

By order of the Board of Governors of the Federal Reserve System, September 19, 2008.

Jennifer J. Johnson,

Secretary of the Board.

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 915

### FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1261

RIN 2590-AA03

### Federal Home Loan Bank Boards of Directors: Eligibility and Elections

**AGENCIES:** Federal Housing Finance Board; Federal Housing Finance Agency.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing and seeking comment on an interim final regulation to implement section 1202 of the Housing and Economic Recovery Act of 2008, which revises section 7 of the Federal Home Loan Bank Act (Bank Act). Section 7 governs the eligibility and election of individuals to serve on the boards of directors of the 12 Federal Home Loan Banks (Banks).

**DATES:** This interim final rule is effective on September 26, 2008. The FHFA will accept written comments on the interim final rule on or before November 25, 2008.

**ADDRESSES:** Submit comments to the FHFA using any *one* of the following methods:

E-mail: [comments@fhfb.gov](mailto:comments@fhfb.gov). Please include RIN 2590-AA03 in the subject line of the message.

Fax: 202-408-2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1625 Eye Street, NW., Washington DC 20006, Attention: Public Comments/RIN 2590-AA03.

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the FHFA at [comments@fhfb.gov](mailto:comments@fhfb.gov) to ensure timely receipt by the FHFA. Include the following information in the subject line of your submission: Federal Housing Finance Agency. Interim Final Rule: Federal Home Loan Bank Boards of Directors: Eligibility and Elections. RIN Number 2590-AA03.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at <http://www.fhfb.gov/Default.aspx?Page=93&Top=93>.

#### FOR FURTHER INFORMATION CONTACT:

Thomas P. Jennings, Senior Attorney Advisor (FHFB), [jennings@fhfb.gov](mailto:jennings@fhfb.gov), (202) 408-2553; or Patricia L. Sweeney, Management Analyst (FHFB), [sweeney@fhfb.gov](mailto:sweeney@fhfb.gov) or (202) 408-2872. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington DC 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory and Regulatory Background

Effective July 30, 2008, the Federal Housing Finance Regulatory Reform Act of 2008 (Act), Division A of the Housing and Economic Recovery Act of 2008, Public Law No. 110-289, 122 Stat. 2654 (2008), transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board over the Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), and the Banks to a new independent executive branch agency known as the Federal Housing Finance Agency (FHFA). The FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including being capitalized adequately, and carry out their public policy missions, including fostering liquid, efficient, competitive, and resilient national housing finance markets. The Enterprises and the Banks continue to operate under regulations promulgated by OFHEO and the FHFB until the FHFA issues its own regulations.

Section 1101 of the Act revised section 7 of the Bank Act. 12 U.S.C. 1427. The FHFB regulation implementing section 7 is codified at 12 CFR part 915. Part 915 governed the nomination and election only of those directors who are chosen from among the officers and directors of members of the Banks, which this interim final rule refers to as member directors. The Act amended section 7(b) of the Bank Act, 12 U.S.C. 1427(b), to give the members the right to also elect all of the other directors on the boards of directors of the Banks, which other directors are referred to in this interim final rule as independent directors. The FHFA has kept the basic process of elections that exists in part 915 as it applies to member directorships, making changes as necessary to comply with the

amendments to section 7 of the Bank Act. The FHFA has added provisions to govern the process for nominating individuals for independent directorships and for conducting the election of independent directors in conjunction with the election of member directors. The organizational structure of part 915 also has been revised.

Section 1201 of the Act (*codified at* 12 U.S.C. 4513(f)) requires the Director of the FHFA to consider the differences between the Banks and the Enterprises in rulemakings that affect the Banks with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability. In preparing the interim final rule, the Director considered these factors and determined that the rule is appropriate, particularly because this interim final rule implements a statutory provision of the Bank Act that applies only to the Banks. *See* 12 U.S.C. 1427.

##### II. Description of the Interim Final Rule

The interim final regulation removes part 915 of the FHFB regulations and establishes part 1261 of the FHFA regulations, which will contain the rules governing the eligibility and election of Bank directors. The name of new part 1261 will read "Federal Home Loan Bank Director Eligibility and Elections."

###### A. Definitions: Section 1261.1

The FHFA has made technical changes to the definitions of "bona fide resident," "guaranteed directorship," "stock directorship," and "voting state," but their meanings remain the same as they were in part 915. The meaning of "record date" has not changed. The identification number for the Banks is the same, except that it is now the number assigned by the FHFA.

The Act's amendments to section 7 of the Bank Act, 12 U.S.C. 1427, divide the directorships of the Banks into two categories—member directorships and independent directorships. Both types of directorships are filled by a vote of the members; however, elections for member directors are held on a state-by-state basis, whereas independent directors are elected at large by all the members of a Bank without regard to whether the members located in a particular voting state may be voting on member directors in any particular year. The definitions of "independent directorship" and "member directorship" reflect that difference.

The definitions of "guaranteed directorship" and "stock directorship"

reflect that there are two categories of member directorships, because section 7(c) of the Bank Act, 12 U.S.C. 1417(c), guarantees that directorships from members located in some states will be no fewer than the number that existed on December 31, 1960, regardless of the amount of voting stock located in those states. The definition of "public interest directorship" reflects the statutory criteria that an independent director must have in order to receive this designation.

Section 7(c) of the Bank Act, 12 U.S.C. 1427(c), requires the Director of the FHFA to determine the number of member directorships based on the approximate ratio of required stock held by members located in particular states in a Bank's geographic region. The method the FHFA uses is defined in this section as the "method of equal proportions."

#### *B. General Provisions: Section 1261.2*

Section 7(a) of the Bank Act, 12 U.S.C. 1427(a), sets the size of a Bank's board of directors at 13, or such other number as the Director may determine, provided the member directorships always maintain a majority and the independent directorships comprise at least 40 percent of the entire board. Section 1261.2(a) provides that the FHFA Director annually will set the number of directorships for each Bank, and will designate the directorships as either member directorships or independent directorships. The rule does not provide that the Director will designate the independent directorships as either public interest directorships or other independent directorships. If the Director does not further designate the independent directorships, the board of directors of a Bank will have the power, through the nomination process, to nominate any number of the independent directorships as public interest directorships, provided it so designates at least two of the independent directorships. The FHFA requests comments on whether the boards of the Banks or the FHFA Director should establish the number of public interest directorships.

Section 7(c) of the Bank Act, 12 U.S.C. 1427(c), continues to require that states be grandfathered with the number of directorships representing members in the states on December 31, 1960, notwithstanding any other provision in section 7. Thus, in applying the grandfather provision to the Banks based on their current districts, notwithstanding the Act's apparent default board size of 13, every Bank must have a minimum of 14 directorships, 8 of which must be

member directorships. The Act amends section 7(d) of the Bank Act, 12 U.S.C. 1427(d), to require that the term of office of directors elected after July 30, 2008 be four years, except that the FHFA has to adjust terms to achieve an approximately equal staggering of the years for the election of the members of the board of directors of a Bank. Section 1261.2(b) addresses this requirement. The Act also amends the Bank Act to require that existing directorships that do not expire on December 31, 2008 continue their existing terms, so the FHFA has to adjust the terms of new directorships beginning January 1, 2009 in order to achieve staggering.

Section 1261.2(c) carries forward the requirement in section 915.3(a) that the Banks are responsible for conducting annual elections. Section 1261.2(d) and (e) are based on the sections 915.3(d) and 915.2, respectively, of the FHFBR rule.

#### *C. Designation of Member Directorships: Section 1261.3*

Section 1261.3(a) continues the requirement in section 915.4 of the FHFBR rule that each Bank must submit a capital report. The FHFA will rely on this information to designate stock directorships among the voting states in a Bank's district. Each Bank also must notify each of its members of its minimum required stock holdings. Section 1261.3(a)(2) applies only to the Chicago Bank, whose capital plan is not yet in effect.

