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§811.5 Delivery of Federal Financing Bank securities.

A Reserve Bank which has received Federal Financing Bank securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. A Reserve Bank shall be fully discharged of its obligations under this part by the delivery of Federal Financing Bank securities in definitive form to its depositor or upon the order of such depositor. Customers of a member bank or other depository (other than a Reserve Bank) may obtain Federal Financing Bank securities in definitive form only by causing the depositor of the Reserve Bank to order the withdrawal thereof from the Reserve Bank.

§811.6 Registered bonds and notes.

Registered Federal Financing Bank securities deposited with a Reserve Bank for any purpose specified in §811.2 shall be assigned for conversion to book-entry Federal Financing Bank securities. The assignment, which shall be executed in accordance with the provisions of subpart F of 31 CFR, part 306, so far as applicable, shall be to—

Federal Reserve Bank of _____, as fiscal agent of the United States acting on behalf of the Federal Financing Bank for conversion to book-entry Federal Financing Bank securities.

§811.7 Servicing book-entry Federal Financing Bank securities; payment of interest; payment at maturity or upon call.

Interest becoming due on book-entry Federal Financing Bank securities shall be charged against the special agent account maintained by the Department of the Treasury for the Federal Financing Bank on the interest due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed and charged against the above said account on the date of maturity or call, and the redemption proceeds, principal and interest, shall be disposed of in accordance with the depositor's instructions.
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CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

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SUBCHAPTER A—GENERAL

PART 900—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

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AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 1422b(a), 1423.

SOURCE: 56 FR 67155, Dec. 30, 1991, unless otherwise noted.

Subpart A—Functions and Responsibilities of Finance Board

§900.1 Definitions.

As used in this part:

Bank means a Federal Home Loan Bank.

Bank Act means the Federal Home Loan Bank Act.

Bank System means the Federal Home Loan Bank System, consisting of the Federal Home Loan Banks.

Finance Board means the Federal Housing Finance Board.

§900.2 General statement and statutory authority.

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

(b) The members of the Board of Directors are individually referred to as Directors. The heads of the various administrative units, called offices or directorates, are also called Directors.

(c) The Finance Board administers chapter 11 of the Bank Act, as amended, and is authorized to issue rules, regulations and orders affecting the Banks. The Finance Board performs all such duties and responsibilities as may be required by statute. Under section 302(b)(2) of the Federal National Mortgage Association Charter Act, it also conducts a monthly survey of all major lenders to calculate a national average for interest rates on mortages for one-family homes, on behalf of the Federal National Mortgage Association. Under section 305(b) of the Federal Home Loan Mortgage Corporation Act, it conducts a similar survey for the Federal Home Loan Mortgage Corporation.

§900.3 Location and business hours.

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

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

§900.4 Federal Home Loan Bank System.

(a) The Finance Board regulates the Banks, created under the Bank Act. Specifically, its duties are:

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

(2) To supervise all lending and related operations of the Banks, which may include:

(i) Prescribing conditions upon which Banks may advance funds to their member lending institutions;

(ii) Prescribing rules and conditions under which a Bank may borrow funds, pay interest on those funds, or issue obligations;

(iii) Requiring examinations of the Banks;

(iv) Appointing the public members of the boards of directors of the Banks, conducting the elections of the members who are elected by the members of the Banks, and designating the Chairman and Vice-Chairman of the boards of directors of the Banks;

(v) Approving dividends paid by the Banks on their capital stock;

(vi) Approving applications for membership in a Bank; and

(vii) Approving the Bank Presidents selected by the Banks' board of directors and approving the salaries of top level Bank officers;

(3) To ensure that the Banks fulfill their mission of channeling funds to the housing finance industry by making long-term loans to financial lending institutions for use in mortgage lending;

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

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

(b) The Finance Board issues the Federal Home Loan Bank consolidated bonds or notes that are the joint and several obligations of the Banks. The Finance Board issues these obligations through the Office of Finance, which is a joint office of the Bank System.

§ 900.5 Financing Corporation.

The Finance Board oversees the operations of the Financing Corporation, including its issuance of obligations. The Financing Corporation is a mixed ownership government corporation chartered by the Finance Board under section 302 of the Competitive Equality Banking Act of 1987, 101 Stat. 552, 585 (1987) (12 U.S.C. 1441).

APPENDIX A TO SUBPART A OF PART 900—FEDERAL HOME LOAN BANKS

FEDERAL HOME LOAN BANK DISTRICT 1

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

Federal Home Loan Bank of Boston

One Financial Center, 20th Floor, Boston, MA 02111

FEDERAL HOME LOAN BANK DISTRICT 2

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

Federal Home Loan Bank of New York

One World Trade Center, 103rd Floor, New York, NY 10048

FEDERAL HOME LOAN BANK DISTRICT 3

(Delaware, Pennsylvania, West Virginia)

Federal Home Loan Bank of Pittsburgh

One Riverfront Center, 20 Stanwix Street, Pittsburgh, PA 15222–4893

FEDERAL HOME LOAN BANK DISTRICT 4

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

Federal Home Loan Bank of Atlanta

1475 Peachtree Street, NE., Atlanta, GA 30309

FEDERAL HOME LOAN BANK DISTRICT 5

(Kentucky, Ohio, Tennessee)

Federal Home Loan Bank of Cincinnati

2400 Atrium Two, 221 East Fourth Street, Cincinnati, OH 45202

FEDERAL HOME LOAN BANK DISTRICT 6

(Indiana, Michigan)

Federal Home Loan Bank of Indianapolis

8250 Woodfield Crossing Boulevard, Indianapolis, IN 46240

FEDERAL HOME LOAN BANK DISTRICT 7

(Illinois, Wisconsin)

Federal Home Loan Bank of Chicago

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

FEDERAL HOME LOAN BANK DISTRICT 8

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

Federal Home Loan Bank of Des Moines

907 Walnut Street, Des Moines, IA 50309

FEDERAL HOME LOAN BANK DISTRICT 9

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

Federal Home Loan Bank of Dallas

5605 North MacArthur Boulevard, Irving, TX 75038

FEDERAL HOME LOAN BANK DISTRICT 10

(Colorado, Kansas, Nebraska, Oklahoma)

Federal Home Loan Bank of Topeka

Townsite Plaza Two, 120 East Sixth Street, Topeka, KS 66603

FEDERAL HOME LOAN BANK DISTRICT 11

(Arizona, California, Nevada)

Federal Home Loan Bank of San Francisco

600 California Street, San Francisco, CA 94108

FEDERAL HOME LOAN BANK DISTRICT 12

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

Federal Home Loan Bank of Seattle

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

[56 FR 67155, Dec. 30, 1991, as amended at 63 FR 3455, Jan. 23, 1998]

Subpart B—General Organization

§900.10 Board of Directors.

The Board of Directors consists of five members (''Directors''). Four Directors are appointed by the President, with the advice and consent of the Senate, for seven-year terms. The fifth Director, the Secretary of Housing and Urban Development, is an *ex officio* Director. Not more than three Directors may belong to the same political party. By law, the four appointed Directors must have backgrounds in housing finance or a demonstrated commitment to providing specialized housing credit, and one such Director must have a background with an organization with a two-year record of representing consumer or community interests on either banking services, credit needs, financial consumer protection or housing. The Board of Directors sets agency policy and issues resolutions, rules, regulations and orders, as necessary.

§900.11 Chairperson.

The President designates one appointed Director as Chairperson of the Board of Directors, who presides over the meetings of the Board of Directors. The Board of Directors has delegated, by resolution, the responsibility of overall management and organizational or personnel administration of the Finance Board to the Chairperson.

§900.12 Office of the Managing Director.

