting or a meeting convened specifically for the purpose of considering the Petition. Consideration of a Petition at a meeting shall be governed by the procedures described in §907.14.

(b) *Final Decision.* The Board of Directors shall render a Final Decision on the issue(s) presented in a Petition or Request to Intervene that has been accepted for consideration, based upon consideration of the entire record of the proceeding. The terms and conditions of the Final Decision shall bind the parties as to any issue(s) presented in the Petition or Request to Intervene and decided by the Board of Directors. The decision of the Board of Directors is a final decision for purposes of obtaining judicial review or as otherwise provided by law.

(c) *Time periods.* Subject to extension by such additional time as may reasonably be required, the Board of Directors shall render a Final Decision within 120 calendar days of the date the Petition is received in a form deemed by the Managing Director to be in compliance with the requirements of §907.10 or, if the Petition has been the subject of a request under §907.12(d), within 120 calendar days of receipt of a response from the Petitioner deemed by the Managing Director to complete the information necessary for the Board of Directors to consider the Petition.

(d) *Transmittal of Final Decision.* The Secretary to the Board shall transmit the Final Decision of the Board of Directors to all parties to the submission.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

### § 907.14 Meetings of the Board of Directors to consider Petitions.

(a) *Full and fair opportunity to be heard.* Any meeting of the Board of Directors to consider a Petition shall be conducted in a manner that provides the parties a full and fair opportunity to be heard on the issues accepted for consideration. Any such meeting shall be conducted so as to permit an expeditious presentation of such issues.

(b) *Participation in meeting.* (1) The presence of a quorum of the Board if Directors is required to conduct a meeting under this section. Members of the Board of Directors are deemed present if they appear in person or by telephone.

(2) An act of the Board of Directors requires the vote of a majority of the members of the Board of Directors voting at a meeting at which a quorum of the Board of Directors is present.

(3) A Final Decision may be reached by a vote of the Board of Directors after the meeting at which the Petition has been considered. Only those members of the Board of Directors present at the meeting at which the Petition was considered may vote on issues presented in the Petition and accepted for consideration. A vote of the majority of the members of the Board of Directors eligible to vote and voting shall be an act of the Board of Directors.

(c) *Chairperson—(1) Presiding officer.* The Chairperson, or a member of the Board of Directors designated by the Chairperson, shall preside over a meeting of the Board of Directors convened under this section.

(2) *Authority of the Chairperson.* The Chairperson shall have all powers and discretion necessary to conduct the meeting in a fair and impartial manner, to avoid unnecessary delay, to regulate the course of the meeting and the conduct of the parties and their counsel, and to discharge the duties of a presiding officer.

(3) *Board of Directors may overrule the Chairperson.* Any member of the Board of Directors may, by motion, challenge any action, finding, or determination made by the Chairperson in the course of the meeting, and the Board of Directors, by majority vote, may overrule any action, finding or determination of the Chairperson.

(d) *Meeting may be closed.* A party may request that the meeting, or portion thereof, be closed to public observation. A request to close a meeting shall be processed in accordance with the requirements of the Government in the Sunshine Act (5 U.S.C. 552b) and the Finance Board's implementing regulation (12 CFR part 912).

(e) *Location of meeting.* Unless otherwise specified, all meetings of the Board of Directors will be held in the Board Room of the Finance Board at 1777 F Street, NW., Washington, DC, at the time specified in the notice of meeting issued pursuant to 12 CFR 912.6.

(f) *Presentation of issues—(1) Stipulations.* Subject to the Chairperson's discretion, the parties may agree to stipulations of law or fact, including stipulations as to the admissibility of exhibits, and present such stipulations at the meeting. Stipulations shall be made a part of the record of the proceeding.

(2) *Order of presentation.* The Chairperson shall determine the order of presentation of the issues, testimony of any witnesses, presentation of any other information or document, and all other procedural matters at the meeting.

(g) *Record.* The meeting shall be recorded and transcribed. Transcripts of the proceedings shall be governed by 12 CFR 912.5(c). The Petition and all supporting documentation shall be made a part of the record, unless otherwise determined by the Chairperson. The Chairperson may order the record corrected, upon motion to correct, upon stipulation of the parties, or at the Chairperson's discretion.

(h) *Admissibility of documents and testimony.* (1) The Chairperson has discretion to admit and make a part of the record documents and testimony that are relevant, material, and reliable, and may elect not to admit documents and testimony that are privileged, unduly repetitious, or of little probative value.

(2) The Board of Directors shall give such weight to documents and testimony admitted and made part of the record as it may deem reasonable and appropriate.

(3) The Chairperson may admit and make a part of the record, in lieu of oral testimony, statements of fact or opinion prepared by a witness. The admissibility of the information contained in the statement shall be subject to the same rules as if the testimony were provided orally.

(i) *Official notice.* All matters officially noticed by the Chairperson shall appear on the record.

(j) *Exhibits and documents—(1) Copies.* A legible duplicate copy of a document shall be admissible to the same extent as the original.

(2) *Exhibits.* Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines, or other graphic materials to summarize, illustrate, or simplify the presentation of testimony. Subject to the Chairperson's discretion, such materials may be used with or without being admitted into the record.

(3) *Identification.* All exhibits offered into the record shall be numbered sequentially and marked with a designation identifying the sponsor. The original of each exhibit offered into the record or marked for identification shall be retained in the record of the meeting, unless the Chairperson permits substitution of a copy for the original.

(4) *Exchange of Exhibits.* One copy of each exhibit offered into the record shall be furnished to each of the parties and to each member of the Board of Directors. If the Chairperson does not fix a time for the exchange of exhibits, the parties shall exchange copies of proposed exhibits at the earliest practicable time before the commencement of the meeting to consider the Petition. Parties are not required to exchange exhibits submitted as rebuttal information before the meeting commences if submission of the exhibits is not reasonably certain at that time.

(5) *Authenticity.* The authenticity of all documents submitted or exchanged as proposed exhibits prior to the meeting shall be admitted unless written objection is filed before the commencement of the meeting, or unless good cause is shown for failing to file such a written objection.

(k) *Sanction for obstruction of the proceedings.* The Board of Directors may

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impose sanctions it deems appropriate for violation of any applicable provision of this subpart or any applicable law, rule, regulation, or order, or any dilatory, frivolous, or obstructionist conduct by any witness or counsel during the course of a meeting.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

### § 907.15 General provisions.

(a) *Waiver of requirements.* The Managing Director may waive any filing requirement or deadline in this subpart for good cause shown. The Managing Director shall provide prompt notice of any such waiver to the Board of Directors.

(b) *Actions of the Managing Director subject to the authority of the Board of Directors.* The Board of Directors may overrule any action by the Managing Director under this subpart.

(c) *Withdrawal.* At any time prior to the issuance by the Managing Director of a Notice of Board Consideration pursuant to §907.12(g), an authorized representative of a Petitioner may withdraw the Petition, or an authorized representative of an Intervenor may withdraw the Request to Intervene, by filing a written request to withdraw with the Secretary to the Board. Only the Board of Directors may grant a request to withdraw after issuance by the Managing Director of a Notice of Board Consideration pursuant to §907.12(g). Unless otherwise agreed, withdrawal of a Petition or Request to Intervene shall not foreclose a Petitioner from resubmitting a Petition, or an Intervenor from submitting a Request to Intervene, on the same or similar issues.

(d) *Settlement agreement.* (1) At any time during the course of proceedings pursuant to this subpart, the Finance Board shall give Petitioners and Intervenor the opportunity to submit offers of settlement when the nature of the proceedings and the public interest permit. With the approval of the Managing Director, an authorized representative of a Petitioner or Intervenor may enter into a proposed settlement agreement with the Finance Board disposing of some or all of the issues presented in a Petition or Request to Intervene.

(2) No proposed settlement agreement shall be final until approved by the Board of Directors. The Board of Directors shall consider any proposed settlement agreement within 30 calendar days of receiving a notice of the proposed settlement agreement. If the Board of Directors disapproves or fails to approve a proposed settlement agreement within 30 days, the proposed settlement agreement shall be null and void and the previously filed Petition or Request to Intervene shall be considered in accordance with this subpart.

(3) A settlement agreement approved by the Board of Directors shall be deemed final and binding on all parties to the agreement. At the time a proposed settlement agreement becomes final, a Petition or Request to Intervene previously filed by a party to the agreement shall be deemed withdrawn as to all issues resolved in the agreement, and the parties to the agreement shall be estopped from raising objection to those issues or to the terms of the settlement agreement.

(e) *No rights created; Finance Board not prohibited.* Nothing in this subpart shall be deemed to create any substantive or discovery right in any party. Nothing in this subpart shall limit in any manner the right of the Finance Board to conduct any examination or inspection of any Bank or the Office of Finance, or to take any action with respect to a Bank or the Office of Finance, or its directors, officers, employees or agents, otherwise authorized by law.

(f) *Exhaustion requirement.* When seeking a Case-by-Case Determination of any matter or review by the Board of Directors of any Supervisory Determination, a Bank or the Office of Finance shall follow the procedures in this subpart as a prerequisite to seeking judicial review. Failure to do so shall be deemed to be a failure to exhaust all available administrative remedies.

(g) *Improper conduct prohibited.* No party shall, by act or omission, unduly burden or frustrate the efforts of the Board of Directors to carry out its duties under the laws and regulations of

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the Finance Board. A Petitioner or Intervenor shall confine its communications with the Board of Directors, or any individual member thereof, concerning issues raised in a pending Petition, to written communications for inclusion in the record of the proceeding, filed with the Secretary to the Board.

(h) *Costs.* Petitioners are encouraged to contain costs associated with the preparation and filing of Petitions and related personal appearances, if any, at any meeting held by the Board of Directors under this subpart. The Petitioner shall be solely responsible for all costs associated with any such Petitions and appearances.

(i) *Procedures are exclusive.* All Case-by-Case Determinations by the Board of Directors and all Reviews of Disputed Supervisory Determinations shall be considered exclusively pursuant to the procedures described in this subpart.

[64 FR 30883, June 9, 1999, as amended at 65 FR 8257, Feb. 18, 2000]

### § 907.16 Rules of practice.

In connection with any matter initiated or pending pursuant to this part, petitioners, requestors or intervenors, or their representatives, shall be subject to the provisions of subpart F of 12 CFR part 908. No other provision of part 908 shall apply under this part

[67 FR 9903, Mar. 5, 2002]

## PART 911—AVAILABILITY OF UNPUBLISHED INFORMATION

Sec.

911.1 Definitions.

911.2 Purpose and scope.

911.3 Prohibition on unauthorized use and disclosure of unpublished information.

911.4 Requests for unpublished information by document or testimony.

911.5 Consideration of requests.

911.6 Persons and entities with access to unpublished information.

911.7 Availability of unpublished information by testimony.

911.8 Availability of unpublished information by document.

911.9 Fees.

AUTHORITY: 5 U.S.C. 301; 12 U.S.C. 1422b(a)(1).

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SOURCE: 64 FR 44106, Aug. 13, 1999, unless otherwise noted. Redesignated at 65 FR 8256, Feb. 18, 2000.

### § 911.1 Definitions.

As used in this part:

*Legal proceeding* means any administrative, civil, or criminal proceeding, including a grand jury or discovery proceeding, in which neither the Finance Board nor the United States is a party.

*Supervised entity* means a Bank, the Office of Finance, and the Financing Corporation.

*Unpublished information* means information and documents created or obtained by the Finance Board in connection with the performance of official duties, whether the information or documents are in the possession of the Finance Board, a current or former Finance Board employee or agent, a supervised entity, a Bank member, government agency, or some other person or entity; and information and documents created or obtained by, or in the memory of, a current or former Finance Board employee or agent, that was acquired in the person's official capacity or in the course of performing official duties. It does not include information or documents the Finance Board must disclose under the Freedom of Information Act (5 U.S.C. 552), Privacy Act (5 U.S.C. 552a), or the Finance Board's implementing regulations (12 CFR parts 910 and 913, respectively). It also does not include information or documents that were previously published or disclosed or are customarily furnished to the public in the course of the performance of official duties such as the annual report the Finance Board submits to Congress pursuant to section 2B(d) of the Act (12 U.S.C. 1422b(d)), press releases, Finance Board forms, and materials published in the FEDERAL REGISTER.

[64 FR 44106, Aug. 13, 1999, as amended at 65 FR 8258, Feb. 18, 2000; 67 FR 12844, Mar. 20, 2002]

### § 911.2 Purpose and scope.

(a) *Purpose.* The purposes of this part are to:

(1) Maintain the confidentiality and control the dissemination of unpublished information;

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(2) Conserve the time of employees for official duties and ensure that Finance Board resources are used in the most efficient manner;

(3) Maintain the Finance Board's impartiality among private litigants; and

(4) Establish an orderly mechanism for the Finance Board to process expeditiously and respond appropriately to requests for unpublished information.

(b) *Scope.* (1) This part applies to a request for and use and disclosure of unpublished information, including a request for unpublished information by document or testimony arising out of a legal proceeding in which neither the Finance Board nor the United States is a party. It does not apply to a request for unpublished information in a legal proceeding in which the Finance Board or the United States is a party or a request for information or records the Finance Board must disclose under the Freedom of Information Act, Privacy Act, or the Finance Board's implementing regulations.

(2) This part does not, and may not be relied upon to create any substantive or procedural right or benefit enforceable against the Finance Board.

### **§911.3 Prohibition on unauthorized use and disclosure of unpublished information.**

(a) *In general.* Possession or control by any person, supervised entity, Bank member, government agency, or other entity of unpublished information does not constitute a waiver by the Finance Board of any privilege or its right to control, supervise, or impose limitations on, the subsequent use and disclosure of the information.

(b) *Current and former employees and agents.* Except as authorized by this part or otherwise by the Finance Board, no current or former Finance Board employee or agent may disclose or permit the disclosure in any manner of any unpublished information to anyone other than a Finance Board employee or agent for use in the performance of official duties.

(c) *Other persons or entities possessing unpublished information.* (1) Except as authorized in writing by the Finance Board, no person, supervised entity, Bank member, government agency, or other entity in possession or control of

unpublished information may disclose or permit the use or disclosure of such information in any manner or for any purpose.

(2) All unpublished information made available under this part remains the property of the Finance Board and may not be used or disclosed for any purpose other than that authorized under this part without the prior written permission of the Finance Board.

(3) Reports of examination, supervisory correspondence, and other unpublished information lawfully in the possession of a supervised entity, Bank member, or government agency remains the property of the Finance Board and may not be used or disclosed for any purpose other than that authorized under this part without the prior written permission of the Finance Board.

(4) Any person or entity that discloses or uses unpublished information except as expressly authorized under this part may be subject to the penalties provided in 18 U.S.C. 641 and other applicable laws. A current Finance Board, Bank, or Office of Finance employee also may be subject to administrative or disciplinary proceedings.

(d) *Exception for supervised entities and Bank members.* When necessary or appropriate for business purposes, a supervised entity, Bank member, or any director, officer, employee, or agent thereof, may disclose unpublished information, including information contained in, or related to, supervisory correspondence or reports of examination, to a person or entity officially connected with the supervised entity or Bank member as officer, director, employee, attorney, agent, auditor, or independent auditor. A supervised entity, Bank member, or a director, officer, employee, or agent thereof, also may disclose unpublished information to a consultant under this paragraph if the consultant is under a written contract to provide services to the supervised entity or Bank member and the consultant has agreed in writing:

(1) To abide by the prohibition on the disclosure of unpublished information contained in this section; and

(2) That it will not to use the unpublished information for any purposes

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other than those stated in its contract to provide services to the supervised entity or Bank member.

(e) *Government agencies.* The Finance Board may make reports of examination, supervisory correspondence, and other unpublished information available to another federal agency or a state agency for use where necessary in the performance of the agency's official duties. As used in this paragraph, the term agency does not include a grand jury.

[64 FR 44106, Aug. 13, 1999, as amended at 65 FR 8258, Feb. 18, 2000; 67 FR 12844, Mar. 20, 2002]

### §911.4 Requests for unpublished information by document or testimony.

(a) *Form of requests.* A request for unpublished information must be submitted to the Finance Board in writing and include a detailed description of the basis for the request. At a minimum, the request must demonstrate that:

(1) The requested information is highly relevant to the purpose for which it is sought;

(2) The requested information is not available from any other source;

(3) The need for the information clearly outweighs the need to maintain its confidentiality; and

(4) The need for the information clearly outweighs the burden on the Finance Board to produce it.

(b) *Requests for documents.* If the request is for unpublished information by document, the request must include the elements in paragraph (a) of this section and also must adequately describe the record or records sought by type and date.

(c) *Requests for testimony.* (1) If the request is for unpublished information by testimony, the request must include the elements in paragraph (a) of this section and also must set forth the intended use of the testimony, a summary of the scope of the testimony requested, and a showing that no document or the testimony of other non-Finance Board persons, including retained experts, could be provided and used in lieu of the testimony.

(2) Upon submitting a request to the Finance Board for unpublished information by testimony, the requester

must notify all other parties to the matter at issue of the request.

(3) After receipt of a request for unpublished information by testimony but before the requested testimony occurs, a party to the matter at issue who did not join in the request and who wishes to question the witness beyond the scope of the testimony sought by the request, must timely submit its own request for unpublished information pursuant to this part.

(d) *Requests in connection with legal proceedings.* If the request for unpublished information arises out of a legal proceeding, the Finance Board generally will require that the legal proceeding already be filed before it will consider the request. In addition to the elements in paragraph (a) of this section, requests in connection with legal proceedings must include the caption and docket number of the case; the forum; the name, address, phone number, and electronic mail address, if available, of counsel to all other parties to the legal proceeding; the requester's interest in the case; a summary of the issues in litigation; and the reasons for the request, including the relevance of the unpublished information and how the requested information will contribute substantially to the resolution of one or more specifically identified issues in the legal proceeding.

(e) *Expedited requests.* If a requester seeks a response in less than 60 days, the request must explain why the request was not submitted earlier and why the Finance Board should expedite the request.

(f) *Where to submit requests.* Send requests for unpublished information to the Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

(g) *Additional information—*(1) *From the requester.* The Office of General Counsel may consult with the requester to refine and limit the scope of the request to make compliance less burdensome or to obtain information necessary to make an informed determination on the request. A requester's failure to cooperate in good faith with the Office of General Counsel may serve as the basis for a determination not to grant the request.

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(2) *From others.* The Office of General Counsel may inquire into the facts and circumstances underlying a request for unpublished information and rely on sources of information other than the requester, including other parties to the matter at issue.

### §911.5 Consideration of requests.

(a) *Discretion.* Each decision concerning the availability of unpublished information is at the sole discretion of the Finance Board based on a weighing of all appropriate factors. The decision is a final agency action that exhausts administrative remedies for disclosure of the information.

(b) *Time to respond.* The Finance Board generally will respond in writing to a request for unpublished information within 60 days of receipt absent exigent or unusual circumstances and dependent upon the scope and completeness of the request.

(c) *Factors the Finance Board may consider.* The factors the Finance Board may consider in making a determination regarding the availability of unpublished information include:

(1) Whether and how the requested information is relevant to the purpose for which it is sought;

(2) Whether information reasonably suited to the requester's needs other than the requested information is available from another source;

(3) Whether the requested information is privileged;

(4) If the request is in connection with a legal proceeding, whether the proceeding has been filed;

(5) The burden placed on the Finance Board to respond to the request;

(6) Whether production of the information would be contrary to the public interest; and

(7) Whether the need for the information clearly outweighs the need to maintain the confidentiality of the information.

(d) *Disclosure of unpublished information by others.* When a person or entity other than the Finance Board has a claim of privilege regarding unpublished information and the information is in the possession or control of that person or entity, the Finance Board, at its sole discretion, may respond to a request for the information by author-

izing the person or entity to disclose the information to the requester pursuant to an appropriate confidentiality order. Finance Board authorization to disclose information under this paragraph does not preclude the person or entity in possession of the unpublished information from asserting its own privilege, arguing that the information is not relevant, or asserting any other argument to protect the information from disclosure.

(e) *Notice to supervised entities and Bank members.* The Finance Board generally will notify a supervised entity or Bank member that it is the subject of a request, unless the Finance Board, in its sole discretion, determines that to do so would advantage or prejudice any of the parties to the matter at issue.

[64 FR 44106, Aug. 13, 1999, as amended at 65 FR 8258, Feb. 18, 2000]

### §911.6 Persons and entities with access to unpublished information.

(a) *Notice to Finance Board.* Any person, including a current or former Finance Board employee or agent, or any entity, including a supervised entity, Bank member, or government agency that receives a request for, or is served with a subpoena, order, or other legal process to disclose unpublished information by document or testimony, must immediately notify the Office of General Counsel.

(b) *Response of person or entity served with request.* Unless the Finance Board has authorized in writing disclosure of the requested information:

(1) A current or former Finance Board employee or agent or a supervised entity that must respond to a subpoena, order, or other legal process, must decline to disclose the requested information, citing this part as authority.

(2) A non-Finance Board person or entity may not disclose unpublished information unless:

(i) The requester has sought the information from the Finance Board under this part; and

(ii) After the Finance Board or the Department of Justice has had the opportunity to appear and oppose disclosure, a Federal court has ordered the person or entity to disclose the information.

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(c) *Finance Board response.* If the Finance Board does not authorize in writing disclosure of the requested information, the Finance Board will provide a copy of this part to the person or entity at whose instance the process was issued and advise that person or entity or the court or other body that the Finance Board has prohibited disclosure of the information under this part. The Finance Board or the Department of Justice may intervene in the matter at issue, attempt to have the compulsory process withdrawn, or register other appropriate objections.

[64 FR 44106, Aug. 13, 1999, as amended at 65 FR 8258, Feb. 18, 2000]

### §911.7 Availability of unpublished information by testimony.

(a) *Scope.* (1) The scope of permissible testimony is limited to that set forth in the written authorization granted by the Finance Board. The Finance Board may act to ensure that the scope of testimony provided is consistent with the written authorization.

(2) A party to the matter at issue that did not join in a request for unpublished information who wishes to question a witness beyond the authorized scope must request expanded authorization under this part. The Finance Board will attempt to render decisions on such requests in an expedited manner.

(3) The Finance Board generally will not authorize a current employee or agent to provide expert or opinion testimony for a private party.

(b) *Manner in which testimony is given.* (1) The Finance Board ordinarily will make the authorized testimony of a former or current employee or agent available only through written interrogatories or deposition. The Finance Board will not authorize testimony at a trial or hearing unless the requester shows that properly developed deposition testimony could not be used or would be inadequate at the trial or hearing.

(2) If the Finance Board has authorized testimony in connection with a legal proceeding, the requester must cause a subpoena to be served on the employee in accordance with applicable rules of procedure, with a copy by

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registered or certified mail to the Office of General Counsel.

(3) If the authorized testimony is through deposition, the deposition ordinarily will take place at the Finance Board's offices at a time that will avoid substantial interference with the performance of the employee's official duties.