Section 1261.3(b) and (c) of the interim final rule carry forward the requirements of section 915.3(b) of the FHFBR regulations. Section 1261.3(b) specifies the methodology by which the FHFA will make the allocation of member directorships, and section 1261.3(c) provides that the FHFA will follow the requirements in sections 7(b) and (c) of the Bank Act in designating member directorships to the states. Annually, the FHFA will use the method of equal proportions to determine how member directorships should be divided among the states in a Bank's district, based on the stock holdings of the members located in each state in the Bank's district. The FHFA's annual allocation to each state will be sufficient to meet the requirement in section 7(c) of the Bank Act that the number of member directorships in each state be equal to the number of elective directorships that it had on December 31, 1960 (the guaranteed directorships).

The effect of the so-called "grandfather" provision is that, based on the present geographic districts of the Banks, each Bank will have a minimum of eight member

directorships. Section 1261.3(c) recognizes that some existing directorships at a Bank may cease to exist if, resulting from the Director's annual designation, the number of directors is set at a number below the size of the existing board, the number of member directorships increases and the number of independent directorships decreases, or vice versa, or the application of the method of equal proportions causes any state to lose a directorship to another state. If a state loses a directorship through any of these events, section 1261.3(c) provides that the director sitting in that directorship shall be ineligible to serve after December 31 of that year.

Section 1261.3(d) continues the notification provision in section 915.3(e) of the FHFBR rule.

#### *D. Director Eligibility: Section 1261.4*

Section 1261.4(a) carries forward section 915.7(b) of the FHFBR rule regarding the eligibility requirements of member directors. Section 1261.4(b) sets forth the eligibility requirements of independent directors in section 7(a) of the Bank Act.

Section 1261.4(c) describes situations in which otherwise eligible individuals would not be eligible to serve. The term limit provisions of section 7(d) of the Bank Act limit service of individuals who have served all or part of three consecutive full terms. Such individuals are ineligible for the two years following such service. For terms beginning after the effective date of the Act, section 1261.4(c) deems only four year terms to be full terms. The existing directorships that do not end on December 31, 2008, have three year terms, and those directorships' terms are full terms. If the FHFA creates shorter than four year terms for directorships that begin on or after January 1, 2009, to effectively stagger the directorships, those shorter terms will not be deemed to be full terms. Nonetheless, such shorter terms will not be effective for purposes of creating a break in service or avoiding the three consecutive term count. In other words, serving in three consecutive three year elective directorships ending December 31, 2008 will render an individual ineligible to serve a shortened term beginning January 1, 2009, and serving in one or two three year elective directorships ending December 31, 2008, a shortened term beginning January 1, 2009, and one or two four year terms immediately thereafter, for a total of three full terms, will render an individual ineligible to again serve for two more years.

The FHFA seeks comment on its application of the consecutive full-term

limitation in section 7(d) of the Bank Act. If a director serves in a term which met the Bank Act's requirement of a full term at the time the director assumed that directorship, no matter how long the term is, should that term be considered a full term? Should the current terms and any prior terms consecutive thereto of directors elected prior to July 30, 2008, be deemed to be full terms for purposes of the three consecutive term rule in section 7(d) of the Bank Act? Should the full terms of the directors appointed by the Finance Board be treated any differently from how the terms of elective directors are treated? Should the shorter term that the FHFA creates for purposes of staggering be considered a break between terms before and after other terms of service, for purposes of treating the other terms as consecutive full terms?

Section 1261.4(d) deems a sitting director to be ineligible on December 31 of the year in which that person's directorship is eliminated or redesignated to another state through the annual allocation under the method of equal proportions. The FHFA is required to do an annual allocation, and changes in member stock ownership on a state-by-state basis may cause a state to lose one or more directorships. Although an individual may have to give up a directorship due to reallocation or elimination, if the individual does not complete a full term due to such action, that term will not count as a full term for purposes of eligibility.

#### *E. Determination of Member Votes: Section 1261.5*

Section 1261.5 carries forward section 915.5 of the FHFB rule, which sets forth how the Banks must determine the number of votes of each member. For those Banks that have more than one class of stock, the Banks are required to calculate the average number of shares separately for each class and allow each member to vote its combined average number of shares. The average for each class is calculated based on the total number of members in each state, even if a member holds no shares in a class of stock. The number of votes allocated to a member is the number of votes that the member may vote for any directorship, whether it is a member directorship, independent public interest directorship, or other independent directorship.

#### *F. Nominations for Member and Independent Directorships: Section 1261.6*

Section 915.6 of the FHFB regulation set forth the requirements for member

directorship nominations. Section 1261.6 carries forth these requirements with some modifications and sets forth how the Banks will nominate independent directorship candidates. Banks are not required to do so in any particular mode of communication, so long as they can demonstrate to the FHFA their compliance with the regulations.

As required by section 1261.6(a) of the interim final rule, the Banks must provide to each member a notice of the commencement of the election process in a reasonable time in advance of the elections. As to member directorships, the notice and nomination procedures do not differ significantly from the procedures set forth in the FHFB regulation.

As to independent directorships, section 7 of the Bank Act requires each Bank to nominate candidates, and the election from among the candidates is the right of the members of each Bank. Under section 1261.6(d) of the interim final rule, a Bank must consider anyone who applies using an application form prescribed by the FHFA and indicates on the form that s/he meets the eligibility requirements set forth in section 1261.4(b), provided the application form is delivered to the Bank by a deadline set by the Bank and the application form contains any of the qualifications for independent directors set forth in that section. Independent directors may meet either the requirements of public interest directors or the requirements set forth in section 1261.6(e).

Section 1261.6(d) also requires that a Bank's board of directors consult with the Bank's Advisory Council before nominating independent directors. The FHFA requests comment on whether it should require the Advisory Council to play any specific role in the consultation process and whether the FHFA should prescribe procedures on how the consultation should take place.

Section 7(a) of the Bank Act and section 1261.6(d) of the interim final rule require that public interest directors have more than four years experience in representing consumer or community interests in banking services, credit needs, housing, or consumer financial protections. Prior to the Act's amendments to section 7(a), a public interest director had to be from an organization that had a history of more than two years representing consumer or community interests, but the individual did not necessarily have to have personal experience doing so. Although the FHFA will impose the Act's requirements on newly chosen independent directors, the FHFA will

deem existing public interest directors who qualified and were designated as public interest directors under the Bank Act before it was amended to be public interest directors for the remainder of their existing terms.

The FHFA requests comments on whether it should apply the revised experience requirements to existing public interest directors and, if so, whether it should require any Bank that does not have two public interest directors who meet the revised requirements to nominate candidates who do meet those requirements.

Section 1261.6(d)(3) requires the Banks to establish the number of public interest directorships from among the number of independent directorships established by the FHFA Director pursuant to section 1261.3(c). It requires the Banks to have at least two public interest directors, as required by section 7(a) of the Bank Act. The boards of directors of the Banks must nominate at least as many individuals for public interest directorships as there are positions available. Any board may nominate more individuals for public interest directorship positions than there are positions to be filled; however, the Bank may fill only those vacant positions that the board has designated as public interest directorships with public interest director nominees.

The rule permits a board of directors to have only enough nominees to fill the vacant positions, because the board of directors of a Bank might determine that the most highly qualified candidates may not apply unless they are assured of a seat after having been nominated. The FHFA requests comment on whether the board of directors of a Bank should be required to nominate more candidates for independent directorships than there are positions to be filled, if the board has determined that there are sufficient applicants who are both eligible and qualified.

Section 7(a) of the Bank Act sets forth specific qualifications that independent directors, other than public interest directors, must have, and it authorizes the FHFA Director to establish other knowledge or experience that an independent director may have in lieu of the types of knowledge or experience specified in section 7(a). Section 1261.6(e) provides that independent directors may be qualified if they have knowledge or experience in the law, in addition to the statutorily prescribed subjects of auditing or accounting, derivatives, financial management, organizational management, project development or risk management practices. In each case, a candidate's knowledge or experience must be

commensurate with the knowledge or experience needed to oversee a business of the size and complexity of the Bank. The FHFA solicits comment on whether additional areas of expertise should be added to the list.