(a) The Managing Director is the Finance Board's chief operating officer. By order of the Chairperson, the Managing Director has been delegated the authority and power necessary and convenient to effect the day-to-day management, functioning, and organization of the Finance Board, including the authority to appoint, remove, promote, direct, set compensation for, and pay Finance Board personnel. The Managing Director is authorized to execute documents on behalf of the Board of Directors, including regulations, resolutions, or orders duly passed by the Board of Directors. The Managing Director is also the Finance Board's Chief Information Officer.

(b) The Executive Secretariat is a division within the Office of the Managing Director. The Executive Secretary is the recording officer for the Board of Directors and is responsible for maintaining the Finance Board's records, including copies of all resolutions and rules adopted by the Board of Directors and orders issued by the Chairperson. The Executive Secretary also is responsible for the preparation and maintenance of the minutes or other records of all official actions and proceedings of the Board of Directors, and is responsible for the official seals of the Finance Board. This division also is responsible for the agency's Freedom of Information Act, Privacy Act, and Records Management Programs. The Executive Secretary is the primary liaison with the Office of the Federal Register.

(c) The District Banks Secretariat is a division within the Office of the Managing Director responsible for administering the election of directors of the Banks and for maintaining records on

each of the Banks' policies and marketing activities.

[61 FR 68129, Dec. 27, 1996]

§ 900.13 Office of Policy.

(a) The Office of Policy coordinates the Finance Board's policy development activities and provides advice to the Chairperson and the Board of Directors on the economic, financial, housing and community and economic development, and competitive environments in which the Bank System and its members operate. The responsibilities of the Office of Policy include:

(1) Analysis and modeling of the financial performance of the Banks;

(2) Collection and analysis of financial data in order to prepare the Bank System's annual combined financial reports and other periodic reports on Bank System operations;

(3) Collection and analysis of data on the housing and community and economic development activities of the Banks;

(4) Analysis of the Banks' performance under the Affordable Housing Program and the Community Investment Program;

(5) Analysis of policy issues arising under the Affordable Housing Program and the Community Investment Program;

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

(7) Review of the Banks' quarterly dividend recommendations.

(b) The Office of Policy is the Finance Board's primary liaison with the Banks' Chief Financial Officers concerning financial management issues, the Banks' Community Investment Officers concerning community and economic development, the Banks' Advisory Councils concerning Bank System support of affordable housing, and the Bank System's fiscal agent, the Office of Finance. It prepares the annual reports to Congress and to the Banks' Advisory Councils concerning Bank System support for low-income housing and community development.

[61 FR 68130, Dec. 27, 1996]

§ 900.14 Office of Supervision.

The Office of Supervision oversees the Banks, the Office of Finance and the Financing Corporation to ensure that they operate in a financially safe and sound manner, that the Banks are carrying out their housing and community and economic development finance mission and are in compliance with applicable statutes and regulations, as well as Finance Board policies and orders. The responsibilities of the Office of Supervision include:

(a) The conduct of examinations, at least annually, of the Banks, the Office of Finance and the Financing Corporation and the furnishing of reports thereon to the Chairpersons of their Boards of Directors;

(b) The follow-up and resolution of outstanding examination issues;

(c) Liaison with each Bank's audit committee and the review and evaluation of the work of each Bank's internal audit staff;

(d) The monitoring of Bank and System interest rate risk, financial trends and mission-related activities; and

(e) The review of Community Support Statements of Bank System members.

[61 FR 68130, Dec. 27, 1996]

§ 900.15 Office of General Counsel.

The General Counsel is the chief legal officer of the Finance Board. The Office of General Counsel provides advice to the Board of Directors, the Chairperson, and other Finance Board officials, on interpretations of statutes and regulations. The Office of General Counsel prepares all legal documents on behalf of the Finance Board and prepares opinions, regulations, and memoranda of law. It represents the Finance Board in all administrative adjudicatory proceedings before the Board of Directors. The Chairman appoints the Finance Board's Designated Agency Ethics Official from the staff of the Office of General Counsel.

[61 FR 68130, Dec. 27, 1996]

§900.16 Office of Inspector General.

The Inspector General is subject to, and operates under, the provisions of the Inspector General Act of 1978, as amended (5 U.S.C. app. 3). The Inspector General reports to and is under the general supervision of the Chairperson. The Inspector General's responsibilities under the Inspector General Act include providing policy direction for, and conducting, supervising, and coordinating audits and investigations relating to the programs and operations of the Finance Board, and recommending policies for promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Finance Board's programs and operations. The Inspector General prepares and furnishes to the Chairman for transmittal to the Congress semiannual reports on the activities of the Office of Inspector General.

[61 FR 68130, Dec. 27, 1996]

§900.17 Office of Congressional Affairs.

The Office of Congressional Affairs is responsible for ensuring the effective coordination and communication with the Congress and interest groups, and for briefing the Chairperson, the other Directors, and the Managing Director, on legislative issues before Congress pertaining to the Finance Board, the Bank System, and the Financing Corporation.

[61 FR 68130, Dec. 27, 1996]

§900.18 Office of Public Affairs.

The Office of Public Affairs is responsible for the dissemination of information about the Finance Board to the public and the news media. The Office of Public Affairs is the Finance Board's primary liaison with news reporters. It also responds to general inquiries about the activities of the Finance Board.

[61 FR 68130, Dec. 27, 1996]

§900.19 Office of Resource Management.

The Office of Resource Management advises the Chairperson and the Board of Directors on internal agency management and organization and provides support services to the agency and to individual employees. The responsibilities of the Office of Resource Management include:

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

(b) Providing support for all facility and supply requirements;

(c) Agency procurement and contracting programs;

(d) Agency financial management, budgeting and accounting; and

(e) Coordinating the design, programming, operation, and maintenance of the Finance Board's electronic data systems.

[61 FR 68130, Dec. 27, 1996]

Subpart C—Delegations of Authority

§900.30 Office of Finance Board of Directors.

(a) *Consolidated obligations.* Subject to Finance Board regulations, resolutions or policies, the Office of Finance Board of Directors is delegated the authority:

(1) To issue through the Office of Finance the Federal Home Loan Bank consolidated debentures, bonds or notes pursuant to the Finance Board's authority under section 11 of the Bank Act (12 U.S.C. 1431); and

(2) To determine their denominations, interest rate and terms.

(b) *Treasury policy.* The Office of Finance Board of Directors shall implement this delegation in accordance with the policies and guidelines issued by the Secretary of the Treasury under section 9108 of title 31 of the United States Code (31 U.S.C. 9108).

[57 FR 6468, Feb. 25, 1992]

Subpart D—Procedures

§900.50 General statement on procedures and forms.

Regulations and rules of procedure of the Finance Board are published in chapter IX of title 12 of the Code of

Federal Regulations and in supplementary material published in the FEDERAL REGISTER. The Finance Board will prescribe the procedures governing the course and conduct of proceedings before the Board of Directors in its General Regulations. When and wherever appropriate, the Finance Board may supplement its administrative procedures with informal procedures designed to aid the public or facilitate the proceedings, including the rendering of advice or assistance to persons dealing with the Finance Board or its Board of Directors.

§ 900.51 Forms.

The following forms are available at the Finance Board headquarters facility (see § 900.3) and shall be used for the purpose indicated:

FORM

10–91—Monthly Survey of Rates and Terms on Conventional 1 Family Nonfarm Mortgage Loans.
9102—Certificate of Nomination, Election of Federal Home Loan Bank Directors.
9103—Election Ballot, Election of Federal Home Loan Bank Directors.
A–1—Appointive Director Candidates—Personal Certification and Disclosure Form.
E–1—Elective Director Nominees—Personal Certification and Disclosure Form.
90–T04—Local Travel Claim.

[60 FR 49199, Sept. 22, 1995, as amended at 63 FR 65687, Nov. 30, 1998]

§ 900.52 Submittal of requests for information.