(4) The requester is responsible for all costs associated with an employee's appearance, including provision of a copy of a transcript of the deposition at the request of the Office of General Counsel. The person whose deposition was transcribed does not waive his or her right to review the transcript and note errors.

(c) *Restrictions on use and disclosure.* The Finance Board may condition its authorization of deposition testimony on an agreement of the parties to appropriate limitations, such as an agreement to keep the transcript of the testimony under seal or to make the transcript available only to the parties, the court or other body, or the jury. Upon request made pursuant to this part or on its own initiative, the Finance Board may authorize use of a deposition transcript in another legal proceeding or non-adversarial matter.

(d) *Responsibility of litigants.* If the testimony is disclosed in connection with a legal proceeding, the requester is responsible for:

(1) Promptly notifying all other parties to the legal proceeding of the disclosure, and, after entry of a protective order, providing copies of the testimony to the other parties who are signatories and subject to the protective order; and

(2) At the conclusion of the legal proceeding, retrieving the testimony from the court or other body's file as soon as it is no longer required and certifying to the Finance Board that every party covered by the protective order has destroyed the unpublished information.

### §911.8 Availability of unpublished information by document.

(a) *Scope.* The scope of permissible document disclosure is limited to that set forth in the written authorization granted by the Finance Board. The Finance Board may act to ensure that

the scope of documents provided is consistent with the written authorization.

(b) *Restrictions on use and disclosure.* The Finance Board may condition a decision to disclose unpublished information by document on entry of a protective order satisfactory to the Finance Board by the court or other body presiding in a legal proceeding or, in non-adversarial matters, on a written agreement of confidentiality that limits access of third parties to the unpublished information. In a legal proceeding in which a protective order already has been entered, the Finance Board may condition a decision to disclose unpublished information upon inclusion of additional or amended provisions in the protective order. Upon request made pursuant to this part or on its own initiative, the Finance Board may authorize use of the documents in another legal proceeding or non-adversarial matter.

(c) *Responsibility of litigants.* If the documents are disclosed in connection with a legal proceeding, the requester is responsible for:

(1) Promptly notifying all other parties to the legal proceeding of the disclosure, and, after entry of a protective order, providing copies of the documents to the other parties that are signatories and subject to the protective order; and

(2) At the conclusion of the legal proceeding, retrieving the documents from the court or other body's file as soon as they are no longer required and certifying to the Finance Board that every party covered by the protective order has destroyed the unpublished information.

(d) *Certification or authentication.* If the Finance Board has authorized disclosure of unpublished information by document, it will provide certified or authenticated copies of the document upon request.

#### §911.9 Fees.

(a) *Fees for records search, copying, and certification.* Unless waived or reduced, a requester must pay a fee to the Finance Board for the costs of searching, copying, authenticating, or certifying unpublished information in accordance with 12 CFR 910.9. The Office of Resource Management generally

will bill a requester upon completion of the production, but, in certain instances, may require a requester to remit payment prior to providing the requested information. To pay fees assessed under this section, a requester must deliver to the Office of Resource Management, located at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, a check or money order made payable to the "Federal Housing Finance Board."

(b) *Witness fees and mileage*—(1) *Current Finance Board or federal employees.* If the Finance Board authorizes disclosure of unpublished information by testimony of a current Finance Board employee or agent or a former Finance Board employee or agent who is still in the employ of the United States, upon completion of the testimonial appearance the requester must remit promptly to the Office of Resource Management payment for witness fees and mileage computed in accordance with 28 U.S.C. 1821.

(2) *Former employees or agents.* If the Finance Board authorizes disclosure of unpublished information by testimony of a former Finance Board employee or agent who is not currently employed by the United States, upon completion of the testimonial appearance the requester must remit promptly to the witness any witness fees or mileage due in accordance with 28 U.S.C. 1821.

[64 FR 44106, Aug. 13, 1999, as amended at 65 FR 8258, Feb. 18, 2000]

## PART 912—INFORMATION REGARDING MEETINGS OF THE BOARD OF DIRECTORS OF THE FEDERAL HOUSING FINANCE BOARD

Sec.

- 912.1 Definitions.
- 912.2 Purpose and scope.
- 912.3 Open meetings.
- 912.4 Closed meetings.
- 912.5 Procedures for closing meetings.
- 912.6 Notice of meetings.

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

SOURCE: 58 FR 19202, Apr. 13, 1993, unless otherwise noted. Redesignated at 65 FR 8256, Feb. 18, 2000.

## §912.1

EFFECTIVE DATE NOTE: At 76 FR 74649, Dec. 1, 2011, part 912 was removed, effective January 3, 2012.

### §912.1 Definitions.

As used in this part:

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

*Chairperson* includes the Acting Chairperson.

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

(1) Discussions to determine whether meetings will be open or closed or whether information pertaining to closed meetings will be disclosed;

(2) Discussions to determine whether to schedule a meeting with less than seven days notice, or to change the time, place or subject matter of a scheduled meeting; and

(3) Disposition of Finance Board business by circulation of written materials on proposed actions to individual Directors for proposed actions, and notational voting by the individual Directors on such proposed actions.

*Public observation* means the right of the general public to attend open meetings of the Board of Directors, but does not include the right to participate therein unless invited to do so by the Chairperson.

*Secretary to the Board* includes the Acting Secretary if the position of Secretary is vacant.

*Sunshine Act* means the Government in the Sunshine Act (5 U.S.C. 552b).

[58 FR 19202, Apr. 13, 1993, as amended at 65 FR 8258, Feb. 18, 2000. Redesignated and amended at 67 FR 12844, Mar. 20, 2002]

### §912.2 Purpose and scope.

(a) This part is issued by the Finance Board pursuant to the Sunshine Act, which requires Federal agencies, headed by collegial bodies, to promulgate regulations to implement its provisions. The purpose of these regulations is to provide the public with access to information regarding the decision-making processes of the Board of Directors of the Finance Board, while protecting the privacy rights of individuals and the ability of the Board of

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Directors to carry out its responsibilities.

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

[58 FR 19202, Apr. 13, 1993, as amended at 65 FR 8258, Feb. 18, 2000. Redesignated and amended at 67 FR 12844, Mar. 20, 2002]

### §912.3 Open meetings.

(a) Except as provided in §912.4, every portion of every meeting of the Board of Directors shall be open to public observation.

(b) Unless otherwise specified in the public notice, open meetings of the Board of Directors shall be held in the Board Room of the Finance Board at 1777 F Street, NW., Washington, DC, at the time specified in the public notice.

[58 FR 19202, Apr. 13, 1993, as amended at 65 FR 8258, Feb. 18, 2000]

### §912.4 Closed meetings.

(a) The Board of Directors may close a meeting, or portion thereof, to public observation, or withhold information from the public pertaining to a meeting, when it determines that opening the meeting, or a portion thereof, or the public disclosure of information pertaining to such meeting, or portion thereof, is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(ii) Are, in fact, properly classified pursuant to such Executive Order;

(2) Relate solely to the internal personnel rules and practices of the Finance Board;

(3) Disclose matters specifically exempt from disclosure by statute (other than the Freedom of Information Act (5 U.S.C. 552)), *provided* that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding matters from the public or refers to particular types of matters to be withheld;

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(4) Disclose trade secrets or commercial or financial information that is obtained from a person and is privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Finance Board or another agency responsible for the regulation or supervision of Banks or other financial institutions;

(9) Disclose information the premature disclosure of which would be likely to:

(i) (A) Lead to significant financial speculation in currencies, securities, or commodities;

(B) Significantly endanger the stability of any of the Banks or any other financial institution; or

(ii) Significantly frustrate implementation of a proposed Finance Board action, except that this paragraph shall not apply in any instance where the Finance Board has already disclosed to the public the content or nature of its proposed action, or where the Finance

Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena by the Board of Directors, or the Finance Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) A meeting or portions of a meeting shall not be closed nor information withheld pursuant to paragraph (a) of this section if the Board of Directors finds that the public interest requires otherwise.

[58 FR 19202, Apr. 13, 1993. Redesignated at 65 FR 8256, Feb. 18, 2000, as amended at 67 FR 12844, Mar. 20, 2002]

### §912.5 Procedures for closing meetings.

(a) *Regular procedures.* (1) Except as provided in paragraph (b) of this section, a meeting of the Board of Directors, or portion thereof, will be closed to public observation, and information pertaining to such meeting, or portion thereof, will be withheld from the public, when a majority of the Board of Directors determines by recorded vote that such meeting, or portion thereof, or the withholding of information qualifies for exemption under §912.4, and the Board of Directors does not find that the public interest requires otherwise.

(2) Except as provided in paragraph (a)(3) of this section, a separate vote of the Board Directors will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof that is proposed to be closed to public observation, or with respect to information that is proposed to be withheld pursuant to paragraph (a) of this section.

(3) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation, or with respect to any information concerning such series of meetings proposed to be withheld, so long as each

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meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(4) The vote of each Board Director taken pursuant to paragraph (a) of this section shall be recorded, and no proxies shall be allowed.

(5) Whenever any person's interests may be directly affected by any portion of a meeting for any of the reasons referred to in §912.4(a)(5), (6), or (7), such person may send a written request to the Secretary to the Board asking that such portion of the meeting be closed to public observation. The Secretary to the Board will transmit the request to each Board Director, and upon the request of a Director, a recorded vote will be taken of the Board of Directors whether to close the meeting to public observation.

(6)(i) Within one day of any vote taken pursuant to paragraph (a) of this section, the Finance Board will make publicly available through the Secretary to the Board a written copy of such vote reflecting the vote of each Board Director.

(ii) If a meeting or portion thereof is to be closed to public observation, the Finance Board within one day of the vote taken pursuant to paragraph (a) of this section will make publicly available through the Secretary to the Board a full, written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the Board of Directors to be exempt from disclosure under §912.4(a).

(7) Any person may request in writing to the Secretary to the Board that an announced closed meeting, or portion thereof, be open to public observation. The Secretary to the Board will transmit the request to each Board Director, and upon the request of a Director, a recorded vote will be taken of the Board of Directors on whether to open the meeting to public observation.

(b) *Expedited procedures.* (1) Since a majority of the meetings, of the Board of Directors may be closed pursuant to §912.4(a)(4), (8), (9)(i) or (10), 5 U.S.C.

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552b(d)(4) allows the Finance Board to use expedited procedures in closing such meetings. The following are examples of meetings of the Board of Directors, or portions thereof, that may be closed to the public under these expedited procedures: sale of consolidated obligations, and review of examination, operating or condition reports of Banks.

(2) A decision to close a meeting, or portion thereof, under paragraph (b) of this section shall be made at the beginning of the meeting, or portion thereof, by majority vote of the Directors.

(3)(i) The Finance Board shall maintain a record of each of the votes taken by its Board of Directors to close a meeting, or portion thereof, or to withhold public access to information thereof, under paragraph (b) of this section.

(ii) A copy of such record, reflecting the vote of each Board Director on the question of closing a meeting, or portion thereof, or withholding public access to information thereof, under this paragraph (b) of this section, shall be made available to any member of the public upon request to the Secretary to the Board.

(4) Public announcement of the time, place and subject matter of meetings, or portions thereof, closed under this paragraph (b) of this section shall be made at the earliest practical time.

(c) *Records of closed proceedings*—(1) *Transcripts or electronic recording.* Except as provided in paragraph (c)(2) of this section, the Finance Board shall make and maintain a complete transcript or verbatim electronic recording of the proceedings at each meeting, or portion thereof, closed to public observation under paragraph (a) or (b) of this section.

(2) *Minutes.* The Finance Board may make and maintain a set of complete minutes, in lieu of such transcript or electronic recording, with respect to meetings, or portions thereof, closed or information withheld under §912.4(a)(8), (9)(i) or (10). Such set of minutes shall fully and clearly describe all matters discussed and provide a full and accurate summary of any action taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll

call vote (reflecting the vote of each Board Director on the question). All documents considered in connection with any action shall be identified in such set of minutes.

(3) *Availability of Records.* (i) The transcript, electronic recording or set of minutes of an item discussed, or of testimony received, at a meeting, shall be made available promptly to the public through the Secretary to the Board except in cases where the Board of Directors determines that the item or testimony contains information which may be withheld under §912.4(a).

(ii) Copies of such transcript, electronic recording or set of minutes, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(iii) The Finance Board shall maintain a complete copy of the transcript, verbatim electronic recording or complete set of minutes of each meeting, or portion thereof closed to the public, for at least two years after such meeting, or until one year after the conclusion of any proceeding of the Board of Directors with respect to which the meeting or portion thereof was held, whichever occurs later.

(d) *Legal certification for closing meeting.* (1) For every meeting, or portion thereof, of the Board of Directors closed pursuant to paragraphs (a) or (b) of this section, the General Counsel (or in the General Counsel's absence or incapacity the senior legal officer available) shall publicly certify that the meeting or portion thereof may be closed to the public pursuant to the Sunshine Act and this part, and specifically state the relevant exemption in support thereof.

(2) A copy of the certification, together with a statement from the Chairperson or, when appropriate, the Acting Chairperson or designee, setting forth the time and place of the meeting and the persons present, shall be retained in the permanent files of the Finance Board.

[58 FR 19202, Apr. 13, 1993, as amended at 65 FR 8258, Feb. 18, 2000; 65 FR 12844, Mar. 20, 2002]

### §912.6 Notice of meetings.

(a) *Scope of notice.* (1) Except as provided in §912.4(a) that such information is determined to be exempt from disclosure, each open meeting of the Board of Directors, or each meeting closed under the regular procedures in §912.5(a), will be preceded by public notice as described in this section.

(2) The notices for meetings of the Board of Directors closed under the expedited procedures pursuant to §912.5(b) will be made in accordance with §912.5(b)(4).

(b) *Content of notice.* A notice of an open meeting or a meeting closed under the regular procedures in §912.5(a) will state the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the Secretary to the Board for information about the meeting. Each such notice shall be posted in the lobby of the Finance Board offices, and may be made available in addition by other means or at other locations as deemed desirable. Immediately following the posting of each such notice, the Finance Board will publish the notice in the FEDERAL REGISTER.

(c) *Time—(1) Seven days notice.* Except as provided in paragraph (c)(2) of this section, a public notice of open meetings or meetings closed under §912.5(a) will be made at least seven days in advance of each meeting.

(2) *Less than seven days notice.* When a majority of the Board of Directors determine by recorded vote that Finance Board business requires a meeting to be called at any earlier date, the seven-day prior notice rule may be suspended and notice shall be made at the earliest practicable time.

(d) *Amendment of notice—(1) Time and place.* A change in the time or place of a meeting following public notice may be made only if announced at the earliest practicable time.

(2) *Subject matter.* A change in the subject matter of a meeting or a re-determination to open or close a meeting, or portions thereof, may be made, after public notice, only if:

(i) At least a majority of the Board Directors determines by recorded vote

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that Finance Board business so requires and that no earlier notice of the change was possible; and

(ii) The Finance Board publicly announces the change and the vote of each Board Director by posting a notice thereof in the lobby of the Finance Board offices at the earliest practicable time.

(3) *Timing of amendment.* A public announcement of a change in either the

time, place or subject matter of a meeting may be made after the commencement of the meeting affected.

(4) *Publication of amendment.* Each change to a notice of a meeting will be published in the FEDERAL REGISTER, following the Finance Board's public announcement of the change.

[58 FR 19202, Apr. 13, 1993, as amended at 65 FR 8258, Feb. 18, 2000; 67 FR 12845, Mar. 20, 2002]

## SUBCHAPTER C—GOVERNANCE AND MANAGEMENT OF THE FEDERAL HOME LOAN BANKS

### PART 914—DATA AVAILABILITY AND REPORTING

Sec.

- 914.1 Regulatory Report defined.
- 914.2 Filing Regulatory Reports.
- 914.3 [Reserved]

AUTHORITY: 12 U.S.C. 1440 and 4526.

SOURCE: 71 FR 35499, June 21, 2006, unless otherwise noted.

#### §914.1 Regulatory Report defined.

(a) *Definition. Regulatory Report* means any report of raw or summary data needed to evaluate the safe and sound condition and operations of a Bank or to determine compliance with any:

- (1) Provision in the Act or other law, order, rule, or regulation;
- (2) Condition imposed in writing by the Finance Board in connection with the granting of any application or other request by a Bank; or
- (3) Written agreement entered into between the Finance Board and a Bank.

(b) *Examples.* Regulatory Report includes:

- (1) Call reports and reports of instrument-level risk modeling data;
- (2) Reports related to a Bank's housing mission achievement, such as reports related to AMA, AHP, CIP, and other CICA programs; and
- (3) Reports submitted in response to requests to one or more Banks for information on a nonrecurring basis.

#### §914.2 Filing Regulatory Reports.

Each Bank shall file Regulatory Reports with the Finance Board in accordance with the forms, instructions, and schedules issued by the Finance Board from time to time. If no regularly scheduled reporting dates are established, Regulatory Reports shall be filed as requested by the Finance Board.

### §914.3 [Reserved]

### PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

Sec.

- 917.1 Definitions.
- 917.2 General authorities and duties of Bank boards of directors.
- 917.3 Risk management.
- 917.4 Bank Member Products Policy.
- 917.5 Strategic business plan.
- 917.6 Internal control system.
- 917.7 Audit committees.
- 917.8 Budget preparation.
- 917.9 Dividends.
- 917.10 Bank bylaws.

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1427, 1432(a), 1436(a), 1440.

SOURCE: 65 FR 25274, May 1, 2000, unless otherwise noted.

#### §917.1 Definitions.

As used in this part:

*Business risk* means the risk of an adverse impact on a Bank's profitability resulting from external factors as may occur in both the short and long run.

*Community financial institution* has the meaning set forth in §925.1 of this chapter.

*Contingency liquidity* means the sources of cash a Bank may use to meet its operational requirements when its access to the capital markets is impeded, and includes:

- (1) Marketable assets with a maturity of one year or less;
- (2) Self-liquidating assets with a maturity of seven days or less;
- (3) Assets that are generally accepted as collateral in the repurchase agreement market; and
- (4) Irrevocable lines of credit from financial institutions rated not lower than the second highest credit rating category by an NRSRO.

*Credit risk* means the risk that the market value, or estimated fair value if market value is not available, of an obligation will decline as a result of deterioration in creditworthiness.

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*Immediate family member* means a parent, sibling, spouse, child, dependent, or any relative sharing the same residence.

*Internal auditor* means the individual responsible for the internal audit function at the Bank.

*Liquidity risk* means the risk that a Bank will be unable to meet its obligations as they come due or meet the credit needs of its members and associates in a timely and cost-efficient manner.

*Market risk* means the risk that the market value, or estimated fair value if market value is not available, of a Bank's portfolio will decline as a result of changes in interest rates, foreign exchange rates, equity and commodity prices.

*Operational liquidity* means sources of cash from both a Bank's ongoing access to the capital markets and its holding of liquid assets to meet operational requirements in a Bank's normal course of business.

*Operations risk* means the risk of an unexpected loss to a Bank resulting from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems.

*Reportable conditions* means matters that represent significant deficiencies in the design or operation of the internal control system that could adversely affect a Bank's ability to record, process, summarize and report financial data consistent with the assertions of management.

[65 FR 25274, May 1, 2000, as amended at 67 FR 12846, Mar. 20, 2002]

### §917.2 General authorities and duties of Bank boards of directors.

(a) *Management of a Bank.* The management of each Bank shall be vested in its board of directors. While Bank boards of directors may delegate the execution of operational functions to Bank personnel, the ultimate responsibility of each Bank's board of directors for that Bank's management is non-delegable.

(b) *Duties of Bank directors.* Each Bank director shall have the duty to:

(1) Carry out his or her duties as director in good faith, in a manner such director believes to be in the best in-

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terests of the Bank, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;

(2) Administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member;

(3) At the time of appointment or election, or within a reasonable time thereafter, have a working familiarity with basic finance and accounting practices, including the ability to read and understand the Bank's balance sheet and income statement and to ask substantive questions of management and the internal and external auditors; and

(4) Direct the operations of the Bank in conformity with the requirements set forth in the Act and this chapter.

(c) *Authority regarding staff and outside consultants.* (1) In carrying out its duties and responsibilities under the Act and this chapter, each Bank's board of directors and all committees thereof shall have authority to retain staff and outside counsel, independent accountants, or other outside consultants at the expense of the Bank.

(2) Bank staff providing services to the board of directors or any committee of the board under paragraph (c)(1) of this section may be required by the board of directors or such committee to report directly to the board or such committee, as appropriate.

### §917.3 Risk management.

(a) *Risk management policy*—(1) *Adoption.* Beginning August 29, 2000, each Bank's board of directors shall have in effect at all times a risk management policy that addresses the Bank's exposure to credit risk, market risk, liquidity risk, business risk and operations risk and that conforms to the requirements of paragraph (b) of this section and to all applicable Finance Board regulations and policies.

(2) *Review and compliance.* Each Bank's board of directors shall:

(i) Review the Bank's risk management policy at least annually;

(ii) Amend the risk management policy as appropriate;

(iii) Re-adopt the Bank's risk management policy, including interim

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amendments, not less often than every three years; and

(iv) Ensure that policies and procedures are in place that are reasonably designed to achieve continuing Bank compliance with the risk management policy.

(b) *Risk management policy requirements.* In addition to meeting any other requirements set forth in this chapter, each Bank's risk management policy shall:

(1) After the Finance Board has approved a Bank's capital plan, but before the plan takes effect, the Bank shall amend its risk management policy to describe the specific steps the Bank will take to comply with its capital plan and to include specific target ratios of total capital and permanent capital to total assets at which the Bank intends to operate. The target operating capital-to-assets ratios to be specified in the risk management policy shall be in excess of the minimum leverage and risk-based capital ratios and may be expressed as a range of ratios or as a single ratio;

(2) Set forth the Bank's tolerance levels for the market and credit risk components; and

(3) Set forth standards for the Bank's management of each risk component, including but not limited to:

(i) Regarding credit risk arising from all secured and unsecured transactions, standards and criteria for, and timing of, periodic assessment of the credit-worthiness of issuers, obligors, or other counterparties including identifying the criteria for selecting dealers, brokers and other securities firms with which the Bank may execute transactions;

(ii) Regarding market risk, standards for the methods and models used to measure and monitor such risk;

(iii) Regarding day-to-day operational liquidity needs and contingency liquidity needs:

(A) An enumeration of specific types of investments to be held for such liquidity purposes; and

(B) The methodology to be used for determining the Bank's operational and contingency liquidity needs;

(iv) Regarding operations risk, standards for an effective internal control

system, including periodic testing and reporting; and

(v) Regarding business risk, strategies for mitigating such risk, including contingency plans where appropriate.

(c) *Risk assessment.* The senior management of each Bank shall perform, at least annually, a risk assessment that is reasonably designed to identify and evaluate all material risks, including both quantitative and qualitative aspects, that could adversely affect the achievement of the Bank's performance objectives and compliance requirements. The risk assessment shall be in written form and shall be reviewed by the Bank's board of directors promptly upon its completion.