Pursuant to section 1261.6(f) of the interim final rule, Banks must verify the eligibility of nominees for directorships before placing their names on the ballots. The FHFA will prescribe eligibility certification forms for member directors, and the Banks must use information on those forms to verify eligibility of nominees for member directorships. The FHFA will prescribe application forms and eligibility certification forms for independent directors. For new nominees for independent directorships, the Banks may use information on the application forms. For incumbent nominees for independent directorships, the Banks may use information on eligibility certification forms or on application forms. As to independent directorship nominees, both incumbent and new nominees, the Banks must deliver the names and contemporaneously executed director application forms of the nominees to the FHFA for its review and comment before the names of any such nominees can be placed on ballots. The FHFA intends to review the information submitted and, whenever it has comments that might aid a Bank, make comments to the Bank's board of directors about how any nominee's qualifications might serve the needs of the Bank.

#### *G. Election Process: Section 1261.7*

##### 1. Ballots

Similar to the current election process conducted by the Banks, the interim final rule requires each Bank to prepare a ballot for each voting state. A Bank may not deliver ballots until after the FHFA has commented on the independent director nominees. Independent director nominees are elected on a district-wide basis, so all states in the district will be voting states in each annual election. The FHFA contemplates that ballots will differ from state to state, because a Bank likely will not include on the ballots in one state the member director nominees for the other states in its district. The ballots must include a closing date for voting, which may not be sooner than 30 days after the ballots are delivered.

The ballots must contain the type of minimum information on member directorship nominees required in section 915.8 of the FHFBA rule. As to independent directorship nominees, the ballots must include information about

their qualifications for the type of directorship for which they are nominated. All nominees must be listed alphabetically and separately for each type of directorship for which the election is being held. A Bank may include additional information it deems appropriate, including a description of the skills and experience of the member director nominees. If, pursuant to section 1261.9, a Bank has conducted an assessment of the skills and experience it needs on its board of directors and included that information in its notice required in section 1261.6, or subsequently has revised that assessment, the Bank may include a statement of the most recent version of its assessment with the ballots. The interim final rule also requires the Banks to include on the ballots a statement that write-in candidates are not permitted and a statement that the Bank will not disclose how any member votes its ballot.

##### 2. Lack of Member Directorship Nominees

In those instances where the number of member nominees is not greater than the number of member directorships to be filled, section 1261.7(c) of the interim final rule requires a Bank to declare the seats filled by the eligible nominees, first filling any guaranteed directorships and then any remaining stock directorships. If any member directorship is not filled, or if the failure to fill any directorship would cause the number of member directors to be fewer than a majority of the directors, then such directorship will become vacant on January 1 of the following year, and the Bank's board of directors at that time may elect an individual to fill the vacancy.

##### 3. Voting

The interim final rule provides that a member's vote for a nominee is deemed a vote in the amount of all the stock that the member is required to hold as of the record date. A member may not vote more than the amount of its required stock for any one nominee, no matter how many directorships are being filled by the election. A member may vote for as many nominees as there are directorships being filled by the election, but a member may vote only one time for any one nominee. A member may vote at any time up until the closing date, by which time it must have delivered its ballot to the Bank.

##### 4. Declaring Results

Section 1261.7(f) of the interim final rule provides that the individual receiving the highest number of votes is

declared the winner of a member directorship. If other member directorships are being filled, the individual receiving the next highest number of votes also will be declared a winner, and so on down the line. The same rule applies to each type of independent directorship, except that a nominee who receives fewer than 20 percent of the number of votes eligible to be cast may not be declared a winner. If, for the last available directorship of any type, there is a tie vote, and for an independent directorship the tie vote is at least 20 percent of the eligible votes, then the disinterested members of the Bank's board of directors by majority vote will determine the winner. At the time of declaring winners and at the time any director is seated, a Bank may not have any reason to know that such director is ineligible to serve.

The FHFA requests comment on whether the rule should continue to require that independent directors must receive at least a minimum percentage of votes cast in order to be elected and, if so, what that minimum should be. The FHFA believes that receiving at least a minimum percentage of votes affirms that the candidate is the choice of the members, even when the number of candidates does not exceed the number of directorships to be filled. If there is a minimum percentage, should it be based on the number of shares actually voting or on the number of shares eligible to vote?

##### 5. Report of Election

Section 1261.7(g) of the interim final rule requires each Bank to promptly report to its members, each nominee, and the FHFA on the results of an election. The report must contain the number of voting members, the number of votes cast, and the number of votes received by each nominee. As to each member director-elect, the Bank must provide the same information required in section 915.8(e) or the FHFBA rule. As to each public interest director, the Bank must provide the consumer or community interest represented and the expiration date of the term of office. For each other independent director-elect, the Bank must provide the individual's qualifications under section 1261.6(e) and the expiration date of the term of office.

##### 6. Failing To Fill All Independent Directorships

If any independent directorship is not filled for failure to receive 20 percent of the eligible votes, section 1261.7(h) of the interim final rule requires a Bank to conduct another election for such directorship, following the same

procedures required for the initial election. The Bank must continue repeated election procedures until the directorship is filled by a vote of 20 percent of the votes eligible to be voted. The eligible votes remain the same for each such repeat election.

*H. Section 1261.8 Is Reserved for Future Use*

*I. Action Affecting Director Elections: Section 1261.9*

Section 1261.9(a) of the interim final rule continues the authorization to a Bank's board of directors to conduct an annual assessment of the skills and experience needed on a Bank's board of directors, as provided in section 915.9(a) of the FHFBA rule. If such an assessment identifies particular skills or experience needed on the board, a Bank may inform its members of those needs in its notice of elections.

Section 1261.9(b) of the interim final rule authorizes a Bank and any of its directors, officers, attorneys, employees, and agents, including the Bank's board of directors and Advisory Council, to support any individual for nomination and election to an independent directorship. Such individuals, if acting in their personal capacity, are not prohibited from supporting the nomination or election of any individual for a member directorship. The distinction between member directorships and independent directorships is that the Bank's board of directors nominates individuals for independent directorships, and support of the Bank's nominees could benefit the Bank without discriminating against any member.

Except as allowed under section 1261.9(a) and (b), no director, officer, employee, attorney, or agent of a Bank may support or oppose the nomination or election of any individual for any directorship of the Bank, or take any other action to influence the voting for or against any such individual.

The FHFA seeks comment on whether it is appropriate to distinguish between member and independent directors when establishing prohibitions on actions that might influence others with respect to any director. Comment also is sought on whether there are other issues that the FHFA should address in this section.

*J. Independent Director Conflict of Interests: Section 1261.10*

Section 7(a) of the Bank Act prohibits an independent director from serving as an officer of any Bank and from serving as a director, officer, or employee of any member of the Bank on whose board the

director sits, or of any recipient of any advances from that Bank. Section 1261.10 of the interim final rule sets forth this prohibition and requires any nominee for, and incumbent holding, an independent directorship to disclose such interests. Positions held in a holding company that controls any member or any recipient of advances, are attributed to any member or recipient of advances if the assets of all members or recipients of advances under the control of the holding company equal at least 35 percent of the assets of the holding company. Positions in any other subsidiary or affiliate of the holding company are not attributed to the member or recipient of advances. Positions held by an individual's spouse are attributed to the individual.

The FHA seeks comment on whether the holding company attribution rule should be set at a number other than 35 percent.

*K. Conflict of Interests Policy for Bank Directors: Section 1261.11*

Section 1261.11(a) of the interim final rule revises and restates the requirement in section 915.11 of the FHFBA rule that Banks adopt a conflicts of interest policy to apply to the members of their boards of directors. The rule sets forth the minimum contents of such a policy. One requirement is that the policy must require the board of directors to administer the affairs of the Bank fairly and impartially, without discriminating in favor of or against any member. The rule does not address nonmember borrowers specifically, but the absence of any reference to nonmember borrowers does not prohibit a Bank from addressing conflicts of interests with respect to nonmember borrowers.