Requests for general information concerning the Finance Board or the Bank System should be made in person at the headquarters facility, at the address listed in § 900.3, or in writing addressed to the Executive Secretary at the same address.

§ 900.53 Official Seal.

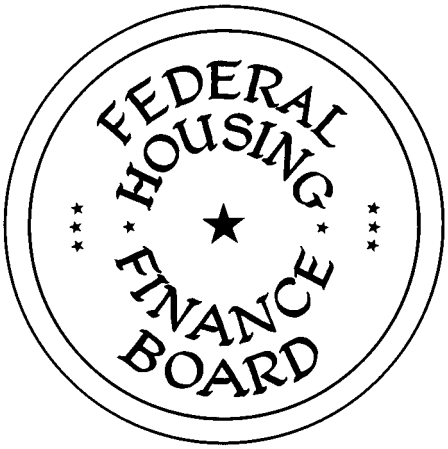
This section describes and displays the official seals used by the Finance Board to certify and authenticate official documents of the Board of Directors:

(a)(1) *Description*. A disc with the term ''SEAL'' in capital letters in its center, encircled by a designation scroll having an outer border with a roped edge and an inner border with a beaded edge, and containing the words ''FEDERAL HOUSING FINANCE BOARD'' in capital letters, in caslon type, with a mullet, in base.

(2) *Display*.

(b)(1) *Description*. A disc with a large mullet at its center and the term ''FEDERAL'' atop the term ''HOUSING'' in capital letters, in uncial type, arranged in a curved format on the upper part of the disc above the large mullet and the term ''FINANCE'' atop the term ''BOARD'' in capital letters, in uncial type, both terms arranged in a curved format on the lower part of the disc below the mullet, with two smaller mullets separating the two aforementioned terms ''HOUSING'' and ''FINANCE'', and with six mullets arranged three each in a vertical row on the left and right sides of the disc, and surrounded by a boarder consisting of two plain lines.

(2) *Display*.



(c) *Description*. A disc having the same design and description as the official logo, contained in §900.54 and displayed in paragraph (b) of that section.

[56 FR 67155, Dec. 30, 1991; 57 FR 749, Jan. 8, 1992]

§900.54 Official logo.

This section describes and displays the logo adopted by the Board of Directors as the official symbol representing the Finance Board. It is displayed on correspondence and selected documents.

(a) *Description*. A disc with its center consisting of three polygons arranged in an irregular line partially overlapping—each polygon drawn in a manner resembling a silhouette of a pitched roof house and with distinctive eaves under its roof—encircled by a designation scroll having an outer and inner border of plain heavy lines and containing the words ''FEDERAL HOUSING FINANCE BOARD'' in capital letters, in sans serif type, with two mullets on the extreme left and right of the scroll.

(b) *Display*.

PART 902—OPERATIONS

Sec.
902.1 Definitions.
902.2 Assessments on the Banks.
902.3 Monthly interest rate survey.
902.4 Schedule of charges for agency services.
902.5 Minority Contractors Outreach Program.
902.6 Procedure for consideration of waiver of regulatory provisions.

AUTHORITY: 12 U.S.C. 1422b and 1438(b).

SOURCE: 58 FR 19195, Apr. 13, 1993, unless otherwise noted.

§902.1 Definitions.

As used in this part:

Bank means a Federal Home Loan Bank.

Bank System means the Federal Home Loan Bank System, consisting of all twelve Banks.

Business means an enterprise, including a firm, corporation, joint stock company, partnership, joint venture or association that engages in commercial activity on a regular basis.

Chairperson means the Chairperson of the Board of Directors.

Finance Board means the Federal Housing Finance Board.

Minority means:

(1) A male person or persons classified as either an African-American, a Native-American, a Hispanic-American, or an Asian-American; or

(2) A female person or persons regardless of ethnic or racial classification.

Minority-owned entity means a business that is:

(1) Owned or controlled by any combination of African-Americans, Native-Americans, Hispanic-Americans or Asian-Americans, regardless of gender, where such ownership or control includes the management of the daily business operations; or

(2) Owned or controlled by female persons, regardless of ethnic origin, where such ownership or control includes the management of its daily business operations.

§ 902.2 Assessments on the Banks.

(a) *Assessment authority*. The Finance Board may impose a semiannual assessment on the Banks in an aggregate amount the Finance Board determines is sufficient to provide for the payment of its estimated expenses for the period for which it makes such assessment.

(b) *Assessment procedure*. (1) At or near the end of each fiscal year, the Finance Board shall approve an annual budget of Finance Board expenses for the next fiscal year. The Finance Board shall promptly provide a copy of the approved budget to each Bank president.

(2) The Finance Board shall assess the Banks semiannually in an aggregate amount it determines is sufficient to pay the expenses approved under paragraph (b)(1) of this section. The Finance Board shall offset the amount of the semiannual assessments it imposes on the Banks by any amount it determines is remaining from previous semiannual assessments. The Finance Board shall promptly notify each Bank president in writing of the amount on any assessment.

(3) Each Bank shall pay a *pro rata* share of the semiannual assessments imposed under paragraph (b)(2) of this section. The Finance Board shall calculate each Bank's *pro rata* share based on the ratio between the total paid-in value of the Bank's capital stock and the aggregate total paid-in value of the capital stock of every Bank. The Finance Board shall promptly notify each Bank in writing of the amount of its *pro rate* share of any semiannual assessment.

(4) Unless otherwise instructed in writing by the Finance Board, each Bank shall pay to the Finance Board its *pro rata* share of an assessment in equal monthly installments during the semiannual period covered by the assessment.

[62 FR 35949, July 3, 1997]

§ 902.3 Monthly interest rate survey.

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

(a) *Initial survey*. Each month, the Finance Board samples approximately 1,000 mortgage lenders (savings and loan associations, savings banks, commercial banks, and mortgage loan companies) and asks them to report the terms and conditions on all conventional mortgages (not federally insured or guaranteed) used to purchase single-family homes that each such lender closes during the last five working days of the month. In most cases, the information is reported electronically in a format similar to Finance Board Form FHFB 10–91. The data is weighted so that the pattern of weighted responses matches the actual pattern of mortgage originations by lender type and by region. The Finance Board tabulates the data and publishes standard data tables late in the following month.

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

(c) *Means of survey*. The Finance Board collects the data for the compilation of the indices described in this section by contract. Pursuant to such contract, a Finance Board form, entitled ''Monthly Survey of Rates and Terms on Conventional One-Family Nonfarm Mortgage Loans'' (FHFB Form 10–91), is distributed to selected

lending institutions. The data is collected, compiled and processed, and the completed survey results are forwarded to the Housing Finance Directorate of the Finance Board for tabulation and distribution.

§902.4 Schedule of charges for agency services.

(a) *Authority.* Section 9701 of title 31, United States Code, directs government agencies to charge a fee for any special service provided to a selected segment of the public that makes use of such special service (31 U.S.C. 9701). The Office of Management and Budget's Circular A–25 contains guidelines for agencies to follow when promulgating regulations for such user fee charges. This section implements that authority.

(b) *ARM Index special programming service.* (1) The Finance Board develops and makes available special tabulations of its monthly interest rate survey data for individual users, upon request.

(2) Each request for a specialized interest rate survey will be made in writing to the Housing Finance Directorate.

(3) The fee for such special service is a $100 per hour for the analyist's time, with a minimum charge of $100, prepaid, to accompany the written request.

§902.5 Minority Contractors Outreach Program.

(a) *Scope.* (1) This section establishes the Finance Board's Minority Contractors Outreach Program and designates the officials responsible for implementing the Program and its oversight.

(2) The Minority Contractor Outreach Program:

(i) Seeks to encourage the maximum participation of minorities in all Finance Board procurement contracts for goods or services;

(ii) Shall operate consistent with the principle of full and open competition and the concept of contracting for minimum agency needs at the lowest practical cost; and

(iii) Shall not be construed to be a substitute means of procurement for the Finance Board's established procedural process for the procurement of goods or services.