[65 FR 25274, May 1, 2000, as amended at 66 FR 8308, Jan. 30, 2001; 67 FR 12846, Mar. 20, 2002]

### §917.4 Bank Member Products Policy.

(a) *Adoption and review of member products policy—(1) Adoption.* Beginning November 15, 2000, each Bank's board of directors shall have in effect at all times a policy that addresses the Bank's management of products offered by the Bank to members and housing associates, including but not limited to advances, standby letters of credit and acquired member assets, consistent with the requirements of the Act, paragraph (b) of this section, and all applicable Finance Board regulations and policies.

(2) *Review and compliance.* Each Bank's board of directors shall:

(i) Review the Bank's member products policy annually;

(ii) Amend the member products policy as appropriate; and

(iii) Re-adopt the member products policy, including interim amendments, not less often than every three years.

(b) *Member products policy requirements.* In addition to meeting any other requirements set forth in this chapter, each Bank's member products policy shall:

(1) Address credit underwriting criteria to be applied in evaluating applications for advances, standby letters of credit, and renewals;

(2) Address appropriate levels of collateralization, valuation of collateral and discounts applied to collateral

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values for advances and standby letters of credit;

(3) Address advances-related fees to be charged by each Bank, including any schedules or formulas pertaining to such fees;

(4) Address standards and criteria for pricing member products, including differential pricing of advances pursuant to §950.5(b)(2) of this chapter, and criteria regarding the pricing of standby letters of credit, including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any of the Banks' CICA programs under part 952 of this chapter;

(5) Provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with the requirements of §975.6(b) of this chapter;

(6) Address the maintenance of appropriate systems, procedures and internal controls; and

(7) Address the maintenance of appropriate operational and personnel capacity.

[65 FR 44426, July 18, 2000, as amended at 67 FR 12846, Mar. 20, 2002]

### §917.5 Strategic business plan.

(a) *Adoption of strategic business plan.* Beginning on July 30, 2000, each Bank's board of directors shall have in effect at all times a strategic business plan that describes how the business activities of the Bank will achieve the mission of the Bank consistent with part 940 of this chapter. Specifically, each Bank's strategic business plan shall:

(1) Enumerate operating goals and objectives for each major business activity and for all new business activities, which must include plans for maximizing activities that enhance the carrying out of the mission of the Bank, consistent with part 940 of this chapter;

(2) Discuss how the Bank will:

(i) Address credit needs and market opportunities identified through ongoing market research and consultations with members, associates and public and private organizations; and

(ii) Notify members and associates of relevant programs and initiatives;

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(3) Establish quantitative performance goals for Bank products related to multi-family housing, small business, small farm and small agri-business lending;

(4) Describe any proposed new business activities or enhancements of existing activities; and

(5) Be supported by appropriate and timely research and analysis of relevant market developments and member and associate demand for Bank products and services.

(b) *Review and monitoring.* Each Bank's board of directors shall:

(1) Review the Bank's strategic business plan at least annually;

(2) Amend the strategic business plan as appropriate;

(3) Re-adopt the Bank's strategic business plan, including interim amendments, not less often than every three years; and

(4) Establish management reporting requirements and monitor implementation of the strategic business plan and the operating goals and objectives contained therein.

(c) *Report to Finance Board.* Each Bank shall submit to the Finance Board annually a report analyzing and describing the Bank's performance in achieving the goals described in paragraph (a)(3) of this section.

[65 FR 25274, May 1, 2000, as amended at 67 FR 12846, Mar. 20, 2002]

### §917.6 Internal control system.

(a) *Establishment and maintenance.* (1) Each Bank shall establish and maintain an effective internal control system that addresses:

(i) The efficiency and effectiveness of Bank activities;

(ii) The safeguarding of Bank assets;

(iii) The reliability, completeness and timely reporting of financial and management information and transparency of such information to the Bank's board of directors and to the Finance Board; and

(iv) Compliance with applicable laws, regulations, policies, supervisory determinations and directives of the Bank's board of directors and senior management.

(2) Ongoing internal control activities necessary to maintain the internal

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control system required under paragraph (a)(1) of this section shall include, but are not limited to:

(i) Top level reviews by the Bank's board of directors and senior management, including review of financial presentations and performance reports;

(ii) Activity controls, including review of standard performance and exception reports by department-level management on an appropriate periodic basis;

(iii) Physical and procedural controls to safeguard, and prevent the unauthorized use of, assets;

(iv) Monitoring for compliance with the risk tolerance limits set forth in the Bank's risk management policy;

(v) Any required approvals and authorizations for specific activities; and

(vi) Any required verifications and reconciliations for specific activities.

(b) *Internal control responsibilities of Banks' boards of directors.* Each Bank's board of directors shall ensure that the internal control system required under paragraph (a)(1) of this section is established and maintained, and shall oversee senior management's implementation of such a system on an ongoing basis, by:

(1) Conducting periodic discussions with senior management regarding the effectiveness of the internal control system;

(2) Ensuring that an internal audit of the internal control system is performed annually and that such annual audit is reasonably designed to be effective and comprehensive;

(3) Requiring that internal control deficiencies be reported to the Bank's board of directors in a timely manner and that such deficiencies are addressed promptly;

(4) Conducting a timely review of evaluations of the effectiveness of the internal control system made by internal auditors, external auditors and Finance Board examiners;

(5) Directing senior management to address promptly and effectively recommendations and concerns expressed by internal auditors, external auditors and Finance Board examiners regarding weaknesses in the internal control system;

(6) Reporting any internal control deficiencies found, and the corrective ac-

tion taken, to the Finance Board in a timely manner;

(7) Establishing, documenting and communicating an organizational structure that clearly shows lines of authority within the Bank, provides for effective communication throughout the Bank, and ensures that there are no gaps in the lines of authority;

(8) Reviewing all delegations of authority to specific personnel or committees and requiring that such delegations state the extent of the authority and responsibilities delegated; and

(9) Establishing reporting requirements, including specifying the nature and frequency of reports it receives.

(c) *Internal control responsibilities of Banks' senior management.* Each Bank's senior management shall be responsible for carrying out the directives of the Bank's board of directors, including the establishment, implementation and maintenance of the internal control system required under paragraph (a)(1) of this section, by:

(1) Establishing, implementing and effectively communicating to Bank personnel policies and procedures that are adequate to ensure that internal control activities necessary to maintain an effective internal control system, including the activities enumerated in paragraph (a)(2) of this section, are an integral part of the daily functions of all Bank personnel;

(2) Ensuring that all Bank personnel fully understand and comply with all policies, procedures and legal requirements applicable to their positions and responsibilities;

(3) Ensuring that there is appropriate segregation of duties among Bank personnel and that personnel are not assigned conflicting responsibilities;

(4) Establishing effective paths of communication upward, downward and across the organization in order to ensure that Bank personnel receive necessary and appropriate information, including:

(i) Information relating to the operational policies and procedures of the Bank;

(ii) Information relating to the actual operational performance of the Bank;

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(iii) Adequate and comprehensive internal financial, operational and compliance data; and

(iv) External market information about events and conditions that are relevant to decision making;

(5) Developing and implementing procedures that translate the major business strategies and policies established by the Bank's board of directors into operating standards;

(6) Ensuring adherence to the lines of authority and responsibility established by the Bank's board of directors;

(7) Overseeing the implementation and maintenance of management information and other systems;

(8) Establishing and implementing an effective system to track internal control weaknesses and the actions taken to correct them; and

(9) Monitoring and reporting to the Bank's board of directors the effectiveness of the internal control system on an ongoing basis.

[65 FR 25274, May 1, 2000, as amended at 67 FR 12846, Mar. 20, 2002]

### §917.7 Audit committees.

(a) *Establishment.* The board of directors of each Bank shall establish an audit committee, consistent with the requirements set forth in this section.

(b) *Composition.* (1) The audit committee shall comprise five or more persons drawn from the Bank's board of directors, each of whom shall meet the criteria of independence set forth in paragraph (c) of this section.

(2) The audit committee shall include a balance of representatives of:

(i) Community financial institutions and other members; and

(ii) Appointive and elective directors of the Bank.

(3) The terms of audit committee members shall be appropriately staggered so as to provide for continuity of service.

(4) At least one member of the audit committee shall have extensive accounting or related financial management experience.

(c) *Independence.* Any member of the Bank's board of directors shall be considered to be sufficiently independent to serve as a member of the audit committee if that director does not have a disqualifying relationship with the

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Bank or its management that would interfere with the exercise of that director's independent judgment. Such disqualifying relationships include, but are not limited to:

(1) Being employed by the Bank in the current year or any of the past five years;

(2) Accepting any compensation from the Bank other than compensation for service as a board director;

(3) Serving or having served in any of the past five years as a consultant, advisor, promoter, underwriter, or legal counsel of or to the Bank; or

(4) Being an immediate family member of an individual who is, or has been in any of the past five years, employed by the Bank as an executive officer.

(d) *Charter.* (1) The audit committee of each Bank shall adopt, and the Bank's board of directors shall approve, a formal written charter that specifies the scope of the audit committee's powers and responsibilities, as well as the audit committee's structure, processes and membership requirements.

(2) The audit committee and the board of directors of each Bank shall:

(i) Review, assess the adequacy of and, where appropriate, amend the Bank's audit committee charter on an annual basis;

(ii) Amend the audit committee charter as appropriate; and

(iii) Re-adopt and re-approve, respectively, the Bank's audit committee charter not less often than every three years.

(3) Each Bank's audit committee charter shall:

(i) Provide that the audit committee has the responsibility to select, evaluate and, where appropriate, replace the internal auditor and that the internal auditor may be removed only with the approval of the audit committee;

(ii) Provide that the internal auditor shall report directly to the audit committee on substantive matters and that the internal auditor is ultimately accountable to the audit committee and board of directors; and

(iii) Provide that both the internal auditor and the external auditor shall have unrestricted access to the audit committee without the need for any

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prior management knowledge or approval.

(e) *Duties.* Each Bank's audit committee shall have the duty to:

(1) Direct senior management to maintain the reliability and integrity of the accounting policies and financial reporting and disclosure practices of the Bank;

(2) Review the basis for the Bank's financial statements and the external auditor's opinion rendered with respect to such financial statements (including the nature and extent of any significant changes in accounting principles or the application therein) and ensure that policies are in place that are reasonably designed to achieve disclosure and transparency regarding the Bank's true financial performance and governance practices;

(3) Oversee the internal audit function by:

(i) Reviewing the scope of audit services required, significant accounting policies, significant risks and exposures, audit activities and audit findings;

(ii) Assessing the performance and determining the compensation of the internal auditor; and

(iii) Reviewing and approving the internal auditor's work plan;

(4) Oversee the external audit function by:

(i) Approving the external auditor's annual engagement letter;

(ii) Reviewing the performance of the external auditor; and

(iii) Making recommendations to the Bank's board of directors regarding the appointment, renewal, or termination of the external auditor;

(5) Provide an independent, direct channel of communication between the Bank's board of directors and the internal and external auditors;

(6) Conduct or authorize investigations into any matters within the audit committee's scope of responsibilities;

(7) Ensure that senior management has established and is maintaining an adequate internal control system within the Bank by:

(i) Reviewing the Bank's internal control system and the resolution of identified material weaknesses and reportable conditions in the internal control system, including the prevention

or detection of management override or compromise of the internal control system; and

(ii) Reviewing the programs and policies of the Bank designed to ensure compliance with applicable laws, regulations and policies and monitoring the results of these compliance efforts;

(8) Review the policies and procedures established by senior management to assess and monitor implementation of the Bank's strategic business plan and the operating goals and objectives contained therein; and

(9) Report periodically its findings to the Bank's board of directors.

(f) *Meetings.* The audit committee shall prepare written minutes of each audit committee meeting.

[65 FR 25274, May 1, 2000, as amended at 67 FR 12846, Mar. 20, 2002]

### §917.8 Budget preparation.

(a) *Adoption of budgets.* Each Bank's board of directors shall be responsible for the adoption of an annual operating expense budget and a capital expenditures budget for the Bank, and any subsequent amendments thereto, consistent with the requirements of the Act, this section, other regulations and policies of the Finance Board, and with the Bank's responsibility to protect both its members and the public interest by keeping its costs to an efficient and effective minimum.

(b) *No delegation of budget authority.* A Bank's board of directors may not delegate the authority to approve the Bank's annual budgets, or any subsequent amendments thereto, to Bank officers or other Bank employees.

(c) *Interest rate scenario.* A Bank's annual budgets shall be prepared based upon an interest rate scenario as determined by the Bank.

(d) *Board approval for deviations.* A Bank may not exceed its total annual operating expense budget or its total annual capital expenditures budget without prior approval by the Bank's board of directors of an amendment to such budget.

### §917.9 Dividends.

(a) A Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings and only in accordance

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with any other applicable limitations on dividends set forth in the Act or this chapter. Dividends on such capital stock shall be computed without preference.

(b) A Bank's board of directors may not declare or pay a dividend based on projected or anticipated earnings and may not declare or pay a dividend if the par value of the Bank's stock is impaired or is projected to become impaired after paying such dividend.

(c) The requirement in paragraph (a) of this section that dividends be computed without preference shall cease to apply to any Bank that has established

any dividend preferences for 1 or more classes or subclasses of its capital stock as part of its approved capital plan, as of the date on which the capital plan takes effect.

[71 FR 78051, Dec. 28, 2006]

**§ 917.10 Bank bylaws.**

A Bank's board of directors shall have in effect at all times bylaws governing the manner in which the Bank administers its affairs and such bylaws shall be consistent with applicable laws and regulations as administered by the Finance Board.

**SUBCHAPTER D—FEDERAL HOME LOAN BANK MEMBERS  
AND HOUSING ASSOCIATES [RESERVED]**

## SUBCHAPTER E—FEDERAL HOME LOAN BANK RISK MANAGEMENT AND CAPITAL STANDARDS

### PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1436(a), 1440, 1443, and 1446.

#### § 930.1 Definitions.

As used in this subchapter:

*Affiliated counterparty* means a counterparty of a Bank that controls, is controlled by or is under common control with another counterparty of the Bank. For the purposes of this definition only, direct or indirect ownership (including beneficial ownership) of more than 50 percent of the voting securities or voting interests of an entity constitutes control.

*Certain drawdown* means a legally binding agreement that commits the Bank to make an advance or acquire a loan, at or by a specified future date.

*Charges against the capital of the Bank* means an other than temporary decline in the Bank's total equity that causes the value of total equity to fall below the Bank's aggregate capital stock amount.

*Class A stock* means capital stock issued by a Bank, including subclasses, that has the characteristics specified by § 931.1(a) of this subchapter.

*Class B stock* means capital stock issued by a Bank, including subclasses, that has the characteristics specified by § 931.1(b) of this subchapter.

*Contingency liquidity* means the sources of cash a Bank may use to meet its operational requirements when its access to the capital markets is impeded, and includes:

- (1) Marketable assets with a maturity of one year or less;
- (2) Self-liquidating assets with a maturity of seven days or less;
- (3) Assets that are generally accepted as collateral in the repurchase agreement market; and
- (4) Irrevocable lines of credit from financial institutions rated not lower than the second highest credit rating category by an NRSRO.

*Credit derivative contract* means a derivative contract that transfers credit risk.

*Credit risk* means the risk that the market value, or estimated fair value if market value is not available, of an obligation will decline as a result of deterioration in creditworthiness.

*Derivative contract* means generally a financial contract the value of which is derived from the values of one or more underlying assets, reference rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate, foreign exchange rate, equity, precious metals, commodity, and credit contracts, and any other instruments that pose similar risks.

*Exchange rate contracts* include cross-currency interest-rate swaps, forward foreign exchange rate contracts, currency options purchased, and any similar instruments that give rise to similar risks.

*General allowance for losses* means an allowance established by a Bank in accordance with GAAP for losses, but which does not include any amounts held against specific assets of the Bank.

*Government Sponsored Enterprise, or GSE*, means a United States Government-sponsored agency or instrumentality originally established or chartered to serve public purposes specified by the United States Congress, but whose obligations are not obligations of the United States and are not guaranteed by the United States.

*Interest rate contracts* include, single currency interest-rate swaps, basis swaps, forward rate agreements, interest-rate options, and any similar instrument that gives rise to similar risks, including when-issued securities.

*Investment grade* means:

- (1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest rating category by any NRSRO; or
- (2) If there is no credit quality rating by an NRSRO, a determination by a

Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or other similar standards.

*Market risk* means the risk that the market value, or estimated fair value if market value is not available, of a Bank's portfolio will decline as a result of changes in interest rates, foreign exchange rates, equity and commodity prices.

*Marketable* means, with respect to an asset, that the asset can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

*Market value at risk* is the loss in the market value of a Bank's portfolio measured from a base line case, where the loss is estimated in accordance with §932.5 of this chapter.

*Minimum investment* means the minimum amount of Class A and/or Class B stock that a member is required to own in order to be a member of a Bank and in order to obtain advances and to engage in other business activities with the Bank in accordance with §931.3 of this chapter.

*Operations risk* means the risk of an unexpected loss to a Bank resulting from human error, fraud, unenforceability of legal contracts, or deficiencies in internal controls or information systems.

*Permanent capital* means the retained earnings of a Bank, determined in accordance with GAAP, plus the amount paid-in for the Bank's Class B stock.

*Redeem or Redemption* means the acquisition by a Bank of its outstanding Class A or Class B stock at par value following the expiration of the six-month or five-year statutory redemption period, respectively, for the stock.

*Regulatory risk-based capital requirement* means the amount of permanent capital that a Bank is required to maintain in accordance with §932.3 of this chapter.

*Regulatory total capital requirement* means the amount of total capital that a Bank is required to maintain in accordance with §932.2 of this chapter.

*Repurchase* means the acquisition by a Bank of excess stock prior to the expiration of the six-month or five-year

statutory redemption period for the stock.

*Repurchase agreement* means an agreement between a seller and a buyer whereby the seller agrees to repurchase a security or similar securities at an agreed upon price, with or without a stated time for repurchase.

*Sales of federal funds subject to a continuing contract* means an overnight federal funds loan that is automatically renewed each day unless terminated by either the lender or the borrower.

*Total assets* means the total assets of a Bank, as determined in accordance with GAAP.

*Total capital* of a Bank means the sum of permanent capital, the amounts paid-in for Class A stock, the amount of any general allowance for losses, and the amount of other instruments identified in a Bank's capital plan that the Finance Board has determined to be available to absorb losses incurred by such Bank.

*Walkaway clause* means a provision in a bilateral netting contract that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the bilateral netting contract, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the bilateral netting contract.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54107, Oct. 26, 2001; 66 FR 66728, Dec. 27, 2001; 67 FR 12849, Mar. 20, 2002; 71 FR 78051, Dec. 28, 2006]

## PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK

Sec.

- 931.1 Classes of capital stock.
- 931.2 Issuance of capital stock.
- 931.3 Minimum investment in capital stock.
- 931.4 Dividends.
- 931.5 Liquidation, merger, or consolidation.
- 931.6 Transfer of capital stock.
- 931.7 Redemption and repurchase of capital stock.
- 931.8 Other restrictions on the repurchase or redemption of Bank stock.
- 931.9 Transition provision.

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

SOURCE: 66 FR 8310, Jan. 30, 2001, unless otherwise noted.

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### § 931.1 Classes of capital stock.

The authorized capital stock of a Bank shall consist of the following instruments:

(a) Class A stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank's capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value; and

(3) Be redeemable in cash only on six-months written notice to the Bank.

(b) Class B stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank's capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value;

(3) Be redeemable in cash only on five-years written notice to the Bank; and

(4) Confer an ownership interest in the retained earnings, surplus, undivided profits, and equity reserves of the Bank; and

(c) Any one or more subclasses of Class A or Class B stock, each of which may have different rights, terms, conditions, or preferences as may be authorized in the Bank's capital plan, provided, however, that each subclass of stock shall have all of the characteristics of its respective class, as specified in paragraph (a) or (b) of this section.

### § 931.2 Issuance of capital stock.

(a) *In general.* A Bank may issue either one or both classes of its capital stock (including subclasses), as authorized by § 931.1, and shall not issue any other class of capital stock. A Bank shall issue its stock only to its members and only in book-entry form, and the Bank shall act as its own transfer agent. All capital stock shall be issued in accordance with the Bank's capital plan.

(b) *Initial issuance.* In connection with the initial issuance of its Class A and/or Class B stock (or any subclass of either), a Bank may issue such stock in exchange for its existing stock, through a conversion of its existing stock, or through any other fair and equitable transaction or method of distribution. As part of its initial stock issuance transaction, a Bank may distribute any portion of its then-existing

unrestricted retained earnings as shares of Class B stock.

### § 931.3 Minimum investment in capital stock.

(a) A Bank shall require each member to maintain a minimum investment in the capital stock of the Bank, both as a condition to becoming and remaining a member of the Bank and as a condition to transacting business with the Bank or obtaining advances and other services from the Bank. The amount of the required minimum investment shall be determined in accordance with the Bank's capital plan and shall be sufficient to ensure that the Bank remains in compliance with its minimum capital requirements. A Bank shall require each member to maintain its minimum investment for as long as the institution remains a member of the Bank and for as long as the member engages in any activity with the Bank against which the Bank is required to maintain capital.

(b) A Bank may establish the minimum investment required of each member as a percentage of the total assets of the member, as a percentage of the advances outstanding to the member, as a percentage of any other business activity conducted with the member, on any other basis that is approved by the Finance Board, or any combination thereof.

(c) A Bank may require each member to satisfy the minimum investment requirement through the purchase of either Class A or Class B stock, or through the purchase of one or more combinations of Class A and Class B stock that have been authorized by the board of directors of the Bank in its capital plan. A Bank, in its discretion, may establish a lower minimum investment for members that invest in Class B stock than is required for members that invest in Class A stock, provided that such reduced investment provides sufficient capital for the Bank to remain in compliance with its minimum capital requirements.

(d) Each member of a Bank shall at all times maintain an investment in the capital stock of the Bank in an amount that is sufficient to satisfy the minimum investment required for that

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member in accordance with the Bank's capital plan.

[66 FR 8310, Jan. 30, 2001, as amended at 70 FR 9510, Feb. 28, 2005]

#### § 931.4 Dividends.

(a) *In general.* A Bank may pay dividends on Class A or Class B stock, including any subclasses of such stock, only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. The capital plan may establish different dividend rates or preferences for each class or subclass of stock, which may include a dividend that tracks the economic performance of certain Bank assets, such as Acquired Member Assets. A member, including a member that has provided the Bank with a notice of intent to withdraw from membership or one whose membership is otherwise terminated, shall be entitled to receive any dividends that a Bank declares on its capital stock while the member owns the stock.