Section 1261.11(b) of the interim final rule requires any director of a Bank to disclose fully to the board of directors of the Bank any financial interest that the director or any immediate family member or business associate has in any business matter or proposed business matter involving the Bank and to refrain from any action in connection with the matter. Section 1261.11(c) requires directors to maintain the confidentiality of confidential information obtained by serving as a director and to refrain from using that information for personal benefit.

Section 1261.11(d) of the interim final rule prohibits the acceptance of gifts to influence the director's actions as a member of the board of directors of a Bank. A director may not accept a gift, no matter the value, if the director believes, or would have reason to believe, that the gift is given with the intent to influence the director's actions.

A director may not accept a gift, no matter the value, if acceptance would have the appearance of the donor's intent to influence the director's actions. Although the prohibition does not prohibit other gifts, the absence of a specific prohibition does not prohibit a Bank from addressing other situations in its conflict of interest policy.

Section 1261.11(e) of the interim final rule prohibits a director from accepting compensation for service on the board of a Bank from any source other than the Bank. This prohibition does not prohibit any director who is a salaried employee from continuing to receive a salary even when the time that the director devotes to the Bank would otherwise be time devoted to the employer.

*L. Reporting Requirements for Bank Directors: Section 1261.12*

Pursuant to section 1261.12(a) of the interim final rule, each sitting director is required to execute an annual eligibility certification form applicable to the directorship held by the director. The form, prescribed by the FHFA for the purpose of identifying any changes since a prior eligibility review, must be executed and delivered to the Bank, and the Bank must deliver a copy to the FHFA.

Section 1261.12(b) of the interim final rule requires any sitting director of a Bank who believes or has reason to believe that s/he no longer meets the statutory or regulatory eligibility requirements to notify promptly both the Bank and the FHFA. Likewise, any Bank that believes or has reason to believe that any of its directors no longer meets the eligibility requirements must notify the FHFA promptly.

*M. Ineligible Bank Directors: Section 1261.13*

Section 7(f) of the Bank Act, prior to the amendments made by the Act, provided that an appointive directorship would become vacant whenever the director holding that directorship failed to meet the eligibility requirements set forth in the Bank Act, but the director could continue to serve until replaced. The amendments to section 7(f) now require that all directors who fail to meet their statutory eligibility requirements immediately must vacate their offices. Section 1261.13 of the interim final rule applies these results whenever the FHFA or a director's Bank makes a determination that the director has failed to meet any eligibility requirement set forth in the Bank Act or in part 1261 or has failed to comply with the reporting requirements in section 1261.12 of the interim final rule. Section 1261.13 also

requires a Bank to notify the FHFA promptly after it has made such a determination.

*N. Vacant Bank Directorships: Section 1261.14*

Section 1261.14(a) of the interim final rule implements the requirements in section 7(f) of the Bank Act that any individual who fills a vacancy on the board of a Bank be elected by a majority vote of the remaining directors.

Section 1261.14(b) of the interim final rule requires the board of directors of a Bank to fill any vacancy with an individual who meets the eligibility and qualification requirements applicable to any individual who was the predecessor in that position; however, if a Bank continues to have at least two public interest directors, the board of directors of the Bank may fill the vacant directorship with an individual who meets the eligibility and qualification requirements for any independent directorship. The eligibility requirements for both member and independent directors are set forth in section 1261.4 of the interim final rule. The eligibility requirements for independent public interest directors and for other independent directors are the same. The qualification requirements for independent public interest directors and for other independent directors are set forth in section 1261.6 of the interim final rule. The Bank must verify eligibility before allowing any director elected by the board to assume office, and the Bank must deliver the individual's application form to the FHFA for review and comment before the individual is allowed to assume office.

Section 1261.14(c) of the interim final rule requires a Bank to provide a notice to the FHFA and to each member of the Bank that includes specified information about any individual who has been elected by the directors of the Bank.

*O. Minimum Number of Member Directorships: Section 1261.15*

Section 1261.15 designates the grandfathered directorships that apply at the present time to the 12 Banks. The section also provides that the grandfathering of directorships for any two or more Banks that merge does not apply to those Banks that are a part of the merger, as required by an amendment to section 7(c) of the Bank Act.

*P. 2008 Temporary Schedule for Election of Directors: Section 1261.16*

Section 1261.16 of the interim final rule requires each Bank to set a

reasonable schedule for the nomination and election of directors in 2008 only.

This temporary director election schedule will cease to be effective after December 31, 2008.

### III. Notice and Public Participation

The notice and comment procedure required by the Administrative Procedure Act is inapplicable to this interim final rule because it is in the public interest to implement the requirements of the Act as soon as it is practicable to do so: The Banks need to conduct elections and install directors in compliance with the new law by January 1, 2009, when a number of terms of existing directors expire. *See* 5 U.S.C. 553(b)(3)(B). However, because the FHFA believes that public comments are valuable, it encourages comments on this interim final rule, and will consider all comments received on or before November 25, 2008 in promulgating a final rule.

### IV. Effective Date

For the reasons stated in part III above, the FHFA for good cause finds that the interim final rule should become effective on September 26, 2008. *See* 5 U.S.C. 553(d)(3).

### V. Paperwork Reduction Act

The interim final rule will have no substantive effect on any collection of information covered by the Paperwork Reduction Act of 1995 (PRA). *See* 44 U.S.C. 3501 *et seq.* Therefore, the FHFA has not submitted this interim final rule to the Office of Management and Budget (OMB) for review. The Finance Board used application forms to collect information on prospective appointive directors, and those forms had been assigned control number 3069-0002 by the OMB. The FHFA will direct the Banks to use those forms, which will be amended as appropriate but the changes to the forms will not materially modify the approved information collection. Consequently, the FHFA has not submitted any information to OMB for review under the PRA.

### VI. Regulatory Flexibility Act

The FHFA is adopting this regulation in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2) and 603(a).

### List of Subjects in 12 CFR Parts 915 and 1261

Banks, Banking, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure,

Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, under the authority of 12 U.S.C. 1319(G) and 12 U.S.C. 1426, 1427 and 1432, the FHFA proposes to amend chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

#### CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

##### PART 915—BANK DIRECTOR ELIGIBILITY AND ELECTIONS

■ 1. Remove 12 CFR part 915.

#### CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

■ 2. Add and reserve subchapters A and C to 12 CFR Chapter XII.

■ 3. Add subchapter B to 12 CFR chapter XII, and transfer part 1231 to subchapter B.

■ 4. Amend title 12 CFR chapter XII by establishing subchapter D to read as follows:

##### Subchapter D—Federal Home Loan Banks

■ 5. Add part 1261 to subchapter D to read as follows:

##### PART 1261—FEDERAL HOME LOAN BANK DIRECTOR ELIGIBILITY AND ELECTIONS

Sec.

1261.1 Definitions.

1261.2 General provisions.

1261.3 Designation of member directorships.

1261.4 Director eligibility.

1261.5 Determination of member votes.

1261.6 Nominations for member and independent directorships.

1261.7 Election process.

1261.8 [Reserved].

1261.9 Actions affecting director elections.

1261.10 Independent director conflict of interests.

1261.11 Conflict of interests policy for Bank directors.

1261.12 Reporting requirements for Bank directors.

1261.13 Ineligible Bank directors.

1261.14 Vacant Bank directorships

1261.15 Minimum number of member directorships.

1261.16 Temporary rule for 2008 election of directors.

**Authority:** 12 U.S.C. 1426, 1427, and 1432.

#### § 1261.1 Definitions.

For purposes of this part:

*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).

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

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

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

*Director* means the Director of the Federal Housing Finance Agency.

*FHFA* means the Federal Housing Finance Agency.

*FHFA ID number* means the number assigned to a member by the FHFA and used by the FHFA and the Banks to identify a particular member.

*Guaranteed directorship* means a member directorship that is required by section 7(c) of the Act (12 U.S.C 1427(c)) to be designated as representing Bank members that are located in a particular state, other than a stock directorship.

*Independent directorship* means a directorship, as defined by section 7(a)(4)(A) of the Act, 12 U.S.C. 1427(a)(4)(A), that is filled by a plurality vote of the members at large by a person having the qualifications specified by section 7(a)(3)(B)(i) or (ii), 12 U.S.C. 1427(a)(3)(B)(i) or (ii).