(b) *Responsibilities.* (1) The Director of Administration shall have general oversight of the Minority Contractors Outreach Program.

(2) The Chairperson shall:

(i) Appoint an Minority Contractors Advocate, who shall—

(A) Have primary responsibility for furthering the purposes of the Minority Contractors Outreach Program;

(B) Be responsible for challenging barriers to, and promoting maximum participation by, minorities or minority-owned entities in the Finance Board procurement process; and

(C) Develop a manual describing the procedures by which the Finance Board will implement the Minority Contractors Outreach Program.

(ii) Assign such Advocate only such duties or responsibilities, with respect to the Minority Contractors Outreach Program, as are consistent with this section, and shall not assign such Advocate any duties of a contracting officer or of a technical representative on a contract.

(c) *Program components.* The Minority Contractors Outreach Program procedures shall include the following:

(1) *Contractor File.* (i) The Minority Contractors Advocate shall compile and maintain an ongoing file consisting of minority-owned entities that are interested in contracting with the Finance Board for goods or services through the competitive bidding or negotiated procurement process.

(ii) The information in such file shall list the current name and address of each such minority-owned entity and shall categorize each name and address as follows:

(A) Accounting services;

(B) Building support services;

(C) Computer services;

(D) Consulting services;

(E) Legal services;

(F) Office supplies and equipment; or

(G) Other services.

(2) *Solicitation.* The Minority Contractors Advocate shall implement a procedure for soliciting potential candidates for the contractor file provided for in paragraph (c)(1) of this section, by means of any of the following:

(i) Referrals from executive departments, agencies or instrumentalities of the Federal Government;

(ii) Direct solicitation of selected candidates;

(iii) Advertising by direct mail or publications specifically directed to minorities, or minority-owned entities;

(iv) Sponsoring Finance Board seminars designed to explain the Minority Contractors Outreach Program to minority contractors or minority-owned entities who have the potential of contracting with the Finance Board;

(v) Attendance at conventions, seminars or other professional conferences of minorities or minority-owned entities located in the greater Washington metropolitan area.

(3) *Certification*. (i) No minority-owned entity (whether solicited by the Minority Contractors Advocate or not) may participate in the Finance Board procurement process as a minority-owned entity unless certified as such by the Chairperson, or designee.

(ii) The certification shall be by a means and form approved by the Finance Board.

(iii) Nothing in this section shall be deemed to prevent an non-certified minority-owned entity from participating in the procurement process as an entity not designated or deemed a minority or minority-owned entity.

(4) *Promotion*. (i) The Minority Contractors Advocate shall maintain an ongoing campaign of promotion of the Minority Contractors Outreach Program with all certified minority-owned entities.

(ii) This campaign shall include:

(A) Ongoing dissemination of information about the Minority Contractors Outreach Program with certified minority-owned entities;

(B) Alerting appropriate certified minority-owned entities when the Finance Board makes a solicitation for a bid or initiates the negotiation of a procurement contract for goods or services;

(C) Acting as a liaison between the Finance Board contracting authorities and a particular minority-owned entity; and

(D) Assisting any certified minority-owned entity to understand Finance Board contracting procedures or other information regarding a particular bid or contract.

(iii) Nothing in this paragraph (c)(4) shall authorize the Minority Contractors Advocate to represent the interests of any minority-owned entity in any contract matter or bid before the Finance Board.

(5) *Contract award guidelines*—(i) *Contracts not exceeding $25,000.* The Finance Board Contracting Officer shall, from time to time, award contracts for the procurement of goods or services, that do not exceed $25,000 in costs, to certified minority-owned entities listed in the contractor file provided for in paragraph (c)(1) of this section, to the extent not inconsistent with the principles of Federal Government procurement laws. Such awards shall be made after consultation with the Minority Contractors Advocate.

(ii) *Contracts exceeding $25,000.* Contracts for goods or services that exceed $25,000 will be awarded on the basis and consistent with the principles of the Federal Government procurement laws. The Finance Board Contracting Officer and the Minority Contractors Advocate shall work to ensure, promote and facilitate the maximum participation of minority-owned entities in the Finance Board's procurement of goods or services that exceed $25,000.

§ 902.6 Procedure for consideration of waiver of regulatory provisions.

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

(b) *Waiver requests.* Any person or entity may file a written waiver request with the Finance Board.

(1) *Procedure.* Any request for a waiver shall be filed with the Executive Secretary, Federal Housing Finance

Board, 1777 F Street, N.W., Washington, DC 20006, and, if from a Bank member institution, with the appropriate Bank.

(2) *Documentation.* A waiver request shall include the following:

(i) A detailed statement of facts, including the provisions of this chapter to which the request relates, the participants in the proposed transaction, and the reasons for the request; and

(ii) An analysis of each legal issue raised.

[61 FR 64614, Dec. 6, 1996]

PART 904—FREEDOM OF INFORMATION ACT REGULATION

Sec.
904.1 Definitions.
904.2 Records available to the public.
904.3 Requests for records.
904.4 Finance Board response to requests for records.
904.5 Records not disclosed.
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904.8 Appeals.
904.9 Fees.

AUTHORITY: 5 U.S.C. 552; 52 FR 10012 (Mar. 27, 1987).

SOURCE: 63 FR 37485, July 13, 1998, unless otherwise noted.

§904.1 Definitions.

For purposes of this part:

(a) *Agency* has the same meaning as in 5 U.S.C. 552(f)(1).

(b) *Duplication* means the process of making a copy of a record in order to respond to a FOIA request, including paper copies, microfilm, audio-video materials, and computer diskettes or other electronic copies.

(c) *Finance Board* means the agency established as the Federal Housing Finance Board.

(d) *Financial regulatory agency* means the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Farm Credit Administration, or a state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a financial institution, including an insurance company.

(e) *FOIA* means the Freedom of Information Act, as amended (5 U.S.C. 552).

(f) *Record* means information or documentary material the Finance Board maintains in any form or format, including an electronic form or format, which the Finance Board:

(1) Made or received under federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence of Finance Board operations or activities or because of the value the information it contains; and

(3) Controls at the time it receives a request.

(g) *Requester* means any person, including an individual, corporation, firm, organization, or other entity, who makes a request to the Finance Board under FOIA for records.

(h) *Review* means the process of examining a record to determine whether all or part of the record may be withheld, and includes redacting or otherwise processing the record for disclosure to a requester. It does not include time spent:

(1) Resolving legal or policy issues regarding the application of exemptions to a record; or

(2) At the administrative appeal level, unless the Finance Board determines that the exemption under which it withheld records does not apply and the records are reviewed again to determine whether a different exemption may apply.

(i) *Search* means the time spent locating records responsive to a request, manually or by electronic means, including page-by-page or line-by-line identification of responsive material within a record.

(j) *Secretary to the Board* means the Secretary to the Board of Directors of the Finance Board. The address for the Secretary to the Board is Executive Secretariat, Office of the Managing Director, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

(k) *Unusual circumstances* means the need to:

(1) Search for and collect records from establishments that are separate from the office processing the request;

(2) Search, review, and duplicate a voluminous amount of separate and distinct records in order to process a single request; or

(3) Consult with another agency or among two or more components of the Finance Board that have a substantial interest in the determination of a request.

(l) *Working days* do not include Saturdays, Sundays, and legal public holidays.

§ 904.2 Records available to the public.

(a) *General.* (1) It is the policy of the Finance Board to respond promptly to all FOIA requests.