(b) *Limitation on payment of dividends.* In no event shall a Bank declare or pay any dividend on its capital stock if after doing so the Bank would fail to meet any of its minimum capital requirements, nor shall a Bank that is not in compliance with any of its minimum capital requirements declare or pay any dividend on its capital stock.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001]

#### § 931.5 Liquidation, merger, or consolidation.

The respective rights of the Class A and Class B stockholders, in the event that the Bank is liquidated, or is merged or otherwise consolidated with another Bank, shall be determined in accordance with the capital plan of the Bank.

#### § 931.6 Transfer of capital stock.

A Bank in its capital plan may allow a member to transfer any excess capital stock of the Bank to another member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the min-

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imum amount of Bank stock that it is required to hold as a condition of membership. Any such stock transfers shall be at par value and shall be effective upon being recorded on the appropriate books and records of the Bank. The Bank may, in its capital plan, require a member to receive the approval of the Bank before a transfer of the Bank's stock, as allowed under this section, is completed.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001]

#### § 931.7 Redemption and repurchase of capital stock.

(a) *Redemption.* A member may have its capital stock in a Bank redeemed by providing written notice to the Bank in accordance with this section. For Class A stock, a member shall provide six-months written notice, and for Class B stock a member shall provide five-years written notice. The notice shall indicate the number of shares of Bank stock that are to be redeemed, and a member shall not have more than one notice of redemption outstanding at one time for the same shares of Bank stock. A member may cancel a notice of redemption by so informing the Bank in writing, and the Bank may impose a fee (to be specified in its capital plan) on any member that cancels a pending notice of redemption. At the expiration of the applicable notice period, the Bank shall pay the stated par value of that stock to the member in cash. A request by a member (whose membership has not been terminated) to redeem specific shares of stock shall automatically be cancelled if the Bank is prevented from redeeming the member's stock by paragraph (c) of this section within five business days from the end of the expiration of the applicable redemption notice period because the member would fail to maintain its minimum investment in the stock of the Bank after such redemption. The automatic cancellation of a member's redemption request shall have the same effect as if the member had cancelled its notice to redeem stock prior to the end of the redemption notice period, and a Bank may impose a fee (to be specified in its capital plan) for automatic cancellation of a redemption request. A Bank

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shall not be obligated to redeem its capital stock other than in accordance with this paragraph.

(b) *Repurchase.* A Bank, in its discretion and without regard to the applicable redemption periods, may repurchase from a member any outstanding Class A or Class B capital stock that is in excess of the amount of that class of Bank stock that the member is required to hold as a minimum investment, in accordance with the capital plan of that Bank. A Bank undertaking such a stock repurchase at its own initiative shall provide the member with reasonable notice prior to repurchasing any excess stock, with the period of such notice to be specified in the Bank's capital plan, and shall pay the stated par value of that stock to the member in cash. For purposes of this section, any Bank stock owned by a member shall be considered to be excess stock if the member is not required to hold such stock either as a condition of remaining a member of the Bank or as a condition of obtaining advances or transacting other business with the Bank. A member's submission of a notice of intent to withdraw from membership, or its termination of membership in any other manner, shall not, in and of itself, cause any Bank stock to be deemed excess stock for purposes of this section.

(c) *Limitation.* In no event may a Bank redeem or repurchase any stock if, following the redemption or repurchase, the Bank would fail to meet any minimum capital requirement, or if the member would fail to maintain its minimum investment in the stock of the Bank, as required by §931.3.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001; 70 FR 9510, Feb. 28, 2005]

### §931.8 Other restrictions on the repurchase or redemption of Bank stock.

(a) *Capital impairment.* A Bank may not redeem or repurchase any capital stock without the prior written approval of the Finance Board if the Finance Board or the board of directors of the Bank has determined that the Bank has incurred or is likely to incur losses that result in or are likely to result in charges against the capital of the Bank. This prohibition shall apply

even if a Bank is in compliance with its minimum capital requirements, and shall remain in effect for however long the Bank continues to incur such charges or until the Finance Board determines that such charges are not expected to continue.

(b) *Bank discretion to suspend redemption.* A Bank, upon the approval of its board of directors, or of a subcommittee thereof, may suspend redemption of stock if the Bank reasonably believes that continued redemption of stock would cause the Bank to fail to meet its minimum capital requirements as set forth in §§932.2 or 932.3 of this chapter, would prevent the Bank from maintaining adequate capital against a potential risk that may not be adequately reflected in its minimum capital requirements, or would otherwise prevent the Bank from operating in a safe and sound manner. A Bank shall notify the Finance Board in writing within two business days of the date of the decision to suspend the redemption of stock, informing the Finance Board of the reasons for the suspension and of the Bank's strategies and time frames for addressing the conditions that led to the suspension. The Finance Board may require the Bank to re-institute the redemption of member stock. A Bank shall not repurchase any stock without the written permission of the Finance Board during any period in which the Bank has suspended redemption of stock under this paragraph.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001]

### §931.9 Transition provision.

(a) *In general.* Each Bank shall comply with the minimum leverage and risk-based capital requirements specified in §932.2 and §932.3 of this chapter, respectively, and each member shall comply with the minimum investment established in the capital plan, as of the effective date of that Bank's capital plan. The effective date of a Bank's capital plan shall be the date on which the Bank first issues any Class A or Class B stock. Prior to the effective date, the issuance and retention of Bank stock shall be as provided in §925.20 and §925.22 of this chapter.

(b) *Transition period*—(1) *Bank transition*. A Bank that will not be in compliance with the minimum leverage and risk-based capital requirements specified in §932.2 and §932.3 of this chapter as of the effective date of its capital plan shall maintain compliance with the leverage limit requirements in §966.3(a) of this chapter and shall include in its capital plan a description of the steps that the Bank will take to achieve compliance with the minimum capital requirements specified in §932.2 and §932.3 of this chapter. The period of time for compliance with the minimum capital requirements shall be stated in the plan and shall not exceed three years from the effective date of the capital plan. When the Bank has achieved compliance with the leverage requirement of §932.2 of this chapter, the leverage limit requirements of §966.3(a) of this chapter shall cease to apply to that Bank.

(2) *Member transition*. (i) *Existing members*. A Bank's capital plan shall require any institution that was a member on November 12, 1999, and whose investment in Bank stock as of the effective date of the capital plan will be less than the minimum investment required by the plan, to comply with the minimum investment by a date specified in the Bank's capital plan. The length of the transition period shall be specified in the capital plan and shall not exceed three years. The capital plan shall describe the actions that the existing members are required to take to achieve compliance with the minimum investment, and may require such members to purchase additional Bank stock periodically over the course of the transition period.

(ii) *New members*. A Bank's capital plan shall require any institution that became a member after November 12, 1999, but prior to the effective date of the capital plan, to comply with the minimum investment specified in the Bank's capital plan as of the effective date of the plan. A Bank's capital plan shall require any institution that becomes a member after the effective date of the capital plan, to comply with the minimum investment upon becoming a member.

(3) *New business*. A Bank's capital plan shall require any member that ob-

tains an advance or other services from the Bank, or that initiates any other business activity with the Bank against which the Bank is required to hold capital, after the effective date of the capital plan to comply with the minimum investment specified in the Bank's capital plan for such advance, services, or activity at the time the transaction occurs.

## PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

Sec.

- 932.1 Risk management.
- 932.2 Total capital requirement.
- 932.3 Risk-based capital requirement.
- 932.4 Credit risk capital requirement.
- 932.5 Market risk capital requirement.
- 932.6 Operations risk capital requirement.
- 932.7 Reporting requirements.
- 932.8 Minimum liquidity requirements.
- 932.9 Limits on unsecured extensions of credit to one counterparty or affiliated counterparties; reporting requirements for total extensions of credit to one counterparty or affiliated counterparties.

AUTHORITY: 12 U.S.C. 1426, 1440, 1443, 1446, 4513, 4526.

SOURCE: 66 FR 8310, Jan. 30, 2001, unless otherwise noted.

### §932.1 Risk management.

Before its new capital plan may take effect, each Bank shall obtain the approval of the Finance Board for the internal market risk model or the internal cash flow model used to calculate the market risk component of its risk-based capital requirement, and for the risk assessment procedures and controls (whether established as part of its risk management policy or otherwise) to be used to manage its credit, market, and operations risks.

### §932.2 Total capital requirement.

Each Bank shall maintain at all times:

(a) Total capital in an amount at least equal to 4.0 percent of the Bank's total assets; and

(b) A leverage ratio of total capital to total assets of at least 5.0 percent of the Bank's total assets. For purposes of determining the leverage ratio, total capital shall be computed by multiplying the Bank's permanent capital

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by 1.5 and adding to this product all other components of total capital.

[76 FR 11674, Mar. 3, 2011]

### § 932.3 Risk-based capital requirement.

Each Bank shall maintain at all times permanent capital in an amount at least equal to the sum of its credit risk capital requirement, its market risk capital requirement, and its operations risk capital requirement, calculated in accordance with §§ 932.4, 932.5 and 932.6, respectively.

76 FR 11674, Mar. 3, 2011]

### § 932.4 Credit risk capital requirement.

(a) *General requirement.* Each Bank's credit risk capital requirement shall be equal to the sum of the Bank's credit risk capital charges for all assets, off-balance sheet items and derivative contracts.

(b) *Credit risk capital charge for assets.* Except as provided in paragraph (i) of this section, each Bank's credit risk capital charge for an asset shall be equal to the book value of the asset multiplied by the credit risk percentage requirement assigned to that asset pursuant to paragraph (e)(2) of this section.

(c) *Credit risk capital charge for off-balance sheet items.* Each Bank's credit risk capital charge for an off-balance sheet item shall be equal to the credit equivalent amount of such item, as determined pursuant to paragraph (f) of this section multiplied by the credit risk percentage requirement assigned to that item pursuant to paragraph (e)(2) of this section, except that the credit risk percentage requirement applied to the credit equivalent amount for a stand-by letter of credit shall be that for an advance with the same remaining maturity as that stand-by letter of credit.

(d) *Credit risk capital charge for derivative contracts—(1) Derivative contracts with non-member counterparties.* Except as provided in paragraph (j) of this section, each Bank's credit risk capital charge for a specific derivative contract entered into between a Bank and a non-member institution shall equal the sum of :

(i) The current credit exposure for the derivative contract, calculated in accordance with paragraph (g) or (h) of this section, as applicable, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to paragraph (e)(2) of this section, provided that:

(A) The remaining maturity of the derivative contract shall be deemed to be less than one year for the purpose of applying Table 1.1 or 1.3 of this part; and

(B) Any collateral held against an exposure from the derivative contract shall be applied to reduce the portion of the credit risk capital charge corresponding to the current credit exposure in accordance with the requirements of paragraph (e)(2)(ii)(B) of this section; plus

(ii) The potential future credit exposure for the derivative contract calculated in accordance with paragraph (g) or (h) of this section, as applicable, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to paragraph (e)(2) of this section, where the actual remaining maturity of the derivative contract is used to apply Table 1.1 or Table 1.3 of this part.

(2) *Derivative contracts with a member.* Except as provided in paragraph (j) of this section, the credit risk capital charge for any derivative contract entered into between a Bank and one of its member institutions shall be calculated in accordance with paragraph (d)(1) of this section. However, the credit risk percentage requirements used in the calculations shall be found in Table 1.1 of this part, which sets forth the credit risk percentage requirements for advances.

(e) *Determination of credit risk percentage requirements—(1) Finance Board determination of credit risk percentage requirements.* The Finance Board shall determine, and update periodically, the credit risk percentage requirements set forth in Tables 1.1 through 1.4 of this part applicable to a Bank's assets, off-balance sheet items, and derivative contracts.

(2) *Bank determination of credit risk percentage requirements.* (i) Each Bank shall determine the credit risk percentage requirement applicable to each

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asset, each off-balance sheet item and each derivative contract by identifying the category set forth in Table 1.1, Table 1.2, Table 1.3 or Table 1.4 of this part to which the asset, item or derivative belongs, given, if applicable, its demonstrated credit rating and remaining maturity (as determined in accordance with paragraphs (e)(2)(ii) and (e)(2)(iii) of this section). The applicable credit risk percentage requirement for an asset, off-balance sheet item or derivative contract shall be used to calculate the credit risk capital charge for such asset, item, or derivative contract in accordance with paragraphs (b), (c) or (d) of this section respectively. The relevant categories and credit risk percentage requirements are provided in the following Tables 1.1 through 1.4 of this part:

TABLE 1.1—REQUIREMENT FOR ADVANCES

Type of advances	Percentage applicable to advances
Advances with:	
Remaining maturity <= 4 years .....	0.07
Remaining maturity > 4 years to 7 years ..	0.20
Remaining maturity > 7 years to 10 years	0.30

TABLE 1.1—REQUIREMENT FOR ADVANCES—Continued

Type of advances	Percentage applicable to advances
Remaining maturity > 10 years .....	0.35

TABLE 1.2—REQUIREMENT FOR RATED RESIDENTIAL MORTGAGE ASSETS

Type of residential mortgage asset	Percentage applicable to residential mortgage assets
Highest Investment Grade .....	0.37
Second Highest Investment Grade .....	0.60
Third Highest Investment Grade .....	0.86
Fourth Highest Investment Grade .....	1.20
If Downgraded to Below Investment Grade After Acquisition By Bank:	
Highest Below Investment Grade .....	2.40
Second Highest Below Investment Grade .....	4.80
All Other Below Investment Grade .....	34.00
Subordinated Classes of Mortgage Assets:	
Highest Investment Grade .....	0.37
Second Highest Investment Grade .....	0.60
Third Highest Investment Grade .....	1.60
Fourth Highest Investment Grade .....	4.45
If Downgraded to Below Investment Grade After Acquisition By Bank:	
Highest Below Investment Grade .....	13.00
Second Highest Below Investment Grade .....	34.00
All Other Below Investment Grade .....	100.00

TABLE 1.3—REQUIREMENT FOR RATED ASSETS OR RATED ITEMS OTHER THAN ADVANCES OR RESIDENTIAL MORTGAGE ASSETS

[Based on remaining maturity]

	Applicable percentage				
	≤ 1 year	>1 yr to 3 yrs	>3 yrs to 7yrs	>7 yrs to 10 yrs	>10 yrs
U.S. Government Securities .....	0.00	0.00	0.00	0.00	0.00
Highest Investment Grade .....	0.15	0.40	0.90	1.40	2.20
Second Highest Investment Grade .....	0.20	0.45	1.00	1.45	2.30
Third Highest Investment Grade .....	0.70	1.10	1.60	2.05	2.95
Fourth Highest Investment Grade .....	2.50	3.70	4.45	5.50	7.05
If Downgraded Below Investment Grade After Acquisition by Bank:					
Highest Below Investment Grade .....	10.00	13.00	13.00	13.00	13.00
Second Highest Below Investment Grade .....	26.00	34.00	34.00	34.00	34.00
All Other .....	100.00	100.00	100.00	100.00	100.00

TABLE 1.4—REQUIREMENT FOR UNRATED ASSETS

Type of unrated asset	Applicable percentage
Cash .....	0.00
Premises, Plant, and Equipment .....	8.00
Investments Under § 940.3(e) & (f) .....	8.00

(ii) When determining the applicable credit risk percentage requirement from Tables 1.2 or 1.3 of this part, each Bank shall apply the following criteria:

(A) For assets or items that are rated directly by an NRSRO, the credit rating shall be the NRSRO's credit rating for the asset or item as determined in accordance with paragraph (e)(2)(iii) of this section.

(B) When using Table 1.3 of this part, for an asset, off-balance sheet item, or derivative contract that is not rated directly by an NRSRO, but for which an NRSRO rating has been assigned to any corresponding obligor

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counterparty, third party guarantor, or collateral backing the asset, item, or derivative, the credit rating that shall apply to the asset, item, or derivative, or portion of the asset, item, or derivative so guaranteed or collateralized, shall be the credit rating corresponding to such obligor counterparty, third party guarantor, or underlying collateral, as determined in accordance with paragraph (e)(2)(iii) of this section. If there are multiple obligor counterparties, third party guarantors, or collateral instruments backing an asset, item, or derivative not rated directly by an NRSRO, or any specific portion thereof, then the credit rating that shall apply to that asset, item, or derivative or specific portion thereof, shall be the highest credit rating among such obligor counterparties, third party guarantors, or collateral instruments, as determined in accordance with paragraph (e)(2)(iii) of this section. Assets, items or derivatives shall be deemed to be backed by collateral for purposes of this paragraph if the collateral is:

(1) Actually held by the Bank or an independent, third-party custodian, or, if permitted under the Bank's collateral agreement with such party, by the Bank's member or an affiliate of that member where the term "affiliate" has the same meaning as in §950.1 of this chapter;

(2) Legally available to absorb losses;

(3) Of a readily determinable value at which it can be liquidated by the Bank;

(4) Held in accordance with the provisions of the Bank's member products policy established pursuant to §917.4 of this chapter; and

(5) Subject to an appropriate discount to protect against price decline during the holding period, as well as the costs likely to be incurred in the liquidation of the collateral.

(C) When using Table 1.3 of this part, for an asset with a short-term credit rating from a given NRSRO, the credit risk percentage requirement shall be based on the remaining maturity of the asset and the long-term credit rating provided for the issuer of the asset by the same NRSRO. Should the issuer of the short-term asset not have a long-term credit rating, the long-term

equivalent rating shall be determined as follows:

(1) The highest short-term credit rating shall be equivalent to the third highest long-term rating;

(2) The second highest short-term rating shall be equivalent to the fourth highest long-term rating;

(3) The third highest short-term rating shall be equivalent to the fourth highest long-term rating; and

(4) If the short-term rating is downgraded to below investment grade after acquisition by the Bank, the short-term rating shall be equivalent to the second highest below investment grade long-term rating.

(D) For residential mortgage assets and other assets or items, or relevant portion of an asset or item, that do not meet the requirements of paragraphs (e)(2)(ii)(A), (e)(2)(ii)(B) or (e)(2)(ii)(C) of this section, and are not identified in Tables 1.1 or Table 1.4 of this part, each Bank shall determine its own credit rating for such assets or items, or relevant portion thereof, using credit rating standards available from an NRSRO or other similar standards. This credit rating, as determined by the Bank, shall be used to identify the applicable credit risk percentage requirement under Table 1.2 of this part for residential mortgage assets, or under Table 1.3 of this part for all other assets or items.

(E) The credit risk percentage requirement for mortgage assets that are acquired member assets described in §955.2 of this chapter shall be assigned from Table 1.2 of this part based on the rating of those assets after taking into account any credit enhancement required by §955.3 of this chapter. Should a Bank further enhance a pool of loans through the purchase of insurance or by some other means, the credit risk percentage requirement shall be based on the rating of such pool after the supplemental credit enhancement, except that the Finance Board retains the right to adjust the credit capital charge to account for any deficiencies with the supplemental enhancement on a case-by-case basis.

(iii) In determining the credit ratings under paragraph (e)(2)(ii)(A),

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(e)(2)(ii)(B) and (e)(2)(ii)(C) of this section, each Bank shall apply the following criteria:

(A) The most recent credit rating from a given NRSRO shall be considered. If only one NRSRO has rated an asset or item, that NRSRO's rating shall be used. If an asset or item has received credit ratings from more than one NRSRO, the lowest credit rating from among those NRSROs shall be used.

(B) Where a credit rating has a modifier (e.g., A-1+ for short-term ratings and A+ or A- for long-term ratings) the credit rating is deemed to be the credit rating without the modifier (e.g., A-1+ = A-1 and A+ or A- = A);

(f) *Calculation of credit equivalent amount for off-balance sheet items*—(1) *General requirement.* The credit equivalent amount for an off-balance sheet item shall be determined by a Finance Board approved model or shall be equal to the face amount of the instrument multiplied by the credit conversion factor assigned to such risk category of instruments, subject to the exceptions in paragraph (f)(2) of this section, provided in the following Table 2 of this part:

TABLE 2—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

Instrument	Credit conversion factor (In percent)
Asset sales with recourse where the credit risk remains with the Bank .....	100
Commitments to make advances subject to certain drawdown.	
Commitments to acquire loans subject to certain drawdown.	
Standby letters of credit .....	50
Other commitments with original maturity of over one year.	
Other commitments with original maturity of one year or less .....	20

(2) *Exceptions.* The credit conversion factor shall be zero for Other Commitments With Original Maturity of Over One Year and Other Commitments With Original Maturity of One Year or Less, for which credit conversion factors of 50 percent or 20 percent would otherwise apply, that are unconditionally cancelable, or that effectively provide for automatic cancellation, due to the deterioration in a borrower's creditworthiness, at any time by the Bank without prior notice.

(g) *Calculation of current and potential future credit exposures for single derivative contracts*—(1) *Current credit exposure.* The current credit exposure for a derivative contract that is not subject to a qualifying bilateral netting contract described in paragraph (h)(3) of this section shall be:

(i) If the mark-to-market value of the contract is positive, the mark-to-market value of the contract; or

(ii) If the mark-to-market value of the contract is zero or negative, zero.

(2) *Potential future credit exposure.* (i) The potential future credit exposure for a single derivative contract, including a derivative contract with a negative mark-to-market value, shall be calculated using an internal model approved by the Finance Board or, in the alternative, by multiplying the effective notional amount of the derivative contract by one of the assigned credit conversion factors, modified as may be required by paragraph (g)(2)(ii) of this section, for the appropriate category as provided in the following Table 3 of this part:

TABLE 3—CREDIT CONVERSION FACTORS FOR POTENTIAL FUTURE CREDIT EXPOSURE DERIVATIVE CONTRACTS  
[In percent]

Residual maturity	Interest rate	Foreign exchange and gold	Equity	Precious metals except gold	Other commodities
One year or less .....	0	1	6	7	10
Over 1 year to five years .....	.5	5	8	7	12
Over five years .....	1.5	7.5	10	8	15

(ii) In applying the credit conversion factors in Table 3 of this part the following modifications shall be made:

(A) For derivative contracts with multiple exchanges of principal, the conversion factors are multiplied by the number of remaining payments in the derivative contract; and

(B) For derivative contracts that automatically reset to zero value following a payment, the residual maturity equals the time until the next payment; however, interest rate contracts with remaining maturities of greater than one year shall be subject to a minimum conversion factor of 0.5 percent.

(iii) If a Bank uses an internal model to determine the potential future credit exposure for a particular type of derivative contract, the Bank shall use the same model for all other similar types of contracts. However, the Bank may use an internal model for one type of derivative contract and Table 3 of this part for another type of derivative contract.

(iv) Forwards, swaps, purchased options and similar derivative contracts not included in the Interest Rate, Foreign Exchange and Gold, Equity, or Precious Metals Except Gold categories shall be treated as other commodities contracts when determining potential future credit exposures using Table 3 of this part.

(v) If a Bank uses Table 3 of this part to determine the potential future credit exposures for credit derivative contracts, the credit conversion factors provided in Table 3 for equity contracts shall also apply to the credit derivative contracts entered into with investment grade counterparties. If the counterparty is downgraded to below investment grade, the credit conversion factor provided in Table 3 of this part for other commodity contracts shall apply.