*Member directorship* means a directorship, as defined by section 7(a)(4)(A) of the Act, 12 U.S.C. 1427(a)(4)(A), that is filled by a plurality vote of the members located in a particular state by a person who is an officer or director of a member located in that state, and includes guaranteed directorships and stock directorships.

*Method of equal proportions* means the mathematical formula used by the FHFA to allocate member directorships among the states in a Bank's district based on the relative amounts of Bank stock required to be held as of the record date by members located in each state.

*Public interest director* means a person serving in a public interest directorship.

*Public interest directorship* means an independent directorship filled by an individual with more than four years experience representing consumer or community interests in banking services, credit needs, housing or consumer financial protections.

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

*Stock directorship* means a member directorship that is designated by the FHFA as representing the members located in a particular voting state based on the amount of Bank stock held required to be held by the members in that state as of the record date, other than a guaranteed directorship.

*Voting state* means the District of Columbia, Puerto Rico, or the state of

the United States in which a member's principal place of business, as determined in accordance with 12 CFR part 925, is located as of the record date. The voting state of a member with a principal place of business located in the U.S. Virgin Islands as of the record date is Puerto Rico, and the voting state of a member with a principal place of business located in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands as of the record date is Hawaii.

#### § 1261.2 General provisions.

(a) *Board size and composition.* Annually, the FHFA Director will determine the size of the board of directors for each Bank and will designate at least a majority, but no more than 60 percent, of the directorships as member directorships and the remainder as independent directorships.

(b) *Term of directorships.* The term of office of each directorship commencing on or after January 1, 2009 shall be four years, except as adjusted pursuant to section 7(d) of the Act (12 U.S.C 1427(d)) to achieve a staggered board, and shall commence on January 1 of the calendar year so designated by the FHFA.

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

(d) *Location of members.* In accordance with section 7(c) of the Act (12 U.S.C 1427(c)), for purposes of the election of member directors, a member is deemed to be located in its voting state, unless otherwise designated by the Director.

(e) *Dates.* If any date specified in this part for action by a Bank, or specified by a Bank pursuant to this part, falls on a Saturday, Sunday, or Federal holiday, the relevant time period is deemed to be extended to the next calendar day that is not a Saturday, Sunday, or Federal holiday.

#### § 1261.3 Designation of member directorships.

(a) *Determination of voting stock.* (1) On or before April 10 of each year, each Bank shall deliver to the FHFA a capital stock report that indicates, as of the record date, the number of members located in each voting state in the Bank's district, the number of shares of Bank stock that each member (identified by its FHFA ID number) was required to hold, and the number of shares of Bank stock that all members located in each voting state were required to hold. If a Bank has issued more than one class of stock, it shall report the total shares of stock of all classes required to be held by the members. The Bank shall certify to the FHFA that, to the best of its knowledge, the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holdings.

(2) If a Bank's capital plan was not in effect as of the record date, the number of shares of Bank stock that any member is required to hold as of the record date shall be determined in accordance with 12 CFR 925.20 and 925.22. If a Bank's capital plan was in effect as of the record date, the number of shares of Bank stock that any member was required to hold as of that date shall be determined in accordance with the minimum investment established by the capital plan for that Bank; however, for any member whose Bank stock is less than the minimum investment during a transition period, the amount of Bank stock to be reported shall be the number of shares of Bank stock actually owned by the member as of the record date.

(b) *Designation of member directorships as stock directorships.* The Director annually will conduct a designation of member directorships for each Bank based on the number of shares of Bank stock required to be held by the members in each state as of December 31 of the preceding calendar year, using the method of equal proportions. If a Bank has issued more than one class of stock, the Director will designate the directorships for each state in that Bank district based on the combined number of shares required to be held by the members in that state. For purposes of conducting the designation, if a Bank's capital plan was not in effect on the immediately preceding December 31, the number of shares of Bank stock required to be held by members as of that date shall be determined in accordance with 12 CFR 925.20 and 925.22. If a Bank's capital plan was in effect on the immediately preceding December 31, the number of shares of Bank stock required to be held

by members as of that date shall be determined in accordance with the minimum investment established by such capital plan; however, for any members whose Bank stock is less than the minimum investment during a transition period, the amount of stock to be used in the designation of directorships shall be the number of shares of Bank stock actually owned by those members as of that December 31. In all cases, the Director will designate the directorships by using the information provided by each Bank in its capital stock report required by paragraph (a)(1) of this section.

(c) *Allocation of directorships.* (1) The member directorships designated by the Director will be allocated among the states by the Director in accordance with sections 7(b) and (c) of the Act.

(2) If the designation of directorships conducted by the Director under paragraph (c)(1) of this section eliminates any existing directorship, or if the allocation of directorships under this paragraph (c) designates any existing stock directorship to another state, the director elected or appointed to that existing directorship shall not be eligible to serve after the close of business on the immediately following December 31.

(d) *Notification.* On or before June 1 of each year, the FHFA will notify each Bank in writing of the total number of directorships established for the Bank and the number of member directorships designated as representing the members in each voting state in the Bank district. If the annual designation of member directorships results in an existing directorship being redesignated as representing members in a different state, the directorship shall be deemed to become vacant as of December 31 of that year, and thereafter shall be filled by the board of directors of the Bank with an eligible person who is an officer or director of a member located in the newly designated state, regardless of whether the term for the incumbent director would have expired by that date.

#### § 1261.4 Director eligibility.

(a) *Eligibility requirements for member directors.* Each member director, and each nominee to a member directorship, shall be:

- (1) A citizen of the United States; and
- (2) An officer or director of a member that is located in the voting state to be represented by the member directorship, that was a member of the Bank as of the record date, and that meets all minimum capital requirements established by its appropriate Federal

banking agency or appropriate state regulator.

(b) *Eligibility requirements for independent directors.* Each independent director, and each nominee to an independent directorship, shall be:

- (1) A citizen of the United States; and
- (2) A bona fide resident of the district in which the Bank is located.

(c) *Restrictions.* (1) A nominee is not eligible if he or she:

- (i) Is an incumbent director, unless:
  - (A) The incumbent director's term of office would expire before the new term of office would begin; and
  - (B) The new term of office would not be barred by the term limit provision of section 7(d) of the Act (12 U.S.C. 1427(d)); or
- (ii) Is a former director whose service would be barred by the term limit provision of section 7(d) of the Act.

(2) For purposes of applying the term limit provision of section 7(d) of the Act (12 U.S.C. 1427(d)):

- (i) A term of office that is adjusted after July 30, 2008 to a period of fewer than four years shall not be deemed to be a full term;
- (ii) Any three year term of office ending immediately before a term of office that is adjusted after July 30, 2008 to a period of fewer than four years and any term of office commencing immediately following such adjusted term of office shall constitute consecutive full terms of office; and
- (iii) Any member director's service through election to any directorship with a three year term of office existing on or before July 30, 2008 shall be deemed to be service in a full term directorship to which the director has been elected.

(d) *Loss of eligibility.* (1) A director shall become ineligible to remain in office if, during his or her term of office, the directorship to which he or she has been elected is eliminated or, with respect to a member directorship, is redesignated by the FHFA as representing members located in another state, in accordance with § 1261.3(c)(2). The incumbent director shall become ineligible after the close of business on December 31 of the year in which the directorship is redesignated or eliminated. Any directorship ceasing through elimination or redesignation shall not be deemed to be a full-term directorship for purposes of the section.

(2) In the case of a redesignation to another state, the redesignated directorship shall be filled by a majority vote of the remaining Bank directors, sitting as a board, regardless of whether the remaining directors constitute a quorum of the board.

#### § 1261.5 Determination of member votes.

(a) *In general.* Each Bank shall determine, in accordance with this section, the number of votes that each member of the Bank may cast for each directorship that is to be filled by the vote of the members.

(b) *Number of votes.* For each member directorship and each independent directorship that is to be filled in an election, each member shall be entitled to cast one vote for each share of Bank stock that the member was required to hold as of the record date.