(2) The Finance Board may disclose records that were previously published or disclosed or are customarily furnished to the public in the course of the performance of official duties without complying with this part. These records include, but are not limited to, the annual report the Finance Board submits to Congress pursuant to section 2B(d) of the Federal Home Loan Bank Act (12 U.S.C. 1422b(d)), press releases, Finance Board forms, and materials published in the FEDERAL REGISTER.

(3) Except as provided in the Privacy Act (5 U.S.C. 552a), the Finance Board's Privacy Act regulation (12 CFR part 909), or paragraph (a)(2) of this section, the Finance Board shall not disclose records except in accordance with the requirements of this part.

(b) *Reading room.* (1) Subject to §§ 904.5 through 904.7, the following records shall be available for public inspection and copying in the Finance Board reading room from 9:00 a.m. to 4:00 p.m. each working day:

(i) Final opinions or orders of the Finance Board in the adjudication of cases.

(ii) A record of the final votes of each member of the Board of Directors in every Finance Board proceeding.

(iii) Statements of policy and interpretations adopted by the Finance Board that are not published in the FEDERAL REGISTER.

(iv) Administrative staff manuals and instructions to staff that affect a member of the public.

(v) Records previously disclosed to any requester pursuant to this part which, because of the nature of their subject matter, the Finance Board has determined will likely be the subject of subsequent requests for substantially the same records, and a general index thereof.

(vi) Current indices that provide identifying information about all matters issued, adopted, or promulgated by the Finance Board.

(vii) The report the Finance Board submits to the Attorney General pursuant to 5 U.S.C. 552(e).

(2) The Finance Board shall make each reading room record created on or after November 1, 1996 available by computer telecommunications or other electronic means, such as on computer diskettes or on the Finance Board's Internet Web site, found at http://www.fhfb.gov.

(3) The Finance Board shall assess fees for searching, reviewing, or duplicating reading room records in accordance with § 904.9.

§ 904.3 Requests for records.

(a) *Request requirements.* Requests for access to, or copies of, Finance Board records shall be in writing and addressed to the Secretary to the Board. Each request shall include the following:

(1) A description of the requested record that provides sufficient detail to enable the Finance Board to locate the record with a reasonable amount of effort;

(2) The requester's full name, mailing address, and a telephone number where the requester can be reached during normal business hours;

(3) A statement that the request is made pursuant to FOIA; and

(4) At the discretion of the requester, a dollar limit on the fees the Finance Board may incur to respond to the request for records. The Finance Board shall not exceed such limit.

(b) *Incomplete requests.* If a request does not meet all of the requirements of paragraph (a) of this section, the Secretary to the Board may advise the requester that additional information

is needed. If the requester submits a corrected request, the Finance Board shall treat the corrected request as a new request.

§904.4 Finance Board response to requests for records.

(a) *Response deadline.* Subject to §904.9(f), within 20 working days of receipt of a request meeting the requirements of §904.3(a) and any extensions of time under paragraph (c) of this section, the Secretary to the Board shall:

(1) Determine whether to grant or deny the request in whole or in part;

(2) Notify the requester in writing of the determination and the reasons therefor; and

(3) Make the records, if any, available to the requester.

(b) *Denials.* If the Secretary to the Board denies the request in whole or in part, the notice required under paragraph (a)(2) of this section shall state that the Secretary to the Board is the person responsible for the denial, the denial is not a final agency action, and the requester may appeal the denial under §904.8.

(c) *Extensions of time.* In unusual circumstances, the Secretary to the Board may extend the time limit in paragraph (a) of this section for a period not to exceed 10 working days by notifying the requester in writing of:

(1) The reasons for the extension;

(2) The date on which a determination is expected; and

(3) The opportunity for the requester to either limit the scope of the request so that the Finance Board may process it in accordance with paragraph (a) of this section, or arrange an alternative time frame for processing the request or a modified request.

(d) *Expedited processing.* (1) The Finance Board shall process a request for records as soon as practicable if it determines that expedited processing is appropriate or the requester demonstrates a compelling need. To demonstrate a compelling need, a requester shall submit a written application certified to be true and correct to the best of the requester's knowledge and belief to the Secretary to the Board. The application shall state that:

(i) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a requester who is primarily engaged in disseminating information, such as a representative of the news media as defined in §904.9(a)(4)(iv), there is urgency to inform the public concerning actual or alleged Finance Board activity.

(2) Within 10 working days of receipt of an application for expedited processing that meets the requirements of paragraph (c)(1) of this section, the Secretary to the Board shall determine whether to grant or deny the application and notify the requester in writing of the determination.

(3) A requester may appeal the denial of an application for expedited processing by submitting a written application stating the grounds for the appeal to the Secretary to the Board. The Finance Board shall expeditiously determine whether to grant or deny the appeal and shall notify the requester in writing of the determination, the name and title or position of the person responsible for the determination, and of the provisions for judicial review of this final action under 5 U.S.C. 552(a)(4) and (6).

(e) *Providing responsive records.* The Finance Board shall provide one copy of a record to a requester in any form or format requested if the record is readily reproducible by the Finance Board in that form or format by regular U.S. mail to the address indicated in the request unless other arrangements are made, such as taking delivery of the document at the Finance Board. At the option of the requester and upon the requester's agreement to pay fees in accordance with §904.9, the Finance Board shall provide copies by facsimile transmission or other express delivery methods.

§904.5 Records not disclosed.

(a) *Records exempt from disclosure.* Except as otherwise provided in this part, the Finance Board shall not disclose records that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are

in fact properly classified pursuant to such Executive order.

(2) Related solely to the Finance Board's internal personnel rules and practices.

(3) Specifically exempted from disclosure by a statute other than FOIA if such statute requires the record to be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of records to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Inter- or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the Finance Board.

(6) Personnel, medical, or similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

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

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, any private institution, or a Federal Home Loan Bank, which furnished information on a confidential basis, and, in the case of a record compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Finance Board, a Federal Home Loan Bank, or a financial regulatory agency.

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Reasonably segregable portions.* (1) The Finance Board shall provide a requester with any reasonably segregable portion of a record after redacting the portion that is exempt from disclosure under paragraph (a) of this section.

(2) The Finance Board shall make a reasonable effort to estimate the volume of redacted information and provide that information to the requester unless providing the estimate would harm an interest protected by the exemption under which the redaction is made.

(3) The Finance Board shall indicate the estimated volume of redacted information on the released portion of the record unless providing the estimate would harm an interest protected by the exemption under which the redaction is made. If technically feasible, the Finance Board shall make the indication at the place in the record where the redaction is made.

(c) *Public interest.* The Finance Board may disclose records it has authority to withhold under paragraph (a) of this section upon a determination that disclosure would be in the public interest.

§ 904.6 Disclosure of Federal Home Loan Bank examination reports.

The Finance Board may disclose an examination, operating, or condition report of a Federal Home Loan Bank or a related record to a financial regulatory agency upon a determination that:

(a) The person requesting the record on behalf of the financial regulatory agency has the authority to make such request;

(b) The financial regulatory agency is requesting the record for a legitimate regulatory purpose; and

(c) The financial regulatory agency making the request agrees that it shall

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

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

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

§904.8 Appeals.

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

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

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

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

(1) Initiate and process an administrative appeal; or

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

§904.9 Fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§906.1 Purpose and scope.

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

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

§906.2 Definitions.

For the purpose of this part:

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

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

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

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

FHLBank means a Federal Home Loan Bank.

Finance Board means the Federal Housing Finance Board.

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

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

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

(3) Disposition of Finance Board business by circulation of written materials on proposed actions to individual

Directors for proposed actions, and notational voting by the individual Directors on such proposed actions.

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

Sunshine Act means the Government in the Sunshine Act.

§ 906.3 Open meetings.

(a) Except as provided in § 906.4, every portion of every meeting of the Board of Directors shall be open to public observation.

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

§ 906.4 Closed meetings.