(h) *Calculation of current and potential future credit exposures for multiple derivative contracts subject to a qualifying bilateral netting contract*—(1) Current credit exposure. The current credit exposure for multiple derivative contracts executed with a single counterparty and subject to a qualifying bilateral netting contract described in paragraph (h)(3) of this section,

shall be calculated on a net basis and shall equal:

(i) The net sum of all positive and negative mark-to-market values of the individual derivative contracts subject to a qualifying bilateral netting contract, if the net sum of the mark-to-market values is positive; or

(ii) Zero, if the net sum of the mark-to-market values is zero or negative.

(2) *Potential future credit exposure.* The potential future credit exposure for each individual derivative contract from among a group of derivative contracts that are executed with a single counterparty and subject to a qualifying bilateral netting contract described in paragraph (h)(3) of this section shall be calculated as follows:

$$A_{\text{net}} = 0.4 \times A_{\text{gross}} + (0.6 \times \text{NGR} \times A_{\text{gross}}),$$

where:

(i)  $A_{\text{net}}$  is the potential future credit exposure for an individual derivative contract subject to the qualifying bilateral netting contract;

(ii)  $A_{\text{gross}}$  is the gross potential future credit exposure, *i.e.*, the potential future credit exposure for the individual derivative contract, calculated in accordance with paragraph (g)(2) of this section but without regard to the fact that the contract is subject to the qualifying bilateral netting contract;

(iii) NGR is the net to gross ratio, *i.e.*, the ratio of the net current credit exposure of all the derivative contracts subject to the qualifying bilateral netting contract, calculated in accordance with paragraph (h)(1) of this section, to the gross current credit exposure; and

(iv) The gross current credit exposure is the sum of the positive current credit exposures of all the individual derivative contracts subject to the qualifying bilateral netting contract, calculated in accordance with paragraph (g)(1) of this section but without regard to the fact that the contract is subject to the qualifying bilateral netting contract.

(3) *Qualifying bilateral netting contract.* A bilateral netting contract shall be considered a qualifying bilateral netting contract if the following conditions are met:

(i) The netting contract is in writing;

(ii) The netting contract is not subject to a walkaway clause;

(iii) The netting contract provides that the Bank would have a single legal claim or obligation either to receive or to pay only the net amount of the sum of the positive and negative mark-to-market values on the individual derivative contracts covered by the netting contract in the event that a counterparty, or a counterparty to whom the netting contract has been assigned, fails to perform due to default, insolvency, bankruptcy, or other similar circumstance;

(iv) The Bank obtains a written and reasoned legal opinion that represents, with a high degree of certainty, that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, the relevant court and administrative authorities would find the Bank's exposure to be the net amount under:

(A) The law of the jurisdiction by which the counterparty is chartered or the equivalent location in the case of non-corporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(B) The law of the jurisdiction that governs the individual derivative contracts covered by the netting contract; and

(C) The law of the jurisdiction that governs the netting contract;

(v) The Bank establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the netting contract continues to satisfy the requirements of this section; and

(vi) The Bank maintains in its files documentation adequate to support the netting of a derivative contract.

(i) *Credit risk capital charge for assets hedged with credit derivatives*—(1) Credit derivatives with a remaining maturity of one year or more. The credit risk capital charge for an asset that is hedged with a credit derivative that has a remaining maturity of one year or more may be reduced only in accordance with paragraph (i)(3) or (i)(4) of this section and only if the credit derivative provides substantial protection against credit losses.

(2) *Credit derivatives with a remaining maturity of less than one year*. The cred-

it risk capital charge for an asset that is hedged with a credit derivative that has a remaining maturity of less than one year may be reduced only in accordance with paragraph (i)(3) of this section and only if the remaining maturity on the credit derivative is identical to or exceeds the remaining maturity of the hedged asset and the credit derivative provides substantial protection against credit losses.

(3) *Capital charge reduced to zero*. The credit risk capital charge for an asset shall be zero if a credit derivative is used to hedge the credit risk on that asset in accordance with paragraph (i)(1) or (i)(2) of this section, provided that:

(i) The remaining maturity for the credit derivative used for the hedge is identical to or exceeds the remaining maturity for the hedged asset, and either:

(A) The asset referenced in the credit derivative is identical to the hedged asset; or

(B) The asset referenced in the credit derivative is different from the hedged asset, but only if the asset referenced in the credit derivative and the hedged asset have been issued by the same obligor, the asset referenced in the credit derivative ranks *pari passu* to or more junior than the hedged asset and has the same maturity as the hedged asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the credit derivative contract calculated pursuant to paragraph (d) of this section is still applied.

(4) *Capital charge reduction in certain other cases*. The credit risk capital charge for an asset hedged with a credit derivative in accordance with paragraph (i)(1) of this section shall equal the sum of the credit risk capital charges for the hedged and unhedged portion of the asset provided that:

(i) The remaining maturity for the credit derivative is less than the remaining maturity for the hedged asset and either:

(A) The asset referenced in the credit derivative is identical to the hedged asset; or

(B) The asset referenced in the credit derivative is different from the hedged asset, but only if the asset referenced in the credit derivative and the hedged

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asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to or more junior than the hedged asset and has the same maturity as the hedged asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the unhedged portion of the asset equals:

(A) The credit risk capital charge for the hedged asset, calculated as the book value of the hedged asset multiplied by the hedged asset's credit risk percentage requirement assigned pursuant to paragraph (e)(2) of this section where the appropriate credit rating is that for the hedged asset and the appropriate maturity is the remaining maturity of the hedged asset; minus

(B) The credit risk capital charge for the hedged asset, calculated as the book value of the hedged asset multiplied by the hedged asset's credit risk percentage requirement assigned pursuant to paragraph (e)(2) of this section where the appropriate credit rating is that for the hedged asset but the appropriate maturity is deemed to be the remaining maturity of the credit derivative; and

(iii) The credit risk capital charge for the hedged portion of the asset is equal to the credit risk capital charge for the credit derivative, calculated in accordance with paragraph (d) of this section.

(j) *Zero Credit risk capital charge for certain derivative contracts.* The credit risk capital charge for the following derivative contracts shall be zero:

(1) A foreign exchange rate contract with an original maturity of 14 calendar days or less (gold contracts do not qualify for this exception); and

(2) A derivative contract that is traded on an organized exchange requiring the daily payment of any variations in the market value of the contract.

(k) *Date of calculations.* Unless otherwise directed by the Finance Board, each Bank shall perform all calculations required by this section using the assets, off-balance sheet items, and derivative contracts held by the Bank, and, if applicable, the values or credit ratings of such assets, items, or derivatives as of the close of business of the last business day of the month for

which the credit risk capital charge is being calculated.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001]

### § 932.5 Market risk capital requirement.

(a) *General requirement.* (1) Each Bank's market risk capital requirement shall equal the sum of:

(i) The market value of the Bank's portfolio at risk from movements in interest rates, foreign exchange rates, commodity prices, and equity prices that could occur during periods of market stress, where the market value of the Bank's portfolio at risk is determined using an internal market risk model that fulfills the requirements of paragraph (b) of this section and that has been approved by the Finance Board; and

(ii) The amount, if any, by which the Bank's current market value of total capital is less than 85 percent of the Bank's book value of total capital, where:

(A) The current market value of the total capital is calculated by the Bank using the internal market risk model approved by the Finance Board under paragraph (d) of this section; and

(B) The book value of total capital is the same as the amount of total capital reported by the Bank to the Finance Board under § 932.7 of this part.

(2) A Bank may substitute an internal cash flow model to derive a market risk capital requirement in place of that calculated using an internal market risk model under paragraph (a)(1) of this section, provided that:

(i) The Bank obtains Finance Board approval of the internal cash flow model and of the assumptions to be applied to the model; and

(ii) The Bank demonstrates to the Finance Board that the internal cash flow model subjects the Bank's assets and liabilities, off-balance sheet items and derivative contracts, including related options, to a comparable degree of stress for such factors as will be required for an internal market risk model.

(b) *Measurement of market value at risk under a Bank's internal market risk model.* (1) Except as provided under paragraph (a)(2) of this section, each

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Bank shall use an internal market risk model that estimates the market value of the Bank's assets and liabilities, off-balance sheet items, and derivative contracts, including any related options, and measures the market value of the Bank's portfolio at risk of its assets and liabilities, off-balance sheet items, and derivative contracts, including related options, from all sources of the Bank's market risks, except that the Bank's model need only incorporate those risks that are material.

(2) The Bank's internal market risk model may use any generally accepted measurement technique, such as variance-covariance models, historical simulations, or Monte Carlo simulations, for estimating the market value of the Bank's portfolio at risk, provided that any measurement technique used must cover the Bank's material risks.

(3) The measures of the market value of the Bank's portfolio at risk shall include the risks arising from the non-linear price characteristics of options and the sensitivity of the market value of options to changes in the volatility of the options' underlying rates or prices.

(4) The Bank's internal market risk model shall use interest rate and market price scenarios for estimating the market value of the Bank's portfolio at risk, but at a minimum:

(i) The Bank's internal market risk model shall provide an estimate of the market value of the Bank's portfolio at risk such that the probability of a loss greater than that estimated shall be no more than one percent;

(ii) The Bank's internal market risk model shall incorporate scenarios that reflect changes in interest rates, interest rate volatility, and shape of the yield curve, and changes in market prices, equivalent to those that have been observed over 120-business day periods of market stress. For interest rates, the relevant historical observations should be drawn from the period that starts at the end of the previous month and goes back to the beginning of 1978;

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to the Finance Board;

(B) Representative of the periods of the greatest potential market stress given the Bank's portfolio, and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations among interest rates.

(5) For any consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, each Bank shall, in addition to fulfilling the criteria of paragraph (b)(4) of this section, calculate an estimate of the market value of its portfolio at risk due to the material foreign exchange, equity price or commodity price risk, such that, at a minimum:

(i) The probability of a loss greater than that estimated shall not exceed one percent;

(ii) The scenarios reflect changes in foreign exchange, equity, or commodity market prices that have been observed over 120-business day periods of market stress, as determined using historical data that is from an appropriate period; and

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to the Finance Board;

(B) Representative of the periods of greatest potential stress given the Bank's portfolio; and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations within or among foreign exchange rates, equity prices, or commodity prices.

(c) *Independent validation of Bank internal market risk model or internal cash flow model.* (1) Each Bank shall conduct an independent validation of its internal market risk model or internal cash flow model within the Bank that is carried out by personnel not reporting to the business line responsible for conducting business transactions for the

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Bank. Alternatively, the Bank may obtain independent validation by an outside party qualified to make such determinations. Validations shall be done on an annual basis, or more frequently as required by the Finance Board.

(2) The results of such independent validations shall be reviewed by the Bank's board of directors and provided promptly to the Finance Board.

(d) *Finance Board approval of Bank internal market risk model or internal cash flow model.* Each Bank shall obtain Finance Board approval of an internal market risk model or an internal cash flow model, including subsequent material adjustments to the model made by the Bank, prior to the use of any model. Each Bank shall make such adjustments to its model as may be directed by the Finance Board.

(e) *Date of calculations.* Unless otherwise directed by the Finance Board, each Bank shall perform any calculations or estimates required under this section using the assets and liabilities, off-balance sheet items, and derivative contracts held by the Bank, and if applicable, the values of any such holdings, as of the close of business of the last business day of the month for which the market risk capital requirement is being calculated.

### § 932.6 Operations risk capital requirement.

(a) *General requirement.* Except as authorized under paragraph (b) of this section, each Bank's operations risk capital requirement shall at all times equal 30 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement.

(b) *Alternative requirements.* With the approval of the Finance Board, each Bank may have an operations risk capital requirement equal to less than 30 percent but no less than 10 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement if:

(1) The Bank provides an alternative methodology for assessing and quantifying an operations risk capital requirement; or

(2) The Bank obtains insurance to cover operations risk from an insurer rated at least the second highest in-

vestment grade credit rating by an NRSRO.

### § 932.7 Reporting requirements.

Each Bank shall report to the Finance Board by the 15th business day of each month its risk-based capital requirement by component amounts, and its actual total capital amount and permanent capital amount, calculated as of the close of business of the last business day of the preceding month, or more frequently, as may be required by the Finance Board.

### § 932.8 Minimum liquidity requirements.

In addition to meeting the deposit liquidity requirements contained in § 965.3 of this chapter, each Bank shall hold contingency liquidity in an amount sufficient to enable the Bank to meet its liquidity needs, which shall, at a minimum, cover five business days of inability to access the consolidated obligation debt markets. An asset that has been pledged under a repurchase agreement cannot be used to satisfy minimum liquidity requirements.

### § 932.9 Limits on unsecured extensions of credit to one counterparty or affiliated counterparties; reporting requirements for total extensions of credit to one counterparty or affiliated counterparties.

(a) *Unsecured extensions of credit to a single counterparty.* A Bank shall not extend unsecured credit to any single counterparty (other than a GSE) in an amount that would exceed the limits of this paragraph. A Bank shall not extend unsecured credit to a GSE in an amount that would exceed the limits set forth in paragraph (c) of this section. If a third-party provides an irrevocable, unconditional guarantee of repayment of a credit (or any part thereof), the third-party guarantor shall be considered the counterparty for purposes of calculating and applying the unsecured credit limits of this section with respect to the guaranteed portion of the transaction.

(1) *Term limits.* All unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank's on- and off-balance sheet and derivative transactions (but excluding

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the amount of sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract) shall not exceed the product of the maximum capital exposure limit applicable to such counterparty, as determined in accordance with paragraph (a)(4) of this section and Table 4 of this part, multiplied by the lesser of:

- (i) The Bank's total capital; or
- (ii) The counterparty's Tier 1 capital, or if Tier 1 capital is not available, total capital (as defined by the counterparty's principal regulator) or some similar comparable measure identified by the Bank.

(2) *Overall limits including sales of overnight federal funds.* All unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank's on- and off-balance sheet and derivative transactions, including the amounts of sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, shall not exceed twice the limit calculated pursuant to paragraph (a)(1) of this section.

(3) *Limits for certain obligations issued by state, local or tribal governmental agencies.* The term limit set forth in paragraph (a)(1) of this section when applied to the marketable direct obligations of state, local or tribal government unit or agencies that are acquired member assets identified in § 955.2(a)(3) of this chapter or are otherwise excluded from the prohibition against investments in whole mortgages or whole loan or interests in such mortgages or loans by § 956.3(a)(4)(iii) of this chapter shall be calculated based on the Bank's total capital and the credit rating assigned to the particular obligation as determined in accordance with paragraph (a)(5) of this section. If a Bank owns series or classes of obligations issued by a particular state, local or tribal government unit or agency or has extended other forms of unsecured credit to such entity falling into different rating categories, the total amount of unsecured credit extended by the Bank to that government unit or agency shall not exceed the term limit associated with the highest-rated obligation issued by the

entity and actually purchased by the Bank.

(4) *Bank determination of applicable maximum capital exposure limits.* (i) Except as set forth in paragraph (a)(4)(ii) or (a)(4)(iii) of this section, the applicable maximum capital exposure limits are assigned to each counterparty based upon the long-term credit rating of the counterparty, as determined in accordance with paragraph (a)(5) of this section, and are provided in the following Table 4 of this part:

TABLE 4—MAXIMUM LIMITS ON UNSECURED EXTENSIONS OF CREDIT TO A SINGLE COUNTERPARTY BY COUNTERPARTY LONG-TERM CREDIT RATING CATEGORY

Long-term credit rating of counterparty category	Maximum capital exposure limit (in percent)
Highest Investment Grade .....	15
Second Highest Investment Grade .....	14
Third Highest Investment Grade .....	9
Fourth Highest Investment Grade .....	3
Below Investment Grade or Other .....	1

(ii) If a counterparty does not have a long-term credit rating but has received a short-term credit rating from an NRSRO, the maximum capital exposure limit applicable to that counterparty shall be based upon the short-term credit rating, as determined in accordance with paragraph (a)(5) of this section, as follows:

(A) The highest short-term investment grade credit rating shall correspond to the maximum capital exposure limit provided in Table 4 of this part for the third highest long-term investment grade rating;

(B) The second highest short-term investment grade rating shall correspond to the maximum capital exposure limit provided in Table 4 of this part for the fourth highest long-term investment grade rating; and

(C) The third highest short-term investment grade rating shall correspond to the maximum capital exposure limit provided in Table 4 of this part for the fourth highest long-term investment grade rating.

(iii) If a specific debt obligation issued by a counterparty receives a credit rating from an NRSRO that is lower than the counterparty's long-term credit rating, the total amount of

the lower-rated obligation held by the Bank may not exceed a sub-limit calculated in accordance with paragraph (a)(1) of this section, except that the Bank shall use the credit rating associated with the specific obligation to determine the applicable maximum capital exposure limit. For purposes of this paragraph, the credit rating of the debt obligation shall be determined in accordance with paragraph (a)(5) of this section.

(5) *Bank determination of applicable credit ratings.* The following criteria shall be applied to determine a counterparty's credit rating:

(i) The counterparty's most recent credit rating from a given NRSRO shall be considered;

(ii) If only one NRSRO has rated the counterparty, that NRSRO's rating shall be used. If a counterparty has received credit ratings from more than one NRSRO, the lowest credit rating from among those NRSROs shall be used;

(iii) Where a credit rating has a modifier, the credit rating is deemed to be the credit rating without the modifier;

(iv) If a counterparty is placed on a credit watch for a potential downgrade by an NRSRO, the credit rating from that NRSRO at the next lower grade shall be used; and

(v) If a counterparty is not rated by an NRSRO, the Bank shall determine the applicable credit rating by using credit rating standards available from an NRSRO or other similar standards.

(b) *Unsecured extensions of credit to affiliated counterparties—(1) In general.* The total amount of unsecured extensions of credit by a Bank to a group of affiliated counterparties that arise from the Bank's on- and off-balance sheet and derivative transactions, including sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, shall not exceed thirty percent of the Bank's total capital.

(2) *Relation to individual limits.* The aggregate limits calculated under this paragraph shall apply in addition to the limits on extensions of unsecured credit to a single counterparty imposed by paragraph (a) of this section.

(c) *Special limits for GSEs—(1) In general.* Unsecured extensions of credit by a Bank to a GSE that arise from the Bank's on- and off-balance sheet and derivative transactions, including from the purchase of any subordinated debt subject to the sub-limit set forth in paragraph (c)(2) of this section, from any sales of federal funds with a maturity of one day or less and from sales of federal funds subject to a continuing contract, shall not exceed the lesser of:

(i) The Bank's total capital; or

(ii) The GSE's total capital (as defined by the GSE's principal regulator) or some similar comparable measure identified by the Bank.

(2) *Sub-limit for subordinated debt.* The maximum amount of subordinated debt issued by a GSE and held by a Bank shall not exceed the term limit calculated under paragraph (a)(1) of this section, except that a Bank shall use the credit rating of the GSE's subordinated debt to determine the applicable maximum capital exposure limit. The credit rating of the subordinated debt shall be determined in accordance with paragraph (a)(5) of this section.

(3) *Limits applying to a GSE after a downgrade.* If any NRSRO assigns a credit rating to any senior debt obligation issued (or to be issued) by a GSE that is below the highest investment grade or downgrades, or places on a credit watch for a potential downgrade of the credit rating on any senior unsecured obligation issued by a GSE to below the highest investment grade, the special limits on unsecured extensions of credit under paragraph (c)(1) of this section shall cease to apply, and instead, the Bank shall calculate the maximum amount of its unsecured extensions of credit to that GSE in accordance with paragraphs (a)(1) and (a)(2) of this section.

(4) *Extensions of unsecured credit to other Banks.* The limits of this section do not apply to unsecured credit extended by one Bank to another Bank.

(d) *Extensions of unsecured credit after downgrade or placement on credit watch.* If an NRSRO downgrades the credit rating applicable to any counterparty or places any counterparty on a credit watch for a potential downgrade, a Bank need not unwind or liquidate any existing transaction or position with

that counterparty that complied with the limits of this section at the time it was entered. In such a case, however, a Bank may extend any additional unsecured credit to such a counterparty only in compliance with the limitations that are calculated using the lower maximum exposure limits. For the purposes of this section, the renewal of an existing unsecured extension of credit, including any decision not to terminate any sales of federal funds subject to a continuing contract, shall be considered an additional extension of unsecured credit that can be undertaken only in accordance with the lower limit.

(e) *Reporting requirements*—(1) *Total unsecured extensions of credit.* Each Bank shall report monthly to the Finance Board the amount of the Bank's total unsecured extensions of credit arising from on- and off-balance sheet and derivative transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of:

- (i) The Bank's total capital; or
- (ii) The counterparty's, or affiliated counterparties' combined, Tier 1 capital, or if Tier 1 capital is not available, total capital (as defined by each counterparty's principal regulator) or some similar comparable measure identified by the Bank.

(2) *Total secured and unsecured extensions of credit.* Each Bank shall report monthly to the Finance Board the amount of the Bank's total secured and unsecured extensions of credit arising from on- and off-balance sheet and derivative transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of the Bank's total assets.

(3) *Extensions of credit in excess of limits.* A Bank shall report promptly to the Finance Board any extensions of unsecured credit that exceeds any limit set forth in paragraphs (a), (b) or (c) of this section. In making this report, a Bank shall provide the name of the counterparty or group of affiliated counterparties to which the excess unsecured credit has been extended, the dollar amount of the applicable limit which has been exceeded, the dollar amount by which the Bank's extension of unsecured credit exceeds such limit,

the dates for which the Bank was not in compliance with the limit, and, if applicable, a brief explanation of any extenuating circumstances which caused the limit to be exceeded.

(f) *Measurement of unsecured extensions of credit*—(1) *In general.* For purposes of this section, unsecured extensions of credit will be measured as follows:

- (i) For on-balance sheet transactions, an amount equal to the sum of the book value of the item plus net payments due the Bank;
- (ii) For off-balance sheet transactions, an amount equal to the credit equivalent amount of such item, calculated in accordance with §932.4(f) of this part; and
- (iii) For derivative transactions, an amount equal to the sum of the current and potential future credit exposures for the derivative contract, where those values are calculated in accordance with §§932.4(g) or 932.4(h) of this part, as applicable, less the amount of any collateral that is held in accordance with the requirements of §932.4(e)(2)(ii)(B) of this part against the credit exposure from the derivative contract.

(2) *Status of debt obligations purchased by the Bank.* Any debt obligation or debt security (other than mortgage-backed securities or acquired member assets that are identified in §§955.2(a)(1) and (2) of this chapter) purchased by a Bank shall be considered an unsecured extension of credit for the purposes of this section, except:

- (i) Any amount owed the Bank against which the Bank holds collateral in accordance with §932.4(e)(2)(ii)(B) of this part; or
- (ii) Any amount which the Finance Board has determined on a case-by-case basis shall not be considered an unsecured extension of credit.