Notwithstanding the preceding sentence, the number of votes that any member may cast for any one directorship shall not exceed the average number of shares of Bank stock required to be held as of the record date by all members located in the same state as of the record date. If a Bank has issued more than one class of stock, it shall calculate the average number of shares separately for each class of stock, using the total number of members in a state as the denominator, and shall apply those limits separately in determining the maximum number of votes that any member owning that class of stock may cast in the election. If a Bank's capital plan was not in effect as of the record date, the number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with 12 CFR 925.20 and 925.22. If a Bank's capital plan was in effect as of the record date, the number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with the minimum investment requirement established by the Bank's capital plan; however, for any member whose Bank stock is less than the minimum investment during a transition period, the amount of Bank stock to be used shall be the number of shares of Bank stock actually owned by the member as of the record date.

(c) *Voting preferences.* If the board of directors of a Bank includes any voting preferences as part of its approved capital plan, those preferences shall supersede the provisions of paragraph (b) of this section that otherwise would allow a member to cast one vote for each share of Bank stock it was required to hold as of the record date. If a Bank establishes a voting preference for a class of stock, the members with voting rights shall remain subject to the provisions of section 7(b) of the Act (12 U.S.C. 1427(b)) that prohibit any member from casting any vote in excess of the average number of shares of stock

required to be held by all members in its state.

**§ 1261.6 Nominations for member and independent directorships.**

(a) *Election announcement.* Within a reasonable time in advance of an election, a Bank shall notify each member in its district of the commencement of the election process. Such notice shall include:

(1) The number of member directorships designated for each voting state in the Bank district and the number of independent directorships for the Bank;

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

(3) A brief statement describing the skills and experience the Bank believes are most likely to add strength to the board of directors, provided that the Bank previously has conducted the annual assessment permitted by § 1261.9 and the Bank has elected to provide the results of the assessment to the members;

(4) An attachment indicating the name, location, and FHFA ID number of every member in the member's voting state, and the number of votes each such member may cast for each directorship to be filled by such members, as determined in accordance with § 1261.5; and

(5) A nominating certificate.

(b) *Member directorship nominations.*

(1) Any member that is entitled to vote in the election may nominate an eligible individual to fill each available member directorship for its voting state by delivering to its Bank, prior to a deadline to be established by the Bank and set forth in the notice required in paragraph (a) of this section, a nominating certificate duly adopted by the member's governing body or by an individual authorized by the member's governing body to act on its behalf.

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

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

nominating certificates for at least two years after the date of the election.

(c) *Accepting member directorship nominations.* A Bank shall notify in writing any person nominated for a member directorship promptly upon receipt of the nominating certificate. A person may accept the nomination only by delivering to the Bank, prior to a deadline established by the Bank and set forth in its notice, an executed director eligibility certification form prescribed by the FHFA. A Bank shall allow each nominee at least 30 calendar days after the date the Bank delivered the notice of nomination within which to deliver the executed form. A nominee may decline the nomination by so advising the Bank in writing, or by failing to deliver a properly executed director eligibility certification form prior to the deadline. Each Bank shall retain all information received under this paragraph for at least two years after the date of the election.

(d) *Independent directorship nominations.* (1) Any individual who seeks to be an independent director of the board of directors of a Bank may deliver to the Bank, on or before the deadline set by the Bank for delivery of nominating certificates, an executed independent director application form prescribed by the FHFA that demonstrates that the individual both is eligible and has either of the following qualifications:

(i) More than four years experience representing consumer or community interests in banking services, credit needs, housing, or consumer financial protections; or

(ii) Knowledge of or experience in one or more of the areas set forth in paragraph (e) of this section.

(2) Any other interested party may recommend to the Bank that it consider a particular individual as a nominee for an independent directorship, but the Bank shall not nominate any individual unless the individual has delivered to the Bank, on or before the date the Bank has set for delivery of nominating certificates, an executed independent director application form prescribed by the FHFA. The application form prescribed by the FHFA will provide a means by which an individual can indicate an intent to be considered for a public interest directorship. Only individuals who indicate on the form that they wish to be considered for a public interest directorship may be nominated for such directorships. The board of directors of the Bank may consider any individual for any independent directorship nomination, provided it has determined that the individual is eligible and qualified. The

board of directors of the Bank shall consult with the Bank's Advisory Council before nominating any individual for any independent directorship. Each Bank shall include in its bylaws the procedures it intends to use for the nomination and election of the independent directors, and shall retain all information received under this paragraph for at least two years after the date of the election.

(3) Each Bank shall determine the number of public interest directorships to be included among its authorized independent directorships, provided that each Bank shall at all times have at least two such directorships, and shall announce that number to its members in the notice required by paragraph (a) of this section. In submitting nominations to its members, each Bank shall nominate at least as many individuals as there are independent directorships to be filled in that year's election.

(e) *Independent director qualifications.* Any independent director or nominee for an independent directorship, other than a public interest director, shall submit to the Bank an independent director application form that includes information demonstrating how that person satisfies the requirement that he or she have experience in, or knowledge of, one or more of the following areas: Auditing and accounting; derivatives; financial management; organizational management; project development; risk management practices; and the law. In considering the qualifications of each such nominee for an independent directorship, the board of directors of a Bank shall consider that the nominee's knowledge or experience must be commensurate with that needed to oversee a financial institution with a size and complexity that is comparable to that of the Bank.

(f) *Eligibility verification.* Using the information provided on the director eligibility certification forms and on the independent director application forms prescribed by the FHFA, a Bank shall verify that each nominee for each member directorship and independent directorship meets all of the eligibility requirements for such directorship, as set forth in the Act and this part. Before announcing any independent director nominee, the Bank shall deliver to the FHFA a copy of the independent director application forms executed by the individuals proposed to be nominated for independent directorships by the board of directors of the Bank.

**§ 1261.7 Election process.**

(a) *Ballots.* Promptly after verifying the eligibility of all nominees in accordance with § 1261.6(f), and if, within two weeks of the delivery of nominee application forms to the FHFA, the FHFA has not informed a Bank of any objection to the nomination of any independent director nominee, a Bank shall prepare and deliver a ballot to all members that were members as of the record date. The Bank shall include with each ballot a closing date for the Bank's receipt of voted ballots, which date shall be no earlier than 30 calendar days after the date such ballot is delivered to the member.

(1) A ballot shall include at least the following provisions:

(i) For states in which one or more member directorships are to be filled in the election, an alphabetical listing of the names of each nominee for such directorship, the name, location, and FHFA ID number of the member each nominee serves, the nominee's title or position with the member, and the number of member directorships to be filled by the members in that voting state in the election;

(ii) An alphabetical listing of the names of each nominee for a public interest directorship and a brief description of each nominee's experience representing consumer and community interests;

(iii) An alphabetical listing of the names nominee for the other independent directorships and a brief description of each nominee's qualifications, including his or her knowledge or experience in the areas of financial management, auditing and accounting, risk management practices, derivatives, project development, organizational management and any other area of knowledge or experience set forth in § 1261.6(e);

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

(v) A confidentiality statement prohibiting the Banks from disclosing how a member voted.

(2) At the election of the Bank, a ballot also may include, in the body or as an attachment, a brief description of the skills and experience of each nominee for a member directorship.

(b) *Statement on skills and experience.* If a Bank has conducted an annual assessment permitted by § 1261.9 and has included the results of the assessment as part of the notice to members required in § 1261.6(a), it may include with each ballot a statement of the results of that assessment or any subsequent assessment. If the statement differs from the statement provided under § 1261.6(a)(3), the Bank also shall

include an explanation of why the statements differ.

(c) *Lack of member directorship nominees.* If, for any voting state, the number of nominees for the member directorships for that state is equal to or fewer than the number of such directorships to be filled in that year's election, the Bank shall deliver a notice to the members in the affected voting state (in lieu of providing a ballot) that such nominees shall be deemed elected without further action, due to a lack of nominees. Thereafter, the Bank shall declare elected all eligible nominees and in doing so may designate particular nominees to guaranteed directorships or stock directorships, respectively, if necessary. The directors declared elected shall be included as directors-elect in the report of election required under paragraph (g) of this section. Any member directorship that is not filled due to a lack of nominees shall be deemed vacant as of January 1 of the following year and shall be filled by the Bank's board of directors in accordance with § 1261.14(a).