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

(1) Disclose matters that are:

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

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

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

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

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

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

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

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

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

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

(i) Interfere with enforcement proceedings;

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

(iii) Constitute an unwarranted invasion of personal privacy;

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

(v) Disclose investigative techniques and procedures; or

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

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

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

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

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

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

disclosure on its own initiative prior to taking final action on such proposal; or

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

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

§906.5 Procedures for closing meetings.

(a) *Regular procedures.* (1) Except as provided in paragraph (b) of this section, a meeting of the Board of Directors, or portion thereof, will be closed to public observation, and information pertaining to such meeting, or portion thereof, will be withheld from the public, when a majority of the Board of Directors determines by recorded vote that such meeting, or portion thereof, or the withholding of information qualifies for exemption under §906.4, and the Board of Directors does not find that the public interest requires otherwise.

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

(3) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation, or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

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

(5) Whenever any person's interests may be directly affected by any portion of a meeting for any of the reasons referred to in paragraphs (a) (5), (6), or (7) of §906.4, such person may send a written request to the Executive Secretary asking that such portion of the meeting be closed to public observation. The Executive Secretary will transmit the request to each Board Director, and upon the request of a Director, a recorded vote will be taken of the Board of Directors whether to close the meeting to public observation.

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

(ii) If a meeting or portion thereof is to be closed to public observation, the Finance Board within one day of the vote taken pursuant to paragraph (a) of this section will make publicly available through the Executive Secretary a full, written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the Board to be exempt from disclosure under paragraph (a) of §906.4.

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

(b) *Expedited procedures.* (1) Since a majority of the meetings, of the Board of Directors may be closed pursuant to paragraphs (a) (4), (8), (9)(i) or (10) of §906.4, 5 U.S.C. 552b(d)(4) allows the Finance Board to use expedited procedures in closing such meetings. The following are examples of meetings of the

Board of Directors, or portions thereof, that may be closed to the public under these expedited procedures: sale of FHLBank consolidated bonds or notes, and review of examination, operating or condition reports of FHLBanks.

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

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

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

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

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

(2) *Minutes.* The Finance Board may make and maintain a set of complete minutes, in lieu of such transcript or electronic recording, with respect to meetings, or portions thereof, closed or information withheld under paragraphs (a) (8), (9)(i) or (10) of § 906.4. Such set of minutes shall fully and clearly describe all matters discussed and provide a full and accurate summary of any action taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each Board Director on the question). All documents considered in connection with any action shall be identified in such set of minutes.

(3) *Availability of Records.* (i) The transcript, electronic recording or set of minutes of an item discussed, or of testimony received, at a meeting, shall be made available promptly to the public through the Executive Secretary except in cases where the Board of Directors determines that the item or testimony contains information which may be withheld under § 906.4(a).

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

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

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

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

§ 906.6 Notice of meetings.

(a) *Scope of notice.* (1) Except as provided in paragraph (a) of § 906.4 that such information is determined to be exempt from disclosure, each open meeting of the Board of Directors, or each meeting closed under the regular procedures in paragraph (a) of § 906.5,

will be preceded by public notice as described in this section.

(2) The notices for meetings of the Board of Directors closed under the expedited procedures pursuant to paragraph (b) of §906.5 will be made in accordance with §906.5(b)(4).

(b) *Content of notice.* A notice of an open meeting or a meeting closed under the regular procedures in paragraph (a) of §906.5 will state the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the Executive Secretary for information about the meeting. Each such notice shall be posted in the lobby of the Finance Board offices, and may be made available in addition by other means or at other locations as deemed desirable. Immediately following the posting of each such notice, the Finance Board will publish the notice in the FEDERAL REGISTER.

(c) *Time*—(1) *Seven days notice.* Except as provided in paragraph (c)(2) of this section, a public notice of open meetings or meetings closed under paragraph (a) of §906.5 will be made at least seven days in advance of each meeting.

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

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

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

(i) At least a majority of the Board Directors determines by recorded vote that Finance Board business so requires and that no earlier notice of the change was possible; and

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

(3) *Timing of amendment.* A public announcement of a change in either the time, place or subject matter of a meeting may be made after the commencement of the meeting affected.

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

PART 908—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT [RESERVED]

PART 909—PRIVACY ACT PROCEDURES

Sec.

909.1 General.
909.2 Definitions.
909.3 Procedures for requesting individual records in a system of records; appeal of denials.
909.4 Time, place and identification requirements for requests.
909.5 Disclosure of requested records.
909.6 Procedures for requesting amendment to a record in a system of records; appeal of denials.
909.7 Fees.
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909.9 Exemptions.

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

SOURCE: 58 FR 19205, Apr. 13, 1993, unless otherwise noted.

§909.1 General.

(a) *Purpose.* This part implements the provisions of the Privacy Act, 5 U.S.C. 552a, which require each executive agency to promulgate regulations for the protection of the privacy of individuals on whom the agency maintains information that is retrieved by reference to an individual's name or an identifying particular assigned to the individual.

(b) *Scope.* These regulations establish procedures by which: an individual may seek access under the Privacy Act to records pertaining to him or her, may request correction or amendment of such records, or may seek an accounting of disclosures of such records maintained by the agency.

§ 909.2 Definitions.

As used in this part:

(a) *Amendment* means any correction, addition or deletion of information contained in a record, as defined in paragraph (g) of this section.

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

(c) *Business days* means all days except Saturdays, Sundays, or Federal Government holidays.

(d) *Finance Board* means the Federal Housing Finance Board.

(e) *Individual* means a natural person who is either a citizen of the United States of America or an alien lawfully admitted to the United States for permanent residence. The term includes the parent(s) having custody of any minor or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(f) *Maintain* means to keep or hold and preserve in an existing state, and includes the terms ''collect,'' ''use,'' ''disseminate'' and ''control.''

(g) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Finance Board within a system of records, and that contains such individual's name, or identifying number, symbol, or other identifying particular assigned to the individual, including a fingerprint, voice print or photograph.

(h) *Records systems manager* means the employee responsible for maintaining a designated system of records at the Finance Board, as such official or employee may be identified through public notice in the FEDERAL REGISTER from time to time by the Finance Board entitled: ''Privacy Act of 1974: Systems of Records.''

(i) *Routine use* means the use of a record for a purpose compatible with the purpose for which it was originally created.

(j) *System of records* means a group of records maintained or controlled by the Finance Board from which information is or may be retrieved by the name of an individual or some identifying number, symbol or other identifying particular assigned to the individual.

(k) *Designated system of records* means a system of records, as defined in paragraph (j) of this section, that has been listed in the FEDERAL REGISTER as required by 5 U.S.C. 552a(e).

§ 909.3 Procedures for requesting individual records in a system of records; appeal of denials.

(a) *Current or former employees.* Any current or former Finance Board employee seeking access to such employee's official personnel record maintained by the Finance Board shall submit a request to the Finance Board in the manner prescribed by regulations of the Office of Personnel Management, at title 5, Code of Federal Regulations.

(b) *Other requests.* Other requests for access to a record that contains information on the requesting individual and is maintained in a Finance Board designated system of records shall be writing, shall contain a reasonable, succinct description of the record sought, and shall identify the particular designated system of records in which the record may be maintained, as identified in a notice published by the Finance Board from time to time in the FEDERAL REGISTER.

(c) *Accounting for previous disclosures.* An individual may use the procedures of this section to request an accounting from the Finance Board of previous disclosures of records pertaining to such individual in a designated system of records, pursuant to the Privacy Act, 5 U.S.C. 552a(c).

(d) *Medical records procedures.* Information on an individual contained in medical records will be disclosed to a requesting individual in accordance with the procedures in paragraph (b) of this section and the requirements of this part, except, if in the judgment of the Finance Board the disclosure of such information could have an adverse effect on the individual, the Finance Board may withhold such information from the individual and transmit it to a licensed medical physician named by the requesting individual.