(g) *Obligations of the United States.* Obligations of, or guaranteed by, the United States are not subject to the requirements of this section.

[66728, Dec. 27, 2002]

## PART 933—BANK CAPITAL STRUCTURE PLANS

Sec.  
933.1 Submission of plan.

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## § 933.2

- 933.2 Contents of plan.
- 933.3 Independent review of capital plan.
- 933.4 Transition provisions.
- 933.5 Disclosure to members concerning capital plan and capital stock conversion.

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

SOURCE: 66 FR 8310, Jan. 30, 2001, unless otherwise noted.

### § 933.1 Submission of plan.

(a) *In general.* By no later than October 29, 2001, the board of directors of each Bank shall submit to the Finance Board a plan to establish and implement a new capital structure for that Bank, which plan shall comply with part 931 of this chapter and under which, when implemented, the Bank shall have sufficient total and permanent capital to comply with the regulatory capital requirements established by part 932 of this chapter. The Finance Board, upon a demonstration of good cause submitted by the board of directors of a Bank, may approve a reasonable extension of the 270-day period for submission of the capital plan. A Bank shall not implement its capital plan, or any amendment to the plan, without Finance Board approval.

(b) *Failure to submit a capital plan.* If a Bank fails to submit a capital plan to the Finance Board by October 29, 2001, including any approved extension, the Finance Board may establish a capital plan for that Bank, take any enforcement action against the Bank, its directors, or its executive officers authorized by section 2B(a) of the Act (12 U.S.C. 1422b(a)), or merge the Bank pursuant to section 26 of the Act (12 U.S.C. 1446) into any other Bank that has submitted a capital plan.

(c) *Consideration of the plan.* After receipt of a Bank's capital plan, the Finance Board may return the plan to the Bank if it does not comply with section 6 of the Act (12 U.S.C. 1426) or any regulatory requirement or is otherwise incomplete or materially deficient. If the Finance Board accepts a capital plan for review, it may require the Bank to submit additional information regarding its plan or to amend the plan, prior to determining whether to approve the plan. The Finance Board may approve a capital plan as sub-

mitted or as amended, or may condition its approval on the Bank's compliance with certain stated conditions, and may require that the capital plans of all Banks take effect on the same date.

### § 933.2 Contents of plan.

The capital plan for each Bank shall include, at a minimum, provisions addressing the following matters:

(a) *Minimum investment.* (1) The capital plan shall require each member to purchase and maintain a minimum investment in the capital stock of the Bank, in accordance with § 931.3, of this chapter and shall prescribe the manner in which the minimum investment is to be calculated. The plan shall require each member to maintain its minimum investment in the Bank's stock for as long as it remains a member and, with regard to Bank stock purchased to support an advance or other business activity, for as long as the advance or business activity remains outstanding.

(2) The capital plan shall specify the amount and class (or classes) of Bank stock that an institution is required to own in order to become and remain a member of the Bank, and shall specify the amount and class (or classes) of Bank stock that a member is required to own in order to obtain advances from, or to engage in other business transactions with, the Bank. If a Bank requires its members to satisfy its minimum investment through the purchase of one or more combinations of Class A and Class B stock, the authorized combinations of stock shall be specified in the capital plan, which shall afford the members the option of satisfying the minimum investment through the purchase of any such combination of stock.

(3) The capital plan may establish a minimum investment that is calculated as a percentage of the total assets of the member, as a percentage of the advances outstanding to the member, as a percentage of the other business activities conducted with the member, on any other basis approved by the Finance Board, or on any combination of the above.

(4) The minimum investment established by the capital plan shall be set at a level that, when applied to all

members, provides sufficient capital for the Bank to comply with its minimum capital requirements, as specified in part 932 of this chapter. The capital plan shall require the board of directors of the Bank to monitor and, as necessary, to adjust, the minimum investment to ensure that the stock required to be purchased and maintained by the members is sufficient to allow the Bank to comply with its minimum capital requirements. The plan shall require each member to comply promptly with any adjusted minimum investment established by the board of directors of the Bank, but may allow a member a reasonable time to do so and may allow a member to reduce its outstanding business with the Bank as an alternative to purchasing additional stock.

(b) *Classes of capital stock.* The capital plan shall specify the class or classes of stock (including subclasses, if any) that the Bank will issue, and shall establish the par value, rights, terms, and preferences associated with each class (or subclass) of stock. A Bank may establish preferences relating to, but not limited to, the dividend, voting, or liquidation rights for each class or subclass of Bank stock. Any voting preferences established by the Bank pursuant to §915.5 of this chapter shall expressly state the voting rights of each class of stock with regard to the election of Bank directors. The capital plan shall provide that the owners of the Class B stock own the retained earnings, surplus, undivided profits, and equity reserves of the Bank, but shall have no right to receive any portion of those items, except through declaration of a dividend or capital distribution approved by the board of directors or through the liquidation of the Bank.

(c) *Dividends.* The capital plan shall establish the manner in which the Bank will pay dividends, if any, on each class or subclass of stock, and shall provide that the Bank may not declare or pay any dividends if it is not in compliance with any capital requirement or if after paying the dividend it would not be in compliance with any capital requirement.

(d) *Initial issuance.* The capital plan shall specify the date on which the

Bank will implement the new capital structure, and shall establish the manner in which the Bank will issue Class A and/or Class B stock to its existing members, as well as to eligible institutions that subsequently become members. The capital plan shall address how the Bank will retire the stock that is outstanding as of the effective date, including stock held by a member that does not affirmatively elect to convert or exchange its existing stock to either Class A or Class B stock, or some combination thereof.

(e) *Members wishing not to convert existing stock.* The capital plan shall establish an opt-out date on or before which a member that does not wish to convert its existing stock into Class A and/or Class B stock must file a written notice to withdraw from membership with the Finance Board. This opt-out date shall not be more than six months before the effective date of the capital plan. (For purposes of applying this provision, the membership of an institution that files its notice to withdraw with the Finance Board on or before the opt-out date established in a capital plan shall terminate six months from the date that the notice of withdrawal was filed with the Finance Board or on the effective date of the Bank's capital plan, whichever date is earlier.) The capital plan shall further provide that any member that is in the process of withdrawing on the effective date of the capital plan but did not file its written notice to withdraw from membership with the Finance Board on or before this opt-out date, shall have its existing stock converted into Class A and/or Class B stock as required by the capital plan, and that the effective date of withdrawal for such member shall be established in accordance with §§925.26(b) and (c) of this chapter, provided, however, that the applicable stock redemption periods calculated under §925.26(c) of this chapter shall commence on date the member first submitted its written notice to withdraw to the Finance Board.

(f) *Stock transactions.* The capital plan shall establish the criteria for the issuance, redemption, repurchase, transfer, and retirement of stock issued by the Bank. The capital plan also:

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(1) Shall provide that the Bank may not issue stock other than in accordance with §931.2 of this chapter;

(2) Shall provide that the stock of the Bank may be issued only to and held only by the members of that Bank;

(3) Shall specify whether the stock of the Bank may be transferred among members, and, if such transfer is allowed, shall specify the procedures that a member should follow to effect such transfer, and that the transfer shall be undertaken only in accordance with §931.6 of this chapter;

(4) Shall specify that the stock of the Bank may be traded only between the Bank and its members;

(5) May provide for a minimum investment for members that purchase Class B stock that is lower than the minimum investment for members that purchase Class A stock, provided that the level of investment is sufficient for the Bank to comply with its regulatory capital requirements;

(6) Shall specify the fee, if any, to be imposed on a member that cancels a request to redeem Bank stock; and

(7) Shall specify the period of notice that the Bank will provide to a member before the Bank, on its own initiative, determines to repurchase any excess Bank stock from a member.

(g) *Termination of membership.* The capital plan shall address the manner in which the Bank will provide for the disposition of its capital stock that is held by institutions that terminate their membership, and the manner in which the Bank will liquidate claims against its members, including claims resulting from prepayment of advances prior to their stated maturity.

(h) *Implementation.* The capital plan shall demonstrate that the Bank has made a good faith determination that the Bank will be able to implement the plan as submitted and that the Bank will be in compliance with its regulatory total capital requirement and its regulatory risk-based capital requirement after the plan is implemented.

[66 FR 8310, Jan. 30, 2001, as amended at 66 FR 54108, Oct. 26, 2001; 70 FR 9510, Feb. 28, 2005]

### § 933.3 Independent review of capital plan.

Prior to submitting its capital plan, each Bank shall conduct a review of the plan by an independent certified public accountant to ensure, to the extent possible, that the implementation of the plan would not result in any write-down of the redeemable stock owned by its members, and shall conduct a separate review by at least one NRSRO to determine, to the extent possible, whether the implementation of the plan would have a material effect on the credit rating of the Bank. The Bank shall submit a copy of each report to the Finance Board as part of its proposed capital plan.

### § 933.4 Transition provisions.

(a) The capital plan of a Bank may include a transition provision that would allow a period of time, not to exceed three years, during which the Bank shall increase its total and permanent capital to levels that are sufficient to comply with its minimum leverage capital requirement and its minimum risk-based capital requirement. The capital plan of a Bank may also include a transition provision that would allow a period of time, not to exceed three years, during which institutions that were members of the Bank on November 12, 1999, shall increase the amount of Bank stock to a level that is sufficient to comply with the minimum investment established by the capital plan. The length of the transition periods need not be identical.

(b) Any transition provision shall comply with the requirements of §931.9.

### § 933.5 Disclosure to members concerning capital plan and capital stock conversion.

(a) No capital plan shall become effective until disclosure required by paragraphs (b) and (c) of this section has been provided to members. All disclosure required under this section shall be transmitted, sent or given to members not less than 45 days and not more than 60 days prior to the opt-out date established in the Bank's capital plan in accordance with §933.2(e).

(b) The following information shall be provided to members about the Class A and/or Class B stock that a

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Bank intends to issue on the effective date of its capital plan:

(1) With regard to each class or subclass of authorized stock, a description of:

- (i) Dividend rights;
- (ii) The terms of conversion;
- (iii) Redemption and repurchase rights;
- (iv) Voting rights and preferences,
- (v) Liquidation rights; and
- (vi) Any liability to further calls or to assessments by the Banks;

(2) A description of any material differences between the securities to be converted into Class A and/or Class B stock and the Class A and/or Class B stock with regard to the rights addressed in paragraph (b)(1) of this section.

(3) A statement of the reasons for the conversion to Class A and/or Class B stock and of the general effect thereof upon the rights of existing members; and

(4) A description of any other material features concerning the Bank's initial issuance of Class A and/or Class B stock.

(c) In addition to the disclosure about Class A and/or Class B stock, the following information shall be provided to members:

(1) The Bank shall disclose financial information as follows:

(i) Audited balance sheets as of the end of the two most recent fiscal years, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being presented, and unaudited interim balance sheets and statements of income and cash flows as of and for appropriate interim dates that in form and content meet the requirements of §989.4 of this chapter;

(ii) A pro forma capitalization table that reflects the Bank's projected new capital structure relative to its actual capitalization as of the date of the latest balance sheet required to be provided to members by paragraph (c)(1)(i) of this section. The Bank shall also provide a description of any material assumptions underlying the pro forma capitalization table and the basis for these assumptions, and shall provide estimates of its risk-based capital re-

quirement, calculated in accordance with §932.3 of this chapter, and of its total capital-to-asset ratio (both of which shall be based on the same financial data used for the capitalization table), along with a discussion of material assumptions underlying these estimates and the basis for these assumptions; and

(iii) Any of the financial information required to be disclosed by paragraph (c)(1) of this section may be incorporated by reference, provided the information being incorporated is contained in an annual or quarterly Bank report prepared in accordance with §989.4 of this chapter or an annual or quarterly Bank System report, and the disclosure identifies the information being incorporated by reference;

(2) A narrative discussion of anticipated developments that could materially affect the liquidity, capital, earnings or continuing operations of the Bank, including those affecting dividends, product volumes, investment volumes, new business lines and risk profile.

(3) A description of any amendments anticipated to be made to the Bank's by-laws, policies or other governance documents as a result of the implementation of the capital plan;

(4) To the extent that such information has not been provided under paragraph (b) of this section, the Bank shall disclose information related to the capital plan as follows:

(i) A description of the minimum stock investment requirements set forth in the capital plan;

(ii) A statement outlining the requirements for amending the capital plan;

(iii) A description of any restrictions or limitations under a Bank's capital plan on a member's rights to buy, or redeem its class A or class B stock, to have such stock repurchased, or otherwise to make use of such stock to fulfill the member's minimum stock investment requirement;

(iv) A statement setting forth the opt-out date, on or before which a member's written notice to withdraw must be filed with the Finance Board (as established in accordance with §933.2(e) of this part) for the member not to have its existing Bank stock

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converted to Class A or Class B stock on the effective date of the Bank's capital plan and describing the effect on a member's effective date of withdrawal of failing to file its notice to withdraw on or before the opt-out date; and

(v) A description of a member's rights under the capital plan to have its stock redeemed or repurchased upon voluntary or involuntary termination of its membership;

(5) The Bank should state the name, address and telephone number where members may direct written or oral requests for a copy of the capital plan and any other instrument or document

that defines the rights of the member/stockholders. This information shall be provided to the members without charge; and

(6) The Bank shall provide a statement as to the anticipated accounting treatment for the transaction and the federal income tax implications of the transaction that members should consider in consultation with their own accounting and tax advisors.

(d) Nothing in this section shall create or be deemed to create any rights in any third party.

[66 FR 54109, Oct. 26, 2001]

**SUBCHAPTER F—FEDERAL HOME LOAN BANK MISSION  
[RESERVED]**

## SUBCHAPTER G—FEDERAL HOME LOAN BANK ASSETS AND OFF-BALANCE SHEET ITEMS

### PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

- Sec.  
952.1 Definitions.  
952.2 Scope.  
952.3 Purpose.  
952.4 Targeted Community Lending Plan.  
952.5 Community Investment Cash Advance Programs.  
952.6 Reporting.  
952.7 Documentation.

AUTHORITY: 12 U.S.C. 1422b(a)(1), 1430.

SOURCE: 63 FR 65546, Nov. 27, 1998, unless otherwise noted. Redesignated at 65 FR 8256, Feb. 18, 2000.

#### § 952.1 Definitions.

As used in this part:

*Champion Community* means a community which developed a strategic plan and applied for designation by either the Secretary of HUD or the Secretary of the USDA as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.

*CICA program* or *Community Investment Cash Advance program* means:

- (1) A Bank's AHP;
- (2) A Bank's CIP;
- (3) A Bank's RDF program or UDF program using any combination of the targeted beneficiaries and targeted income levels specified in §952.1 of this part; and
- (4) Any other advance or grant program offered by a Bank using targeted beneficiaries and targeted income levels other than those specified in §952.1 of this part, established by the Bank with the prior approval of the Finance Board.

*Economic development projects* means:

- (1) Commercial, industrial, manufacturing, social service, and public facility projects and activities; and
- (2) Public or private infrastructure projects, such as roads, utilities, and sewers.

*Family* means one or more persons living in the same dwelling unit.

*Housing projects* means projects or activities that involve the purchase, con-

struction, rehabilitation or refinancing (subject to §952.5(c) of this part) of, or predevelopment financing for:

- (1) Individual owner-occupied housing units, each of which is purchased or owned by a family with an income at or below the targeted income level;
- (2) Projects involving multiple units of owner-occupied housing in which at least 51% of the units are owned or are intended to be purchased by families with incomes at or below the targeted income level;
- (3) Rental housing where at least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or
- (4) Manufactured housing parks where:

- (i) At least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or
- (ii) The project is located in a neighborhood with a median income at or below the targeted income level.

*Median income for the area*—(1) *Owner-occupied housing projects and economic development projects*. For purposes of owner-occupied housing projects and economic development projects, median income for the area means one or more of the following, as determined by the Bank:

- (i) The median income for the area, as published annually by HUD;
- (ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;
- (iii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;
- (iv) The median income for the area, as published by the USDA; or
- (v) The median income for the area obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

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(2) *Rental housing projects.* For purposes of rental housing projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD; or

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

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

*MSA* means a Metropolitan Statistical Area as designated by the Office of Management and Budget.

*Neighborhood* means:

(1) A census tract or block numbering area;

(2) A unit of local government with a population of 25,000 or less;

(3) A rural county; or

(4) A geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographic designation that is within the boundary of but does not encompass the entire area of a unit of general local government.

*Provide financing* means:

(1) Originating loans;

(2) Purchasing a participation interest, or providing financing to participate, in a loan consortium for CICA-eligible housing or economic development projects;

(3) Making loans to entities that, in turn, make loans for CICA-eligible housing or economic development projects;

(4) Purchasing mortgage revenue bonds or mortgage-backed securities, where all of the loans financed by such bonds and all of the loans backing such securities, respectively, meet the eligibility requirements of the CICA program under which the member or housing associate borrower receives funding;

(5) Creating or maintaining a secondary market for loans, where all such loans are mortgage loans meeting the eligibility requirements of the CICA program under which the member

or housing associate borrower receives funding;

(6) Originating CICA-eligible loans within 3 months prior to receiving the CICA funding; and

(7) Purchasing low-income housing tax credits.

*RDF* or *Rural Development Funding program* means an advance or grant program offered by a Bank for targeted community lending in rural areas.

*Rural area* means:

(1) A unit of general local government with a population of 25,000 or less;

(2) An unincorporated area outside an MSA; or

(3) An unincorporated area within an MSA that qualifies for housing or economic development assistance from the USDA.

*Small business* means a "small business concern," as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration under 13 CFR part 121, or any successor provisions.

*Targeted beneficiaries* means beneficiaries determined by the geographical area in which a project is located (Geographically Defined Beneficiaries), by the individuals who benefit from a project as employees or service recipients (Individual Beneficiaries), or by the nature of the project itself (Activity Beneficiaries), as follows:

(1) Geographically Defined Beneficiaries:

(i) The project is located in a neighborhood with a median income at or below the targeted income level;

(ii) The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of the USDA;

(iii) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of HUD;

(iv) The project is located in an Indian area, as defined by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), Alaskan Native Village, or Native Hawaiian Home Land;

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(v) The project is located in an area and involves a property eligible for a Brownfield Tax Credit;

(vi) The project is located in an area affected by a military base closing and is a “community in the vicinity of the installation” as defined by the Department of Defense at 32 CFR part 176;

(vii) The project is located in a designated community under the Community Adjustment and Investment Program as defined under 22 U.S.C. 290m-2;

(viii) The project is located in a Federally declared disaster area; or

(ix) The project is located in a state declared disaster area, or other area that qualifies for assistance under another Federal or State targeted economic development program, approved by the Finance Board.

### (2) Individual Beneficiaries:

(i) The annual salaries for at least 51% of the permanent full- and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level; or

(ii) At least 51% of the families who otherwise benefit from (other than through employment), or are provided services by, the project have incomes at or below the targeted income level.

(3) Activity Beneficiaries: Projects that qualify as small businesses.

(4) Other Targeted Beneficiaries. A Bank may designate, with the prior approval of the Finance Board, other targeted beneficiaries for its targeted community lending.

(5) Only targeted beneficiaries identified in paragraphs (1)(i) through (1)(iv), and (2)(i) and (2)(ii) of this definition are eligible for CIP advances.

*Targeted community lending* means providing financing for economic development projects for targeted beneficiaries.

### *Targeted income level* means:

(1) For rural areas, incomes at or below 115 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;

(2) For urban areas, incomes at or below 100 percent of the median income for the area, as adjusted for family size

in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;

(3) For advances provided under CIP:

(i) For economic development projects, incomes at or below 80 percent of the median income for the area; or

(ii) For housing projects, incomes at or below 115 percent of the median income for the area, both as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four; or

(4) For advances or grants provided under any other CICA program offered by a Bank, a targeted income level established by the Bank with the prior approval of the Finance Board.

*UDF program* or *Urban Development Funding program* means an advance or grant program offered by a Bank for targeted community lending in urban areas.

### *Urban area* means:

(1) A unit of general local government with a population of more than 25,000; or

(2) An unincorporated area within an MSA that does not qualify for housing or economic development assistance from the USDA.

*USDA* means the United States Department of Agriculture.

[63 FR 65546, Nov. 27, 1998, as amended at 65 FR 8264, Feb. 18, 2000; 65 FR 44431, July 18, 2000; 66 FR 50295, Oct. 3, 2001. Redesignated and amended at 67 FR 12852, Mar. 20, 2002]

### § 952.2 Scope.

Section 10(j)(10) of the Act (12 U.S.C. 1430(j)(10)) authorizes the Banks to offer Community Investment Cash Advance (CICA) programs. This part establishes requirements for all CICA programs offered by a Bank, except for a Bank’s Affordable Housing Program (AHP), which is governed specifically by part 951 of this chapter.

[63 FR 65546, Nov. 27, 1998, as amended at 65 FR 8264, Feb. 18, 2000. Redesignated and amended at 67 FR 12852, Mar. 20, 2002]

### § 952.3 Purpose.

The purpose of this part is to identify targeted community lending projects that the Banks may support through

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the establishment of CICA programs under section 10(j)(10) of the Act (12 U.S.C. 1430(j)(10)). Pursuant to this part, a Bank may offer Rural Development Funding (RDF) or Urban Development Funding (UDF) programs, or both, for targeted community lending using the targeted beneficiaries or targeted income levels specified in § 952.1, without prior Finance Board approval. A Bank also may offer other CICA programs for targeted community lending using targeted beneficiaries and targeted income levels other than those specified in § 952.1, established by the Bank with the prior approval of the Finance Board. In addition, a Bank shall offer CICA programs under section 10(i) of the Act (12 U.S.C. 1430(i)) (Community Investment Program (CIP)) and section 10(j) of the Act (12 U.S.C. 1430(j)) (Affordable Housing Program (AHP)). A Bank may provide advances or grants under its CICA programs except for CIP programs, under which a Bank may only provide advances.

[67 FR 12852, Mar. 20, 2002]

### § 952.4 Targeted Community Lending Plan

Each Bank shall develop and adopt an annual Targeted Community Lending Plan pursuant to § 944.6 of this chapter.

[63 FR 65546, Nov. 27, 1998, as amended at 65 FR 8264, Feb. 18, 2000; 65 FR 44431, July 18, 2000]

### § 952.5 Community Investment Cash Advance Programs.

(a) *In general.* (1) Each Bank shall offer an AHP in accordance with part 951 of this chapter.

(2) Each Bank shall offer a CIP to provide financing for housing projects and for eligible targeted community lending at the appropriate targeted income levels.

(3) Each Bank may offer RDF programs or UDF programs, or both, for targeted community lending using the targeted beneficiaries or targeted income levels specified in § 952.1 of this part, without prior Finance Board approval.

(4) Each Bank may offer CICA programs for targeted community lending using targeted beneficiaries and targeted income levels other than those

specified in § 952.1 of this part, established by the Bank with the prior approval of the Finance Board.