(d) *Voting.* For each directorship to be filled, a member may cast the number of votes determined by the Bank pursuant to § 1261.5. A member may not split its votes among multiple nominees for a single directorship, and, where there are multiple directorships to be filled, either within the member's voting state or at large, in the case of independent directorships, a member may not cumulatively vote for a single nominee. If any member votes, it shall by resolution of its governing body either authorize the voting for specific nominees or delegate to an individual the authority to vote for specific nominees. To vote, a member shall:

(1) Mark on the ballot the name of not more than one of the nominees for each directorship to be filled. Each nominee so selected shall receive all of the votes that the member is entitled to cast.

(2) Execute and deliver the ballot to the Bank on or before the closing date. A Bank shall not allow a member to change a ballot after it has been delivered to the Bank.

(e) *Counting ballots.* A Bank shall not review any ballot until after the closing date, and shall not include in the election results any ballot received after the closing date. Promptly after the closing date, each Bank shall tabulate the votes cast in the election: for the member directorships, the Bank shall tabulate votes by each voting state; for the independent directorships, the Bank shall tabulate votes for the district at-large. Any ballots cast in violation of paragraph (d) of this section shall be void.

(f) *Declaring results.* (1) For a member directorship, the Bank shall declare elected the nominee receiving the highest number of votes. If more than one member directorship is to be filled for a particular state, the Bank shall declare elected each successive nominee receiving the next highest number of votes until all such open directorships are filled.

(2) For an independent directorship, the Bank shall declare elected the nominee that has received the highest number of votes and has received at least 20 per cent of the number of votes eligible to be cast in the election. If more than one independent directorship is to be filled, the Bank shall declare elected each successive nominee receiving the next highest number of votes for such directorship until all such open directorships are filled, provided such successive nominee has received at least 20 per cent of the number of votes eligible to be cast in the election.

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

(4) A Bank shall not declare elected a nominee that it has reason to know is ineligible to serve, nor shall it seat a director-elect that it has reason to know is ineligible to serve.

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

(g) *Report of election.* Promptly following the election, each Bank shall deliver a notice to its members, to each nominee, and to the FHFA that contains the following information:

(1) For each member directorship, the name of the director-elect, the name and location of the member at which he or she serves, his or her title or position at the member, the voting state represented, the expiration date of the term of office, and the number of votes cast for each nominee;

(2) For each independent directorship, the name of the director-elect, whether the director-elect will fill a public interest directorship and, if so, the consumer or community interest represented by such directorship, any qualifications under § 1261.6(e), the expiration date of the term of office and the number of votes cast for each nominee;

(3) The number of members voting in the election and the total number of votes cast for each nominee for the member directorships, which shall be reported by state, and the total number

of votes cast for each nominee for the independent directorships, which shall be reported for the district at large.

(h) *Failing to fill all independent directorships.* If any independent directorship of a Bank is not filled through the initial election process set forth in this section, the board of directors of the Bank shall identify additional nominee and shall conduct additional election for the directorship, following the election process set forth in this section. In any such election a nominee shall not be elected unless he or she receives at least 20 percent of the votes eligible to be cast.

**§ 1261.8 [Reserved].**

**§ 1261.9 Action affecting director elections.**

(a) *Banks.* Each Bank, acting through its board of directors, may conduct an annual assessment of the skills and experience possessed by the members of its board of directors as a whole and may determine whether the capabilities of the board would be enhanced through the addition of individuals with particular skills and experience. If the board of directors determines that the Bank could benefit by the addition to the board of directors of individuals with particular qualifications, such as auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, or the law, it may identify those qualifications and so inform the members as part of its announcement of elections pursuant to § 1261.6(a).

(b) *Support for nomination or election.* (1) A Bank director, officer, attorney, employee, or agent, acting in his or her personal capacity, may support the nomination or election of any individual for a member directorship, provided that no such director may purport to represent the views of the Bank or its board of directors in doing so.

(2) Notwithstanding paragraph (b)(1) of this section, a Bank director, officer, attorney, employee or agent and the board of directors and Advisory Council of a Bank may support the candidacy of any person nominated by the board of directors for election to an independent directorship.

(c) *Prohibition.* Except as provided in paragraphs (a) and (b) of this section, no director, officer, attorney, employee, or agent of a Bank may:

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

(2) Take any other action to influence the voting with respect to any particular individual.

**§ 1261.10 Independent director conflict of interests.**

(a) *Employment interests.* During any independent director's term of service, such director may not serve as an officer, employee, or director of any member of the Bank on whose board the individual sits, or of any recipient of advances from such Bank, and may not serve as an officer of any Bank. An independent director or nominee for any independent directorship shall disclose all such interests to the Bank on whose board of directors the individual serves or which is considering the individual for nomination to its board of directors.

(b) *Holding companies.* Service as an officer, employee, or director of a holding company that controls one or more members of, or one or more recipients of advances from, any Bank is not deemed to be service as an officer, employee or director of a member or recipient of advances if the assets of all such members or all such recipients of advances constitute less than 35 percent of the assets of the holding company, on a consolidated basis.

(c) *Attribution.* For purposes of determining compliance with this section, a Bank shall attribute to the independent director any officer position, employee position, or directorship of the director's spouse.

**§ 1261.11 Conflict of interests policy for Bank directors.**

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

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

(2) Require independent directors to comply with § 1261.10(a);

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

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

(5) Provide internal controls to ensure that reports are filed and that conflicts are disclosed and resolved; and

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

(b) *Disclosure and recusal.* A director shall disclose to the Bank's board of directors any financial interests he or

she has, as well as any financial interests known to the director of any immediate family member or business associate of the director, in any matter to be considered by the Bank's board of directors and in any other business matter or proposed business matter involving the Bank and any other person or entity. A director shall disclose fully the nature of his or her interests in the matter and shall provide to the Bank's board of directors any information requested to aid in its consideration of the director's interest. A director shall refrain from considering or voting on any issue in which the director, any immediate family member, or any business associate has any financial interest.

(c) *Confidential Information.* Directors shall not disclose or use confidential information they receive solely by reason of their position with the Bank to obtain any benefit for themselves or for any other individual or entity.

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

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

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

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

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

(3) *Business associate* means any individual or entity with whom a director has a business relationship, including, but not limited to:

(i) Any corporation or organization of which the director is an officer or partner, or in which the director

beneficially owns ten percent or more of any class of equity security, including subordinated debt;

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

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

**§ 1261.12 Reporting requirements for Bank directors.**

(a) *Annual reporting.* Annually, each Bank shall require each of its directors to execute and deliver to the Bank the appropriate director eligibility certification form prescribed by the FHFA for the type of directorship held by such director. The Bank promptly shall deliver to the FHFA a copy of the certification form delivered to it by each director.

(b) *Report of noncompliance.* At any time that any director believes or has reason to believe that he or she no longer meets the eligibility requirements set forth in the Act or this part, the director promptly shall so notify the Bank and the FHFA in writing. At any time that a Bank believes or has reason to believe that any director no longer meets the eligibility requirements set forth in the Act or this part, the Bank promptly shall notify the FHFA in writing.

**§ 1261.13 Ineligible Bank directors.**

Upon a determination by the FHFA or a Bank that any director of the Bank no longer satisfies the eligibility requirements set forth in the Act or this part, or has failed to comply with the reporting requirements of § 1261.12, the directorship shall immediately become vacant. Any director that is determined to have failed to comply with the eligibility or reporting requirements shall not continue to serve as a Bank director. Whenever a Bank makes such a determination, the Bank promptly shall notify the Bank director and the FHFA in writing.

**§ 1261.14 Vacant Bank directorships.**

(a) *Filling unexpired terms.* As soon as practicable after any vacancy occurs, the board of directors of a Bank shall elect, by a majority vote of the remaining Bank directors sitting as a board, an individual to fill the unexpired term of office of the vacant directorship, regardless of whether the remaining Bank directors constitute a quorum of the Bank's board of directors.