(e) *Response policy.* The Finance Board will acknowledge, or substantially respond to if practicable, a request made under this section within ten (10) business days of its receipt.

(f) *Initial review.* (1) The Executive Secretary will make the initial determination whether to grant or deny a request for records under this part, after consultation with the systems manager of the appropriate designated system of records.

(2) The Executive Secretary will notify the requesting individual whether the Finance Board:

(i) Has the requested record in a Finance Board designated system of records; and

(ii) Will release the requested record or not.

(3) If the request is denied, the Executive Secretary will inform the requesting individual of the reasons for nondisclosure, and describe the individual's right to appeal the determination.

(g) *Appeal process.* (1) An individual who has been denied a request made pursuant to paragraph (b) of this section, may appeal to the Board of Directors, or designee, within 30 business days of being notified of the denial pursuant to paragraph (f) of this section.

(2) The appeal shall be in writing, shall be mailed or delivered to the Executive Secretary, and shall give the reasons why the initial determination should be overturned.

(3) The Board of Directors, or such official designated by the Board of Directors, shall decide on the appeal within 30 business days following receipt of the appeal by the Executive Secretary. The Board of Directors or designated official may extend the time period for good cause, after giving notice, and reason therefor, to the individual making the appeal.

(4) If a decision is made to affirm the initial denial of a request for a record by an individual, the Board of Directors or designated official shall notify the individual making the appeal of the decision and the reason therefor, and shall inform the individual of the right of judicial review of the appeal.

§909.4 Time, place and identification requirements for requests.

(a) *Time.* An individual may hand deliver a written request for access to or amendment of records, made under §909.3(b) or §909.6 of this part, to the Finance Board on any business day, between the hours of 8:30 a.m. and 5:30 p.m.

(b) *Place.* All written requests for access to or amendment of records shall be mailed or hand delivered to the Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

(c) *Identification*—(1) *Mailed requests.* All requests for access to or amendment of records that are mailed to the Finance Board shall be signed by the individual who is the subject of the requested record and who is making the request. The validity of each such signature shall be attested to by a notary public.

(2) *Hand delivered requests.* All requests for access to or amendment of records that are hand delivered to the Finance Board by the requesting individual shall be authenticated as to the identity of the requesting individual by two forms of identification with photographs, or by one such form of identification and a properly authenticated birth certificate.

§909.5 Disclosure of requested record.

(a) *Requesting individual.* Except to the extent that records pertaining to an individual are exempt from disclosure under §909.9 of this part, or were compiled in reasonable anticipation of a civil action or proceedings, the Finance Board will make such records available upon request, pursuant to §909.3 of this part in either of the following methods, at the option of the requesting individual:

(1) By mailing a copy of the record to the address of the requesting individual; or

(2) By making the record available for inspection and copying by the requesting individual, as soon as practicable, at the offices of the Executive Secretary on regular business days, from 9:30 a.m. until 4:30 p.m. The requesting individual may choose to be accompanied by another person during the inspection and copying by submitting a signed statement authorizing the presence of such person.

(b) *Other individuals.* (1) The Finance Board will disclose a record to a person or entity other than the requesting individual, in the manner provided by

paragraph (a) of this section, only when the Finance Board:

(i) Receives a copy of a written authorization for disclosure to such person or entity signed by the requesting individual and attested to by a notary public; and

(ii) Receives adequate identification from such person or entity.

(2) The restrictions contained in paragraph (b)(1) of this section on disclosure of a record shall not apply to:

(i) A disclosure to Finance Board officers or employees who have a need for the record in the performance of their duties;

(ii) A disclosure otherwise required by the Freedom of Information Act (5 U.S.C. 552);

(iii) A routine use listed with respect to a designated system of records;

(iv) A disclosure to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(v) A disclosure to a recipient who has provided the Finance Board with advance written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;

(vi) A disclosure to the National Archives and Records Administration as a record with sufficient historical or other value to warrant its continued preservation by the Federal Government or for evaluation by the Archivist of the United States to determine whether it has such value.

(vii) A disclosure to another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for civil or criminal law enforcement activity authorized by law if the head of such agency or instrumentality has made a written request to the Finance Board specifying the particular record requested and the law enforcement activity for which it is sought;

(viii) A disclosure to any person pursuant to a showing of compelling circumstances affecting the health and safety of an individual if notification of the disclosure is transmitted to the last known address of the individual who is the subject of the disclosed record;

(ix) A disclosure to a joint committee of Congress, or any subcommittee thereof, or to either House of Congress, or to any committee or joint committee, or subcommittee thereof, but only to the extent of matter within such joint committee's, committee's or subcommittee's jurisdiction;

(x) A disclosure to the Comptroller General, or authorized representative, made in the course of performing the duties of the General Accounting Office.

(xi) Pursuant to the order of a court of competent jurisdiction; or

(xii) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

(c) The Finance Board, with respect to each system of records under its control shall:

(1) Except for disclosures made under paragraphs (b)(1) or (b)(2) of this section, keep an accurate accounting of:

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency made under paragraph (b) of this section; and

(ii) The name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting made under paragraph (c)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made; and

(3) Except for disclosures made under paragraph (b)(2)(vii) of this section, make the accounting made under paragraph (c)(1) of this section available to the individual named in the record at his or her request.

(4) When a record has been amended or corrected or when a statement of disagreement has been filed, the Finance Board will advise all prior recipients of the affected record whose identities may be determined pursuant to the disclosure accountings required by the Privacy Act or any other accounting previously made, of the amendment or correction or the filing of the statement of disagreement. Any disclosure of disputed information occurring after a statement of disagreement has been filed will clearly identify the specific

information disputed and be accompanied by a copy of the statement of disagreement and a copy of the statement of explanation, if any, as set forth in §909.6 of this part.

§909.6 Procedures for requesting amendment to a record in a system of records; appeal of denials.

(a) *Scope.* This section applies only to amendment of records on an individual maintained in a Finance Board system of records used in making a determination about such individual.

(b) *Individual request.* (1) Any individual may request the Finance Board to amend any portion of a record in a designated system of records pertaining to that individual, where such portion of the record is not accurate, relevant, timely or complete.

(2) A request to amend a record pursuant to this section shall be in writing, shall identify the particular designated system of records containing the record which the individual requests to amend and the portion of that record to be amended, and shall describe the reasons for the requested amendment.

(c) *Prior proceeding.* Nothing in this section shall permit a collateral attack upon any matter decided in a prior judicial, quasi-judicial or other proceeding.

(d) *Response policy.* The Finance Board shall acknowledge, or substantially reply to, if practicable, a request for amendment of records under this section.

(e) *Initial review.* (1) The Executive Secretary shall acknowledge all requests by individuals for amendment of records. The Executive Secretary shall refer all requests to the appropriate systems manager of the designated system of records containing the record to be reviewed, for disposition of the request within 10 business days of the referral. The systems manager shall promptly review the request and review the record for accuracy, relevance, timeliness, completeness or necessity.

(2) The systems manager will promptly provide to the Executive Secretary a recommendation whether the record should be amended and shall state any reasons for denying the request in any part.

(3) The Executive Secretary will promptly notify the requesting individual of his decision and reasons for any denial, and describe the individual's right to appeal any denial.

(f) *Appeal process.* (1) An individual who has been denied a request made pursuant to this section may appeal to the Board of Directors, or an official designated by the Board of Directors, within 30 business days of being notified of the denial pursuant to paragraph (e)(3) of this section.

(2) The appeal shall be in writing, shall be mailed to the Executive Secretary, and shall give the reasons why the initial determination should be overturned.

(3) The Board of Directors, or designated official, shall decide the appeal within 30 business days of its receipt by the Executive Secretary. The Board of Directors or designated official may extend the 30 day limit for good cause, after giving notice, and the reasons therefor, to the individual making the appeal.