(b) *Mixed-use projects.* (1) For projects funded under CICA programs other than CIP, involving a combination of housing projects and economic development projects, only the economic development components of the project must meet the appropriate targeted income level for the respective CICA program.

(2) For projects funded under CIP, both the housing and economic development components of the project must meet the appropriate targeted income levels.

(c) *Refinancing.* CICA funding other than AHP may be used to refinance economic development projects and housing projects, provided that any equity proceeds of the refinancing of rental housing and manufactured housing parks are used to rehabilitate the projects or to preserve affordability for current residents.

(d) *Pricing and Availability of advances—*(1) *Advances to members.* For CICA programs other than AHP and CIP, a Bank shall price advances to members as provided in § 950.5 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Act. (12 U.S.C. 1430(a)).

(2) *Pricing of CIP advances.* The price of advances made under CIP shall not exceed the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs.

(3) *Pricing of AHP advances.* A Bank shall price advances made under AHP in accordance with parts 950 and 951 of this chapter.

(4) *Advances to housing associate borrowers.* (i) A Bank may offer advances under CICA programs to housing associate borrowers at the Bank's option, except for AHP and CIP, which are available only to members.

(ii) A Bank shall price advances to housing associate borrowers as provided in § 950.17 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made

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pursuant to section 10b of the Act. (12 U.S.C. 1430b).

(5) *Pricing pass-through.* A Bank may require that borrowers receiving advances made under CICA programs pass through the benefit of any price reduction from regular advance pricing to their borrowers.

(6) *Discount Fund.* (i) A Bank may establish a Discount Fund which the Bank may use to reduce the price of CIP or other advances made under CICA programs below the advance prices provided for by this part.

(ii) Price reductions made through the Discount Fund shall be made in accordance with a fair distribution scheme.

[63 FR 65546, Nov. 27, 1998, as amended at 65 FR 8264, Feb. 18, 2000; 65 FR 44431, July 18, 2000; 66 FR 50296, Oct. 3, 2001; 67 FR 12852, Mar. 20, 2002]

## § 952.6 Reporting.

(a) By July 1, 1999, each Bank shall provide to the Finance Board an initial assessment of the credit needs and market opportunities in a Bank's district for targeted community lending.

(b) Effective in 2000, each Bank annually shall provide to the Finance Board, on or before January 31, a Targeted Community Lending Plan.

(c) Each Bank shall provide such other reports concerning its CICA programs as the Finance Board may request from time to time.

[63 FR 65546, Nov. 27, 1998. Redesignated at 65 FR 8256, Feb. 18, 2000, as amended at 65 FR 44431, July 18, 2000]

## § 952.7 Documentation.

(a) A Bank shall require the borrower to certify to the Bank that each project funded under a CICA program (other than AHP) meets the respective targeting requirements of the CICA program. Such certification shall include a description of how the project meets the requirements, and where appropriate, a statistical summary or list of incomes of the borrowers, rents for the project, or salaries of jobs created or retained.

(b) For those CICA-funded projects that also receive funds from another targeted Federal economic development program that has income targeting requirements that are the same

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as, or more restrictive than, the targeting requirements of the applicable CICA program, the Bank shall permit the borrower to certify that compliance with the criteria of such Federal economic development program will meet the requirements of the respective CICA program.

(c) Such certifications shall satisfy the Bank's obligations to document compliance with the CICA funding provisions of this part.

[63 FR 65546, Nov. 27, 1998. Redesignated at 65 FR 8256, Feb. 18, 2000, as amended at 66 FR 50296, Oct. 3, 2001]

## PART 955—ACQUIRED MEMBER ASSETS

Sec.

955.1 Definitions.

955.2 Authorization to hold acquired member assets.

955.3 Required credit-risk sharing structure.

955.4 Reporting requirements for acquired member assets.

955.5 Administrative and investment transactions between Banks.

955.6 Risk-based capital requirement for acquired member assets.

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a), 1430, 1430b, 1431.

SOURCE: 65 FR 43981, July 17, 2000, unless otherwise noted.

### § 955.1 Definitions.

As used in this part:

*Affiliate* means any business entity that controls, is controlled by, or is under common control with, a member.

*Expected losses* means the base loss scenario in the methodology of an NRSRO applicable to that type of AMA asset.

*Residential real property* has the meaning set forth in § 950.1 of this chapter.

[67 FR 12852, Mar. 20, 2002]

### § 955.2 Authorization to hold acquired member assets.

Subject to the requirements of part 980 of this chapter, each Bank may hold assets acquired from or through Bank System members or housing associates by means of either a purchase or a funding transaction (AMA), subject to each of the following requirements:

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(a) *Loan type requirement.* The assets are either:

(1) Whole loans that are eligible to secure advances under §§ 950.7(a)(1)(i), (a)(2)(ii), (a)(4), or (b)(1) of this chapter, excluding:

(i) Single-family mortgages where the loan amount exceeds the limits established pursuant to 12 U.S.C. 1717(b)(2); and

(ii) Loans made to an entity, or secured by property, not located in a state;

(2) Whole loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or

(3) State and local housing finance agency bonds;

(b) *Member or housing associate nexus requirement.* The assets are:

(1) Either:

(i) Originated or issued by, through, or on behalf of a Bank System member or housing associate, or an affiliate thereof; or

(ii) Held for a valid business purpose by a Bank System member or housing associate, or an affiliate thereof, prior to acquisition by a Bank; and

(2) Acquired either:

(i) From a member or housing associate of the acquiring Bank;

(ii) From a member or housing associate of another Bank, pursuant to an arrangement with that Bank, which, in the case of state and local finance agency bonds only, may be reached in accordance with the following process:

(A) The housing finance agency shall first offer the Bank in whose district the agency is located (local Bank) a right of first refusal to purchase, or negotiate the terms of, its proposed bond offering;

(B) If the local Bank indicates, within a three day period, that it will negotiate in good faith to purchase the bonds, the agency may not offer to sell or negotiate the terms of a purchase with another Bank; and

(C) If the local Bank declines the offer, or has failed to respond within the three day period, the acquiring Bank will be considered to have an arrangement with the local Bank for purposes of this section and may offer to buy or negotiate the terms of a bond sale with the agency;

(iii) From another Bank; and

(c) *Credit risk-sharing requirement.* The transactions through which the Bank acquires the assets either:

(1) Meet the credit risk-sharing requirements of § 955.3 of this part; or

(2) Were authorized by the Finance Board under section II.B.12 of the FMP and are within any total dollar cap established by the Finance Board at the time of such authorization.

### § 955.3 Required credit risk-sharing structure.

(a) *Determination of necessary credit enhancement.* At the earlier of 270 days from the date of the Bank's acquisition of the first loan in a pool, or the date at which the amount of a pool's assets reaches \$100 million, a Bank shall determine the total credit enhancement necessary to enhance the asset or pool of assets to a credit quality that is equivalent to that of an instrument having at least the fourth highest credit rating from an NRSRO, or such higher credit rating as the Bank may require. The Bank shall make this determination for each AMA product using a methodology that is confirmed in writing by an NRSRO to be comparable to a methodology that the NRSRO would use in determining credit enhancement levels when conducting a rating review of the asset or pool of assets in a securitization transaction.

(b) *Credit risk-sharing structure.* A Bank acquiring AMA shall implement, and have in place at all times, a credit risk-sharing structure for each AMA product under which a member or housing associate of the Bank or, with the approval of both Banks, a member or housing associate of another Bank, provides a sufficient credit enhancement from the first dollar of credit loss for each asset or pool of assets such that the acquiring Bank's exposure to credit risk for the life of the asset or pool of assets is no greater than that of an asset rated in the fourth highest credit rating category, as determined pursuant to paragraph (a) of this section, or such higher rating as the acquiring Bank may require. This credit enhancement structure shall meet the following requirements:

(1) A portion of the credit enhancement may be provided by:

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(i) Contracting with an insurance affiliate of that member or housing associate to provide an enhancement or undertaking against losses to the Bank, but only where such insurance is positioned in the credit enhancement structure so as to cover only losses remaining after the member or housing associate has borne losses as required under paragraph (b)(2) of this section;

(ii) Purchasing loan-level insurance, which may include United States government insurance or guarantee, but only where:

(A) The member or housing associate is legally obligated at all times to maintain such insurance with an insurer rated not lower than the second highest credit rating category; and

(B) Such insurance is positioned in the credit enhancement structure so as to cover only losses remaining after the member or housing associate has borne losses as required under paragraph (b)(2) of this section;

(iii) Purchasing pool-level insurance, but only where such insurance:

(A) Insures that portion of the required credit enhancement attributable to the geographic concentration and size of the pool; and

(B) Is positioned last in the credit enhancement structure so as to cover only those losses remaining after all other elements of the credit enhancement structure have been exhausted; or

(iv) Contracting with another member or housing associate in the Bank's district or in another Bank's district, pursuant to an arrangement with that Bank, to provide an enhancement or undertaking against losses to the Bank in return for some compensation;

(2) The member or housing associate that is providing the credit enhancement required under paragraph (b)(1) of this section shall in all cases bear the direct economic consequences of actual credit losses on the asset or pool of assets:

(i) From the first dollar of loss up to the amount of expected losses; or

(ii) Immediately following expected losses, but in an amount equal to or exceeding the amount of expected losses;

(3) The portion of the credit enhancement that is an obligation of a Bank System member or housing associate shall be fully secured; and

(4) The Bank shall obtain written verification from an NRSRO that concludes to the satisfaction of the Finance Board, based on the underlying economic terms of the credit enhancement structure as represented by the Bank for each AMA product, that either:

(i) The level of credit enhancement provided by the member or housing associate is generally sufficient to enhance the asset or pool of assets to a credit quality that is equivalent to that of an instrument having the fourth highest credit rating from an NRSRO, or such higher rating as the Bank may require; or

(ii) The methodology used by the Bank for estimating the level of credit enhancement provided by the member or housing associate is in accordance with the practices established by the NRSRO.

(c) *Timing of NRSRO opinions.* For AMA programs already in operation at the time of the effective date of this rule, a Bank shall have 90 days from the effective date of this rule to obtain the NRSRO verifications required under paragraphs (a) and (b)(4) of this section.

[65 FR 43981, July 17, 2000, as amended at 67 FR 12852, Mar. 20, 2002]

**§ 955.4 Reporting requirement for acquired member assets.**

Each Bank shall report information related to AMA in accordance with the instructions provided in the Data Reporting Manual issued by the Finance Board, as amended from time to time.

[71 FR 35500, June 21, 2006]

**§ 955.5 Administrative and investment transactions between Banks.**

(a) *Delegation of administrative duties.* A Bank may delegate the administration of an AMA program to another Bank whose administrative office has been examined and approved by the Finance Board to process AMA transactions. The existence of such a delegation, or the possibility that such a delegation may be made, must be disclosed to any potential participating member or housing associate as part of any AMA-related agreements are

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signed with that member or housing associate.

(b) *Terminability of Agreements.* Any agreement made between two or more Banks in connection with any AMA program shall be made terminable by either party after a reasonable notice period.

(c) *Delegation of Pricing Authority.* A Bank that has delegated its AMA pricing function to another Bank shall retain a right to refuse to acquire AMA at prices it does not consider appropriate.

**§ 955.6 Risk-based capital requirement for acquired member assets.**

(a) *General.* Each Bank shall hold retained earnings plus general allowance

for losses as support for the credit risk of all AMA estimated by the Bank to represent a credit risk that is greater than that of comparable instruments that have received the second highest credit rating from an NRSRO in an amount equal to or greater than the outstanding balance of the assets or pools of assets times a factor associated with the putative credit rating of the assets or pools of assets as determined by the Finance Board on a case-by-case basis. For single-family mortgage assets, the factors are as set forth in Table 1 of this part.

TABLE 1

Putative rating of single-family mortgage assets	Percentage applicable to on-balance sheet equivalent value of AMA
Third Highest Investment Grade .....	0.90
Fourth Highest Investment Grade .....	1.50
If Downgraded to Below Investment Grade After Acquisition By Bank:	
Highest Below Investment Grade .....	2.25
Second Highest Below Investment Grade .....	2.60
All Other Below Investment Grade .....	100.00

(b) *Recalculation of credit enhancement.* For risk-based capital purposes, each Bank shall recalculate the estimated credit rating of a pool of AMA if

there is evidence that a decline in the credit quality of that pool may have occurred.

**SUBCHAPTER H—FEDERAL HOME LOAN BANK LIABILITIES  
[RESERVED]**

## SUBCHAPTER I—MISCELLANEOUS FEDERAL HOME LOAN BANK OPERATIONS AND AUTHORITIES

### PART 975—COLLECTION, SETTLEMENT, AND PROCESSING OF PAYMENT INSTRUMENTS

Sec.

- 975.1 Definitions.
- 975.2 Authority and scope.
- 975.3 General provisions.
- 975.4 Incidental powers.
- 975.5 Operations.
- 975.6 Pricing of services.
- 975.7 Rights, powers, responsibilities, duties, and liabilities.

AUTHORITY: 12 U.S.C. 1430, 1431.

SOURCE: 45 FR 64164, Sept. 29, 1980, unless otherwise noted. Redesignated at 54 FR 36759, Sept. 5, 1989, and further redesignated at 65 FR 8256, Feb. 18, 2000.

#### §975.1 Definitions.

(a) Unless otherwise defined in this part, the terms used in this part shall conform, in the following order, to: Regulations of the Finance Board, the Uniform Commercial Code, regulations of the Federal Reserve System, and general banking usage.

(b) As used in this part:

*Account processing* includes charging, crediting, and settling of member or eligible institution accounts, excluding individual customer accounts.

*Assets* includes furniture and equipment, leasehold improvements, and capitalized start-up costs.

*Data communication* means transmitting and receiving of data to or from Banks, Federal Reserve offices, clearinghouse associations, depository institutions or their service bureaus, and other direct sending entities, arrangement for delivery of information; and telephone inquiry service.

*Data processing* includes capture, storage, and assembling of, and computation of, data from payment instruments received from Federal Reserve offices, Banks, clearinghouse associations, depository institutions, and other direct lending entities.

*Eligible institution* means any institution that is eligible to make application to become a member of a Bank under section 4 of the Act (12 U.S.C. 1424), including any building and loan

association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution (as defined in section 2(12) of the Act (12 U.S.C. 1422(12))), regardless of whether the institution applies for or would be approved for membership.

*Issuance of forms* means the designation and distribution of standardized forms for use in collection, processing, and settlement services.

*Presentment* means a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder, and may involve the use of electronic transmission of an instrument or item or transmission of data from the instrument or item by electronic or mechanical means.

*Statement packaging* includes receiving statement information from members or eligible institutions or their service bureaus on respective customer cycle dates; printing statements; matching customer account statements; packaging the statements with appropriate items and informational materials, as authorized by individual members and eligible institutions, for distribution to their customers; sending the packages to the members or eligible institutions or mailing the packages directly to their customers.

*Storage services* includes filing, storage, and truncation of items.

*Transportation of items* includes transporting items from Federal Reserve offices, other Banks' clearinghouse associations, depository institutions, and other direct sending entities to a Bank; forwarding items to financial institutions after sorting and forwarding cash items or return items to Federal Reserve offices and other sending entities.

[67 FR 12854, Mar. 20, 2002]

#### §975.2 Authority and scope.

(a) Pursuant to section 11(e)(2) of the Act (12 U.S.C. 1431(e)(2)), the Finance Board has promulgated this part governing the collection, processing, and settlement, and services incidental

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thereto, of drafts, checks, and other negotiable and nonnegotiable items and instruments by Banks. Settlement, collection, and processing include the following activities as defined in this part: Account processing, data processing, data communication, issuance of forms, transportation of items, and storage services.

(b) Any activity authorized by section 11(e)(2) of the Act (12 U.S.C. 1431(e)(2)) shall be governed by the provisions of this part.

[45 FR 64164, Sept. 5, 1989, as amended at 65 FR 8266, Feb. 18, 2000. Redesignated and amended at 67 FR 12854, Mar. 20, 2002]

### §975.3 General provisions.

The Banks are authorized to:

(a) Engage in, be agents or intermediaries for, or otherwise participate or assist in, the processing, collection, and settlement of checks, drafts, or any other negotiable or nonnegotiable items and instruments of payment drawn on eligible institutions or Bank members; and

(b) Be drawees of checks, drafts, and other negotiable and nonnegotiable items and instruments issued by eligible institutions or Bank members.

[67 FR 12854, Mar. 20, 2002]

### §975.4 Incidental powers.

In connection with the collection, processing, and settlement of items and instruments drawn on or issued by eligible institutions or Bank members, a Bank may also perform the following services:

(a) Statement packaging; and

(b) Any other activity that the Finance Board shall, from time to time, after notice and comment, find necessary for the exercise of the authority of this part.

[45 FR 64164, Sept. 29, 1980, as amended at 55 FR 2231, Jan. 23, 1990; 65 FR 8266, Feb. 18, 2000; 67 FR 12854, Mar. 20, 2002]

### §975.5 Operations.

A Bank may utilize the services of a Federal Reserve Bank and may become a member or use the services of a clearinghouse, public or private financial institution, or agency in the exercise of

any powers or functions under this part.

[45 FR 64164, Sept. 5, 1989, as amended at 65 FR 8266, Feb. 18, 2000]

### §975.6 Pricing of services.

(a) *General.* Banks shall charge for services authorized in this part in a manner consistent with the principles of section 11(A)(c) of the Federal Reserve Act (12 U.S.C. 248a(c)), as interpreted by this part.

(b) *Payment instrument account services.* (1) In determining the fees for services provided under this part, a Bank must take into account all direct and indirect costs of providing the services.

(2) Prices must reflect the imputed rate of return that would have been earned and the taxes that would have been paid if the Bank were a private corporation, by using a cost of capital adjustment factor applied to those assets used in providing services authorized under this part.

(c) *Review and publication.* The Finance Board shall from time to time and at least annually review the cost of capital adjustment factor and review prices for services authorized in this part for compliance with the principles set forth in paragraphs (a) and (b) of this section. All prices for Bank services authorized in this part will be published annually in the FEDERAL REGISTER, except those for fees charged to an applicant for draws made by a beneficiary under a standby letter of credit.

(12 U.S.C. 1431(e); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

[45 FR 64164, Sept. 29, 1980, as amended at 46 FR 38900, July 30, 1981. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 58 FR 59936, Nov. 12, 1993; 60 FR 57682, Nov. 17, 1995; 63 FR 65700, Nov. 30, 1998; 65 FR 8266, Feb. 18, 2000]

### §975.7 Rights, powers, responsibilities, duties, and liabilities.

To the extent it is not inconsistent with other provisions of this part, the Uniform Commercial Code governs the rights, powers, responsibilities, duties, and liabilities of Banks in the exercise of their authority under this part. For purposes of this paragraph, the term "bank," as used in the Uniform Commercial Code and clearinghouse rules,

includes Banks and their members and eligible institutions.

[45 FR 64164, Sept. 5, 1989, as amended at 65 FR 8266, Feb. 18, 2000]

## PART 977—MISCELLANEOUS BANK AUTHORITIES

Sec.

977.1 Definitions. [Reserved]

977.2 Transfer of funds between Banks.

977.3 Trustee powers.

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1431(a), 1431(e), 1432(a).

SOURCE: 65 FR 8266, Feb. 18, 2000, unless otherwise noted.

### § 977.1 Definitions. [Reserved]

### § 977.2 Transfer of funds between Banks.

Inter-Bank borrowing shall be through unsecured deposits bearing interest at rates negotiated between Banks.

### § 977.3 Trustee powers.

A Bank may act, and make reasonable charges for doing so, as trustee of any trust affecting the business of any member or any institution or group applying for membership or for insurance of accounts, or any group applying for a charter for a Federal Savings Association, if:

(a) Such trust is created or arises for the benefit of the institution or its depositors, investors, or borrowers, or for the promotion of sound and economical home financing; and

(b) In the case of applicants, the Bank ceases to act as trustee if the application is withdrawn or rejected.

## PART 978—BANK REQUESTS FOR INFORMATION

Sec.

978.1 Definitions.

978.2 Scope.

978.3 Request for confidential information.

978.4 Form of request.

978.5 Storage of confidential information.

978.6 Access to confidential information.

978.7 Third party requests for confidential information.

978.8 Computer data.

AUTHORITY: 12 U.S.C. 1422b(a), 1442.

SOURCE: 65 FR 8266, Feb. 18, 2000, unless otherwise noted.

### § 978.1 Definitions.

As used in this part:

*Confidential information* means any record, data, or report, including but not limited to examination reports, or any part thereof, that is non-public, privileged or otherwise not intended for public disclosure which is in the possession or control of a financial regulatory agency and which contains information regarding members of a Bank or financial institutions with which a Bank has had or contemplates having transactions under the Act.

*Financial regulatory agency* means any of the following:

(1) The Department of the Treasury, including either the OCC or the OTS;

(2) The FRB;

(3) The NCUA; or

(4) The FDIC.

*Third party* means any person or entity except a director, officer, employee or agent of either:

(1) A Bank in possession of any particular confidential information; or

(2) The financial regulatory agency that supplied the particular confidential information to such Bank.

[65 FR 8266, Feb. 18, 2000, as amended at 67 FR 12854, Mar. 20, 2002]

### § 978.2 Scope.

This part governs the procedure by which a Bank will request and receive confidential information pursuant to section 22 of the Act (12 U.S.C. 1442).

[65 FR 8266, Feb. 18, 2000, as amended at 67 FR 12854, Mar. 20, 2002]

### § 978.3 Request for confidential information.

A Bank shall make all requests for confidential information to a financial regulatory agency, or to a regional office of such agency if mutually agreeable, in accordance with the procedures contained in this part as well as any procedures of general applicability for requesting information promulgated by such financial regulatory agency. This part and its procedures may be supplemented by a confidentiality agreement between a Bank and a financial regulatory agency.

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### § 978.4 Form of request.

A request by a Bank to a financial regulatory agency for confidential information shall be made in writing or by such other means as may be agreed upon between the Bank and the financial regulatory agency. The request shall reference section 22 of the Act (12 U.S.C. 1442), as amended, and this regulation, and shall describe the confidential information requested and identify its intended use pursuant to the Act. The request shall be signed or otherwise made by any duly authorized Bank officer or employee.

[65 FR 8266, Feb. 18, 2000, as amended at 67 FR 12854, Mar. 20, 2002]

### § 978.5 Storage of confidential information.

Each Bank shall:

(a) Store all identified confidential information in secure storage areas or filing cabinets or other secured facilities generally used by such Bank and limit access thereto in the same manner as it maintains the confidentiality of its own members' privileged or non-public information;

(b) Have in place a written set of procedures and policies designed to ensure the confidentiality of confidential information in its possession; and

(c) Establish an internal review of its procedures for storing confidential information and maintaining its confidentiality, as a part of its internal audit process.