(b) *Verifying eligibility.* The board of directors of a Bank shall elect to a

vacant directorship an individual who satisfies all of the eligibility requirements and any of the qualification requirements set forth in the Act and this part that were applicable to his or her predecessor, except that if the vacant directorship is a public interest directorship and the Bank has at least two other public interest directorships that are not vacant, the board of directors of the Bank may elect any individual who is eligible and qualified for any independent directorship. The Bank shall obtain an executed director eligibility certification form prescribed by the FHFA from the individual filling a member directorship. The Bank shall obtain an executed independent director application form prescribed by the FHFA from the individual filling an independent directorship. The Bank shall verify the individual's eligibility and shall deliver any independent director application form to the FHFA for its review and comment before allowing the individual to assume the directorship. The Bank shall retain the information it receives in accordance with § 1261.6.

(c) *Notification.* Promptly after allowing the individual to assume the directorship, as provided in paragraph (b) of this section, a Bank shall notify the FHFA and each member located in the Bank's district in writing of the following:

(1) For each member directorship filled by the board of a Bank, the name of the director, the name, location, and FHFA ID number of the member the director serves, the director's title or position with the member, the voting state that the director represents, and the expiration date of the director's term of office; and

(2) For each independent directorship filled by the board of a Bank, the name of the director, the name and location of the organization with which the director is affiliated, if any, the director's title or position with such organization, and the expiration date of the director's term of office.

**§ 1261.15 Minimum number of member directorships.**

Except with respect to member directorships of a Bank resulting from the merger of any two or more Banks, the number of member directorships allocated to each state shall not be less than the number of directorships allocated to that state on December 31, 1960. The following list sets forth the states whose members held more than one directorship on December 31, 1960:

State	Number of elective directorships on December 31, 1960
California .....	3
Colorado .....	2
Illinois .....	4
Indiana .....	5
Iowa .....	2
Kansas .....	3
Kentucky .....	2
Louisiana .....	2
Massachusetts .....	3
Michigan .....	3
Minnesota .....	2
Missouri .....	2
New Jersey .....	4
New York .....	4
Ohio .....	4
Oklahoma .....	2
Pennsylvania .....	6
Tennessee .....	2
Texas .....	3
Wisconsin .....	4

**§ 1261.16 Temporary rule for 2008 election of directors.**

(a) This section applies to the scheduling provisions for the election of directors of the Banks during calendar year 2008. Each Bank shall schedule its elections to allow a reasonable time to accomplish each act and complete the election process by December 31, 2008. As described herein, this section operates in conjunction with §§ 1261.3, 1261.6 and 1261.7, which govern generally the election of directors. The special provisions of this section govern the process for the 2008 elections for Bank directorships in the case of any conflict with the provisions of the other sections of this part.

(b) Each Bank shall notify its members of the commencement of the election process and shall establish a reasonable deadline after delivery of such notice within which nominating certificates must be received by the Bank, pursuant to the requirements of § 1261.6.

(c) After a Bank has accepted member directorship nominations, the Bank shall take the actions specified in § 1261.6(c) within a reasonable time.

(d) No Bank shall accept any completed and executed director eligibility certification form or any independent director application form referred to in § 1261.6(c) and (d) beyond a reasonable deadline established by the Bank.

(e) Each Bank shall deliver to each of its voting members a set of ballot materials, pursuant to the requirements of § 1261.7(a), and shall establish a reasonable period of time for the voting of ballots.

(f) After the closing date established by a Bank, the Bank shall commence the counting of ballots pursuant to the requirements of § 1261.7(e).

(g) Not later than December 31, 2008, each Bank shall declare the results of its election and report the results, pursuant to § 1261.7(f) and (g).

(h) For any Bank that began a 2008 elective directorship election process after having received the Federal Housing Finance Board's Resolution titled *2008 Designation of Federal Home Loan Bank Directorships*, Resolution No. 2008-10 dated May 14, 2008, if the number of elective directorships designated for election in 2008 in that Resolution for any state is the same as, or is more than, the number of member directorships designated for election in the state in 2008 in the Order of the FHFA Director dated September 8, 2008, then, as to such states to the extent that the Bank has completed the election process for such directorships in accordance with Federal Housing Finance Board rules up through and including verification of eligibility of nominees, the Bank's election process for member directorships shall be deemed to be in compliance with paragraphs (a), (b), (c) and (d) of this section, as applicable.

(i) This section is effective from September 26, 2008 through December 31, 2008.

Dated: September 22, 2008.

**James B. Lockhart, III,**

*Director, Federal Housing Finance Agency.*  
[FR Doc. E8-22659 Filed 9-25-08; 8:45 am]  
BILLING CODE 8070-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 47

#### Cape Town Treaty Implementation

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This final rule corrects a previously published rule. In the original document, an amendment inadvertently removed two paragraphs relating to the registration of certain aircraft. This rule reinstates those two paragraphs in their original form.

**DATES:** This rule is effective September 26, 2008.

**FOR FURTHER INFORMATION CONTACT:** Walter Binkley, Civil Aviation Registry, AFS-750, Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169; Telephone (405) 954-3131.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 3, 2005, FAA published a final rule revising the regulations concerning registering aircraft and recording security documents (70 FR 245). These revisions were required by the Cape Town Treaty Implementation Act of 2004. The Cape Town Treaty established a new International Registry for registering interests against certain aircraft and aircraft engines. The rule also made unrelated technical changes to other portions of the regulations.

One of the technical changes affected 14 CFR 47.35. The amendment should have revised paragraph (a) introductory text, in order to revise an outdated reference to an Act. However, the entire paragraph (a) was inadvertently revised, which resulted in the loss of paragraphs (a)(1) and (a)(2). The information in paragraphs (a)(1) and (a)(2) was still necessary and should have remained in the section.

#### Technical Amendment

This technical amendment merely reinstates paragraphs (a)(1) and (a)(2) to 14 CFR 47.35. The text of these paragraphs remains as it was at the time of their inadvertent removal.

#### Justification for Immediate Adoption

Because this action reinstates paragraphs that were never intended to be removed, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective upon publication.

#### List of Subjects in 14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

#### The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, part 47, as follows:

#### PART 47—AIRCRAFT REGISTRATION

■ 1. The authority citation for part 47 continues to read as follows:

**Authority:** 4 U.S.T. 1830; Pub. L. 108-297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(g), 40113-40114, 44101-44108, 44110-44113, 44703-44704, 44713, 45302, 46104, 46301.

■ 2. Amend § 47.35 by adding paragraphs (a)(1) and (a)(2) to read as follows:

**§ 47.35 Aircraft last previously registered in the United States.**

(a) \* \* \*

(1) If the applicant bought the aircraft from the last registered owner, the conveyance must be from that owner to the applicant.

(2) If the applicant did not buy the aircraft from the last registered owner, he must submit conveyances or other instruments showing consecutive transactions from the last registered owner through each intervening owner to the applicant.

\* \* \* \* \*

Issued in Washington, DC, on September 22, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E8-22586 Filed 9-25-08; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2008-0610; Airspace Docket No. 08-ASW-10]

#### Establishment of Class E Airspace; Pampa, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date; correction.

**SUMMARY:** This action confirms the effective date and makes a correction to the direct final rule that establishes Class E airspace at Pampa, Mesa Vista Ranch Airport, TX, published in the *Federal Register* July 7, 2008 (73 FR 38314) Docket No. FAA-2008-0610. This action corrects the final rule by adding "Mesa Vista Ranch Airport" to more clearly define the airport name in the airport description.

**DATES:** Effective Date: 0901 UTC September 25, 2008. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Gary Mallett, Central Service Center, System Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd, Fort Worth, TX, 76193-0530; telephone (817) 222-4949.

**SUPPLEMENTARY INFORMATION:**

#### History

The FAA published a direct final rule with request for comments in the *Federal Register* July 7, 2008, (73 FR 38314), Docket No. FAA-2008-0610.