### § 978.6 Access to confidential information.

Each Bank shall ensure that access to the confidential information stored at its facility is limited to those with a need to know such information and that employees with access maintain the confidentiality of the confidential information in accordance with the Bank's own procedures for maintaining the confidentiality of its members' privileged or non-public information.

### § 978.7 Third party requests for confidential information.

(a) *General.* In the event a Bank receives a request for confidential information in its possession from any third party, the Bank shall forward such re-

quest to the financial regulatory agency from which the confidential information was obtained.

(b) *Subpoena.* In the event a Bank receives a subpoena for confidential information issued by a Federal, state or local government department, agency, court or bureau, the Bank shall give timely written notice of such subpoena to the financial regulatory agency from which the confidential information was obtained, unless such notice is prohibited by applicable law. Except as limited in this part, the Bank may disclose confidential information pursuant to the subpoena, after giving timely written notice, when:

(1) The financial regulatory agency gives written approval to the disclosure; or

(2) A binding order to produce the confidential information has become final with all rights of appeal either exhausted or lapsed.

(c) *Nondisclosure to third parties.* Except as provided in paragraph (b) of this section, a Bank shall not disclose confidential information to any third party. A Bank shall refer all third party requests for such confidential information to the financial regulatory agency that released the confidential information to the Bank.

(d) *Disclosure to Finance Board.* (1) Neither this part nor any confidentiality agreement executed between a Bank and a financial regulatory agency shall prevent a Bank from disclosing confidential information in its possession to the Finance Board whenever disclosure is necessary to accomplish the Finance Board's supervision of Bank membership applications or Bank director eligibility issues, or disclosing any confidential information in its possession if such disclosure is made pursuant to an audit conducted pursuant to § 978.5 or section 20 of the Act (12 U.S.C. 1440).

(2) The Finance Board shall keep all confidential information received under paragraph (d) of this section in strict confidence.

[65 FR 8266, Feb. 18, 2000, as amended at 67 FR 12854, Mar. 20, 2002]

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**§ 978.8 Computer data.**

Nothing in this part shall preclude a Bank from arranging with any financial regulatory agency to transmit or allow access to confidential information with the consent of such agency by means of an electronic computer

system. Any such arrangement shall ensure the security of the computerized data stored in a Bank's computer and restrict access to such data in order to preserve confidentiality in a manner agreed upon by the Bank and the financial regulatory agency.

**SUBCHAPTER J—NEW FEDERAL HOME LOAN BANK  
ACTIVITIES [RESERVED]  
SUBCHAPTER K—OFFICE OF FINANCE [RESERVED]**

## SUBCHAPTER L—NON-BANK SYSTEM ENTITIES

### PART 995—FINANCING CORPORATION OPERATIONS

- Sec.  
995.1 Definitions.  
995.2 General authority.  
995.3 Authority to establish investment policies and procedures.  
995.4 Book-entry procedure for Financing Corporation obligations.  
995.5 Bank and Office of Finance employees.  
995.6 Budget and expenses.  
995.7 Administrative expenses.  
995.8 Non-administrative expenses; assessments.  
995.9 Reports to the Finance Board.  
995.10 Review of books and records.

AUTHORITY: 12 U.S.C. 1441(b)(8), (c), (j).

SOURCE: 62 FR 50248, Sept. 25, 1997, unless otherwise noted. Redesignated at 65 FR 8256, Feb. 18, 2000.

#### § 995.1 Definitions.

As used in this part:

*Administrative expenses:*

(1) Include general office and operating expenses such as telephone and photocopy charges, printing, legal, and professional fees, postage, courier services, and office supplies; and

(2) Do not include any form of employee compensation, custodian fees, issuance costs, or any interest on (and any redemption premium with respect to) any Financing Corporation obligations.

*BIF-assessable deposit* means a deposit that is subject to assessment for purposes of the Bank Insurance Fund under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), including a deposit that is treated as a deposit insured by the Bank Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)).

*Custodian fees* means any fee incurred by the Financing Corporation in connection with the transfer of any security to, or maintenance of any security in, the segregated account established under section 21(g)(2) of the Act (12 U.S.C. 1441(g)(2)), and any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

*Directorate* means the board established under section 21(b) of the Act (12 U.S.C. 1441(b)) to manage the Financing Corporation.

*Exit fees* means the amounts paid under sections 5(d)(2)(E) and (F) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(E) and (F)), and regulations promulgated thereunder (12 CFR part 312).

*Insured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

*Issuance costs* means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of Financing Corporation obligations, including legal and accounting expenses, trustee, fiscal, and paying agent charges, securities processing charges, joint collection agent charges, advertising expenses, and costs incurred in connection with preparing and printing offering materials to the extent the Financing Corporation incurs such costs in connection with issuing any obligations.

*Non-administrative expenses* means custodian fees, issuance costs, and interest on Financing Corporation obligations.

*Obligations* means debentures, bonds, and similar debt securities issued by the Financing Corporation under sections 21(c)(3) and (e) of the Act (12 U.S.C. 1421(c)(3) and (e)).

*Receivership proceeds* means the liquidating dividends and payments made on claims received by the Federal Savings and Loan Insurance Corporation Resolution Funding Fund established under section 11A of the Federal Deposit Insurance Act (12 U.S.C. 1821a) from receiverships, that are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal Fund established under section 21B of the Act (12 U.S.C. 1441b).

*SAIF-assessable deposit* means a deposit that is subject to assessment for

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purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act, including a deposit that is treated as a deposit insured by the Savings Association Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)).

[67 FR 12855, Mar. 20, 2002]

### § 995.2 General authority.

Subject to the limitations and interpretations in this part and such orders and directions as the Finance Board may prescribe, the Financing Corporation shall have authority to exercise all powers and authorities granted to it by the Act and by its charter and by-laws regardless of whether the powers and authorities are specifically implemented in regulation.

### § 995.3 Authority to establish investment policies and procedures.

The Directorate shall have authority to establish investment policies and procedures with respect to Financing Corporation funds provided that the investment policies and procedures are consistent with the requirements of section 21(g) of the Act (12 U.S.C. 1441(g)). The Directorate shall promptly notify the Finance Board in writing of any changes to the investment policies and procedures.

[62 FR 50248, Sept. 25, 1997. Redesignated at 65 FR 8256, Feb. 18, 2000, as amended at 67 FR 12855, Mar. 20, 2002]

### § 995.4 Book-entry procedure for Financing Corporation obligations.

(a) *Authority.* Any Federal Reserve Bank shall have authority to apply book-entry procedure to Financing Corporation obligations.

(b) *Procedure.* The book-entry procedure for Financing Corporation obligations shall be governed by the book-entry procedure established for Bank consolidated obligations, codified at part 987 of this chapter. Wherever the terms “Bank(s),” “consolidated obligation(s)” or “Book-entry consolidated obligation(s)” appear in part 987, the terms shall be construed also to mean “Financing Corporation,” “Financing Corporation obligation(s),” or “Book-entry Financing Corporation obliga-

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tion(s),” respectively, if appropriate to accomplish the purposes of this section.

[62 FR 50248, Sept. 25, 1997, as amended at 65 FR 8268, Feb. 18, 2000; 67 FR 12855, Mar. 20, 2002]

### § 995.5 Bank and Office of Finance employees.

Without further approval of the Finance Board, the Financing Corporation shall have authority to utilize the officers, employees, or agents of any Bank or the Office of Finance in such manner as may be necessary to carry out its functions.

### § 995.6 Budget and expenses.

(a) *Directorate approval.* The Financing Corporation shall submit annually to the Directorate for approval, a budget of proposed expenditures for the next calendar year that includes administrative and non-administrative expenses.

(b) *Finance Board approval.* The Directorate shall submit annually to the Finance Board for approval, the budget of the Financing Corporation’s proposed expenditures it approved pursuant to paragraph (a) of this section.

(c) *Spending limitation.* The Financing Corporation shall not exceed the amount provided for in the annual budget approved by the Finance Board pursuant to paragraph (b) of this section, or as it may be amended by the Directorate within limits set by the Finance Board.

(d) *Amended budgets.* Whenever the Financing Corporation projects or anticipates that it will incur expenditures, other than interest on Financing Corporation obligations, that exceed the amount provided for in the annual budget approved by the Finance Board or the Directorate pursuant to paragraph (b) or (c) of this section, the Financing Corporation shall submit an amended annual budget to the Directorate for approval, and the Directorate shall submit such amended budget to the Finance Board for approval.

### § 995.7 Administrative expenses.

(a) *Payment by Banks.* The Banks shall pay all administrative expenses

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of the Financing Corporation approved pursuant to § 995.6.

(b) *Amount.* The Financing Corporation shall determine the amount of administrative expenses each Bank shall pay in the manner provided by section 21(b)(7)(B) of the Act (12 U.S.C. 1441(b)(7)(B)). The Financing Corporation shall bill each Bank for such amount periodically.

(c) *Adjustments.* The Financing Corporation shall adjust the amount of administrative expenses the Banks are required to pay in any calendar year pursuant to paragraphs (a) and (b) of this section, by deducting any funds that remain from the amount paid by the Banks for administrative expenses in the prior calendar year.

[62 FR 50248, Sept. 25, 1997, as amended at 65 FR 8268, Feb. 18, 2000; 67 FR 12856, Mar. 20, 2002]

### § 995.8 Non-administrative expenses; assessments.

(a) *Interest expenses.* The Financing Corporation shall determine anticipated interest expenses on its obligations at least semiannually.

(b) *Assessments on insured depository institutions—(1) Authority.* To provide sufficient funds to pay the non-administrative expenses of the Financing Corporation approved under § 995.6, the Financing Corporation shall, with the approval of the board of directors of the FDIC, assess against each insured depository institution an assessment in the same manner as assessments are made by the FDIC under section 7 of the Federal Deposit Insurance Act.

(2) *Assessment rate—(i) Determination.* The Financing Corporation at least semiannually shall establish an assessment rate formula, which may include rounding methodology, to determine the rate or rates of the assessment it will assess against insured depository institutions pursuant to section 21(f)(2) of the Act (12 U.S.C. 1441(f)(2)) and paragraph (b)(1) of this section.

(ii) *Limitation.* Until the earlier of December 31, 1999, or the date as of which the last savings association ceases to exist, the rate of the assessment imposed on an insured depository institution with respect to any BIF-assessable deposit shall be a rate equal to 1/2 of the rate of the assessment imposed on an

insured depository institution with respect to any SAIF-assessable deposit.

(iii) *Notice.* The Financing Corporation shall notify the FDIC and the collection agent, if any, of the formula established under paragraph (b)(2)(i) of this section.

(3) *Collecting assessments—(i) Collection agent.* The Financing Corporation shall have authority to collect assessments made under section 21(f)(2) of the Act (12 U.S.C. 1441(f)(2)) and paragraph (b)(1) of this section through a collection agent of its choosing.

(ii) *Accounts.* Each Bank shall permit any insured depository institution whose principal place of business is in its district to establish and maintain at least one demand deposit account to facilitate collection of the assessments made under section 21(f)(2) of the Act (12 U.S.C. 1441(f)(2)) and paragraph (b)(1) of this section.

(c) *Receivership proceeds—(1) Authority.* To the extent the amounts collected under paragraph (b) of this section are insufficient to pay the non-administrative expenses of the Financing Corporation approved under § 995.6, the Financing Corporation shall have authority to require the FDIC to transfer receivership proceeds to the Financing Corporation in accordance with section 21(f)(3) of the Act (12 U.S.C. 1441(f)(3)).

(2) *Procedure.* The Directorate shall request in writing that the FDIC transfer the receivership proceeds to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the non-administrative expenses of the Financing Corporation approved under § 995.6.

(d) *Exit fees—(1) Authority.* To the extent the amounts provided under paragraphs (b) and (c) of this section are insufficient to pay the interest due on Financing Corporation obligations, the Financing Corporation shall have authority to request that the Secretary of the Treasury order the transfer of exit fees to the Financing Corporation in accordance with section 5(d)(2)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(E)) or as otherwise may be provided for by statute.

(2) *Procedure.* The Directorate shall request in writing that the Secretary of the Treasury order that exit fees be

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transferred to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the interest due on Financing Corporation obligations.

[62 FR 50248, Sept. 25, 1997, as amended at 65 FR 8268, 8269, Feb. 18, 2000; 67 FR 12856, Mar. 20, 2002]

### § 995.9 Reports to the Finance Board.

The Financing Corporation shall file such reports as the Finance Board shall direct.

### § 995.10 Review of books and records.

The Finance Board shall examine the Financing Corporation at least annually to determine whether the Financing Corporation is performing its functions in accordance with the requirements of section 21 of the Act (12 U.S.C. 1441) and this part.

[62 FR 50248, Sept. 25, 1997. Redesignated at 65 FR 8256, Feb. 18, 2000, as amended at 67 FR 12856, Mar. 20, 2002]

## PART 996—AUTHORITY FOR BANK ASSISTANCE OF THE RESOLUTION FUNDING CORPORATION

- Sec.  
996.1 [Reserved]  
996.2 Bank employees.  
996.3 Demand deposit accounts.

AUTHORITY: 12 U.S.C. 1422a, 1422b.

### § 996.1 [Reserved]

### § 996.2 Bank employees.

Upon the request of the Directorate of the Resolution Funding Corporation, established pursuant to section 21B(b) of the Act (12 U.S.C. 1441b(b)), officers, employees, or agents of the Banks are authorized to act for and on behalf of the Resolution Funding Corporation in such manner as may be necessary to carry out the functions of the Resolution Funding Corporation as provided in section 21B(c)(6)(B) of the Act (12 U.S.C. 1441b(c)(6)(B)).

[54 FR 39729, Sept. 28, 1989, as amended at 65 FR 8269, Feb. 18, 2000. Redesignated and amended at 67 FR 12856, Mar. 20, 2002]

### § 996.3 Demand deposit accounts.

Each Bank shall allow any Savings Association Insurance Fund member

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whose principal place of business is in its district to establish and maintain at least one demand deposit account for the purpose of facilitating the Resolution Funding Corporation's assessments pursuant to section 21B(e)(7) of the Act (12 U.S.C. 1441b(e)(7)).

[54 FR 39729, Sept. 28, 1989, as amended at 65 FR 8269, Feb. 18, 2000. Redesignated and amended at 67 FR 12856, Mar. 20, 2002]

## PART 997—RESOLUTION FUNDING CORPORATION OBLIGATIONS OF THE BANKS

- Sec.  
997.1 Definitions.  
997.2 Reduction of the payment term.  
997.3 Extension of the payment term.  
997.4 Calculation of the quarterly present-value determination.  
997.5 Termination of the obligation.

AUTHORITY: 12 U.S.C. 1422b(a) and 1441b(f).

SOURCE: 65 FR 17438, Apr. 3, 2000, unless otherwise noted.

EFFECTIVE DATE NOTE: At 76 FR 74649, Dec. 1, 2011, part 997 was removed, effective January 3, 2012.

### § 997.1 Definitions.

As used in this part:

*Actual quarterly payment* means the quarterly amount paid by the Banks to fulfill the Banks' obligation to pay toward interest owed on bonds issued by the REFCORP. The amount will equal the aggregate of 20 percent of the quarterly net earnings of each Bank, or such other amount assessed in accordance with the Act and the regulations adopted thereunder.

*Benchmark quarterly payment* means \$75 million, or such amount that may result from adjustments required by calculations made in accordance with §§ 997.2 and 997.3.

*Current benchmark quarterly payment* means the benchmark quarterly payment that corresponds to the date of the actual quarterly payment.

*Deficit quarterly payment* means the amount by which the actual quarterly payment falls short of the current benchmark quarterly payment.

*Estimated interest rate* means the interest rate provided to the Finance Board by the Department of the Treasury on a zero-coupon Treasury bond, the maturity of which is the same as

the date of the benchmark quarterly payment that is being defeased, or if no bond matures on that date, then is the date closest to the date of the payment being defeased.

*Excess quarterly payment* means the amount by which the actual quarterly payment exceeds the current benchmark quarterly payment.

*Quarterly present-value determination* means the quarterly calculation that will determine the extent to which an excess quarterly payment or deficit quarterly payment alters the term of the Banks' obligation to the REFCORP. This determination will fulfill the requirements of 21B(f)(2)(C)(ii) of the Act (12 U.S.C 1441b(f)(2)(C)(ii), *as amended by* Pub. L. 106-102, sec. 607, 113 Stat.1456-57.

[65 FR 17438, Apr. 3, 2000, as amended at 67 FR 12856, Mar. 20, 2002]

#### § 997.2 Reduction of the payment term.

(a) *Generally*. The Finance Board shall shorten the term of the obligation of the Banks to make payments toward the interest owed on bonds issued by the REFCORP for each quarter in which there is an excess quarterly payment.

(b) *Excess quarterly payment*. Where there is an excess quarterly payment, the quarterly present-value determination shall be as follows:

(1) The future value of the excess quarterly payment shall be calculated using the estimated interest rate corresponding to the last non-defeased benchmark quarterly payment.

(2) The future value calculated in paragraph (b)(1) of this section shall be subtracted from the amount of the last non-defeased quarterly benchmark payment.

(3) If the difference resulting from the calculation in paragraph (b)(2) of this section is greater than zero, then the last non-defeased quarterly benchmark payment is reduced by the future value of the excess quarterly payment.

(4) If the difference resulting from the calculation in paragraph (b)(2) of this section is less than zero, then the last non-defeased quarterly benchmark payment shall be defeased and the payment term shall be shortened.

(5) The amount of the excess quarterly payment that has not already

been applied to defeasing the payment under paragraph (b)(4) of this section shall be applied toward defeasing the last non-defeased quarterly benchmark payment using the applicable estimated interest rate.

#### § 997.3 Extension of the payment term.

(a) *Generally*. The Finance Board will extend the term of the obligation of the Banks to make payments toward interest owed on bonds issued by the REFCORP for each calendar quarter in which there is a deficit quarterly payment.

(b) *Deficit quarterly payment*. Where there is a deficit quarterly payment, the quarterly present-value determination shall be as follows:

(1) The future value of the deficit quarterly payment shall be calculated using the estimated interest rate corresponding to the last non-defeased benchmark quarterly payment, or to the first quarter thereafter if the last non-defeased benchmark quarterly payment already equals \$75 million.

(2) The future value calculated in paragraph (b)(1) of this section shall be added to the amount of the last non-defeased quarterly benchmark payment if that sum is \$75 million or less.

(3) If the sum calculated in paragraph (b)(2) of this section exceeds \$75 million, the last non-defeased quarterly benchmark payment will become \$75 million, and the quarterly benchmark payment term will be extended.

(4) The extended payment will equal the future value of the amount of the deficit quarterly payment that has not already been applied to raising the quarterly benchmark payment to \$75 million under paragraph (b)(3) of this section, using the estimated interest rate corresponding to the date of the extended benchmark quarterly payment.

(c) *Term beyond maturity*. The benchmark quarterly payment term may be extended beyond April 15, 2030, if such extension is necessary to ensure that the value of the aggregate amounts paid by the Banks exactly equals the present value of an annuity of \$300 million per year that commences on the date on which the first obligation of the REFCORP was issued and ends on April 15, 2030.

## § 997.4

### § 997.4 Calculation of the quarterly present-value determination.

(a) *Applicable interest rates.* The Finance Board shall obtain from the Department of the Treasury the applicable estimated interest rates and provide those rates to the REFCORP so that the REFCORP can perform the calculations required under §§ 997.2 and 997.3.

(b) *Calculation by the Finance Board.* If § 997.3 requires that the term for the Banks' actual quarterly payments extend beyond April 15, 2030 or if, for any reason, the REFCORP is unable to perform the calculations or to provide the Finance Board with the results of the calculations, the Finance Board shall make all calculations required under this part.

(c) *Records.* The Finance Board will maintain the official record of the results of all quarterly present-value determinations made under this part.

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### § 997.5 Termination of the obligation.

(a) *Generally.* The Banks' obligation to the REFCORP, or to the Department of the Treasury if the term of that obligation extends beyond April 15, 2030, will terminate when the aggregate actual quarterly payments made by the Banks exactly equal the present value of an annuity of \$300 million per year that commences on the date on which the first obligation of the REFCORP was issued and ends on April 15, 2030.

(b) *Date of the final payment.* The aggregate actual quarterly payments made by the Banks exactly equal the present value of the annuity described in paragraph (a) of this section when the value of any remaining benchmark quarterly payment(s), after the benchmark quarterly payments have been adjusted as required by §§ 997.2 and 997.3, exactly equals the actual quarterly payment.

[65 FR 17438, Apr. 3, 2000, as amended at 65 FR 40492, June 30, 2000]

## SUBCHAPTER M—FEDERAL HOME LOAN BANK DISCLOSURES

### PART 998—REGISTRATION OF FEDERAL HOME LOAN BANK EQUITY SECURITIES

Sec.

998.1 Purpose.

998.2 Registration and periodic disclosures.

998.3 Reservation of authority.

AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422b(a)(1).

SOURCE: 69 FR 38811, June 29, 2004, unless otherwise noted.

#### § 998.1 Purpose.

The purposes of this part are to enhance the quality of the financial disclosures provided by each Bank, to promote a greater degree of consistency and uniformity of such disclosures from Bank to Bank, to provide a greater degree of transparency regarding the financial condition of each Bank, and to conform the disclosure practices of the Banks to those of other financial institutions who raise funds in the global debt markets.

#### § 998.2 Registration and periodic disclosures.

(a) *Registration.* (1) Each Bank shall file a registration statement by no later than June 30, 2005 to register a class of its equity securities pursuant to the provisions of section 12(g)(1) of the 1934 Act. Each Bank shall ensure that its registration statement becomes effective as provided in section 12 no later than August 29, 2005.

(2) Notwithstanding paragraph (a)(1) of this section, the Finance Board may by order extend the registration date for one or more Banks if it determines, based on factors presented in a written

request to the Finance Board, that good cause exists to do so.

(b) *Periodic disclosures.* Consistent with the registration required pursuant to paragraph (a) of this section, each Bank, after registering a class of equity securities with the SEC, shall comply with the periodic disclosure requirements of the 1934 Act by preparing and filing with the SEC such annual, quarterly, and current reports, as well as any other materials required pursuant to SEC rules, regulations, or interpretations, including those related to audited financial statements, as may be required by the SEC under the 1934 Act.

(c) *Submission to Finance Board.* Unless otherwise directed by the Finance Board, each Bank shall provide to the Finance Board on a concurrent basis copies of all disclosure documents filed with the SEC.

#### § 998.3 Reservation of authority.

The requirements of this part do not diminish, or otherwise restrict the ability of the Finance Board to exercise, any and all authority conferred by the Bank Act to ensure that the Banks operate in a financially safe and sound manner, that they carry out their housing finance mission, and that they remain adequately capitalized and able to raise funds in the capital markets. Nor do the requirements of part 998 diminish or otherwise restrict the Finance Board's authority to supervise the Banks, to conduct examinations, to require reports and other disclosures, and to enforce compliance with applicable laws, rules, orders or agreements.