(4) If a decision is made to affirm the initial denial of a request for a record by an individual, the Board of Directors or designated official shall notify the individual making the appeal of the decision and the reason therefor, and shall inform the individual of the right of judicial review of the appeal.

(g) *Statements.* (1) Within 30 business days after being denied an appeal pursuant to paragraph (f) of this section, an individual may submit a concise written statement of disagreement setting forth the individual's reasons for disagreeing with the Finance Board's refusal to amend the record.

(2) Such statement shall be provided to persons or other agencies or entities to whom the record is disclosed.

(3) The Finance Board may, if deemed appropriate, prepare a concise statement of explanation of the reason(s) why the requested amendment or correction was not made. Any statement of explanation will be included in the system of records in the same manner as the statement of disagreement. A copy of the statement of explanation and of the notation of the dispute as marked on the original record will be

provided to the individual who requested correction or amendment of the record.

§ 909.7 Fees.

The Finance Board, upon a request for records disclosable pursuant to these regulations, shall charge a fee of $0.10 per page for duplicating, unless:

(a) The Finance Board determines that it shall grant access to the record only by making a copy thereof;

(b) The total fee will not exceed $2.00; or

(c) The Finance Board determines, in its sole discretion, that a reduction or waiver of the fees is warranted for good cause.

§ 909.8 Penalties.

Subsection (i)(3) of the Privacy Act of 1974 (5 U.S.C. 552a(i)(3)) imposes criminal penalties for obtaining Finance Board records on individuals under false pretenses. It provides as follows:

> Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretense shall be guilty of a misdemeanor and fined not more than $5,000.00.

§ 909.9 Exemptions.

The following information is exempt from disclosure:

(a) The Office of Inspector General Investigative Files system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) except the following: (b) relating to conditions of disclosure; (c) (1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4) (A) through (F) relating to publishing a system notice setting forth name, location, categories of individuals and records, routing uses and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e) (6), (7), (9), (10) and (11) relating to dissemination and maintenance of records, and relating to criminal penalties. This system of records is also exempt from §§ 909.3, 909.4, 909.5 (a) and (c) (3) and (4), and 909.6 of this part. This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

(b) To the extent that there may exist within this system of records and investigative files compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, the Inspector General Investigative Case Files system of records is exempt from the following sections of the Privacy Act (5 U.S.C. 552(a)): (c)(3) relating to access to the disclosure accounting, (d) relating to access to records, (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H) and (I) relating to publishing the system notice information as to agency procedures of access and amendment and information as to the categories of sources or records, and (f) relating to developing agency rules for gaining access and making corrections. This system of records is also exempt from §§ 909.3, 909.4, 909.5 (a) and (c)(3), and 909.6 of this part.

(c) Reason for exemptions. (1) The Office of Inspector General is a component of the Finance Board which performs, as its principal function, activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2). This exemption applies only to those records and information contained in the system of records pertaining to criminal investigations. This system of records is exempt for one or more of the following reasons:

(i) To prevent interference with law enforcement proceedings.

(ii) To avoid unwarranted invasion of personal privacy by disclosure of information about third parties, including other subjects of investigation, investigators, and witnesses.

(iii) To protect the identity of Federal employees who furnish a complaint or information to the Office of the Inspector General, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(iv) To protect the confidentiality of non-Federal employee sources of information.

(v) To assure access to sources of confidential information, including those contained in Federal, State and local criminal law enforcement information systems.

(vi) To prevent disclosure of law enforcement techniques and procedures.

(vii) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(2) Investigative records within this system of records which are compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), are exempt under the provisions of 5 U.S.C. 552a(k)(2); provided, however, that if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(i) To prevent interference with law enforcement proceedings.

(ii) To protect investigatory material compiled for law enforcement purposes.

(iii) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel and sources of information.

(iv) To fulfill commitments made to protect the confidentiality of sources.

(v) To protect the identity of Federal employees who furnish a complaint or information of OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(vi) To assure access to sources of confidential information, including those contained in Federal, State and local criminal law enforcement systems.

(vii) To prevent disclosure of law enforcement techniques and procedures.

(viii) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(d) Records within a Finance Board System of records comprised of investigatory material compiled solely for the purpose of determining suitability or eligibility for Federal civilian employment, Federal contractors, or access to classified information, are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(1) To fulfill commitments made to protect the confidentiality of sources.

(2) To assure access to sources of confidential information; including those contained in Federal, State, and local criminal law enforcement information systems.

(e) Testing or examination material used solely to determine or assess individual qualifications for appointment to employment at the Finance Board, or promotion therein—the disclosure of which would compromise the objectivity or fairness of the testing, evaluation or examining process is exempt under 5 U.S.C. 552a(k)(6).

PART 910—CONSOLIDATED BONDS AND DEBENTURES

Sec.
910.0 Definitions.
910.1 Issuance of consolidated bonds.
910.2 Form of consolidated bonds.
910.3 Transactions in consolidated bonds.
910.4 Lost, stolen, destroyed, mutilated, or defaced bonds.
910.5 Administrative provision.
910.6 Reservation of right to revoke or amend; limitations thereon.

AUTHORITY: 12 U.S.C. 1422b, 1431.

§910.0 Definitions.

(a) *Board* means the Federal Housing Finance Board.

(b) *Consolidated bonds* means bonds or notes issued on behalf of all Federal Home Loan Banks.

(c) *Senior bonds* means consolidated bonds issued pursuant to 12 U.S.C. 1431 and this part and not defeased, other than bonds specifically subordinated to

any then outstanding consolidated bonds.

(d) *Unsecured, senior liabilities* means all obligations of the Banks recognized as a liability under Generally Accepted Accounting Principles, except:

(1) Liabilities that are covered by a perfected security interest;

(2) Consolidated bonds;

(3) Bonds issued pursuant to 12 U.S.C. 1431(a); and

(4) Allowance for losses for off-balance sheet obligations.

[57 FR 62186, Dec. 30, 1992]

§ 910.1 Issuance of consolidated bonds.

(a) *General.* The Board will determine and authorize the issuance of all consolidated bonds, dates of issue, maturities, rates of interest, terms and conditions thereof, and the manner in which such bonds shall be issued, subject to the provisions of 31 U.S.C. 9108. The Board in its discretion may delegate this responsibility.

(b) *Leverage limit.* The Board shall not issue senior bonds, other than bonds issued to refund consolidated bonds previously issued, if, immediately following such issuance, the aggregate amount of senior bonds and unsecured, senior liabilities of the Federal Home Loan Banks exceeds twenty (20) times the total paid-in capital stock, retained earnings and reserves (excluding loss reserves and deposit reserves pursuant to 12 U.S.C. 1431(g)), of all the Federal Home Loan Banks.

(c) *Negative pledge requirement.* The Federal Home Loan Banks shall at all times maintain assets of the following types, free from any lien or pledge, in a total amount at least equal to the amount of senior bonds outstanding:

(1) Cash;

(2) Obligations of or fully guaranteed by the United States;

(3) Secured advances;

(4) Mortgages as to which one or more Federal Home Loan Banks have any guaranty or insurance, or commitment therefore, by the United States or any agency thereof;

(5) Investments described in section 16(a) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1436(a)); and

(6) Other securities which have been assigned a rating or assessment by a major nationally recognized securities rating agency that is equivalent to or higher than the rating or assessment assigned by such agency on senior bonds outstanding.

Provided, however, that any assets of the types described in paragraphs (c)(1) through (6) of this section which are subject to a lien or pledge for the benefit of the holders of any issue of senior bonds shall be treated as if they were assets free from any lien or pledge for purposes of compliance with this provision.

[57 FR 62186, Dec. 30, 1992]

§ 910.2 Form of consolidated bonds.

Consolidated Federal Home Loan Bank bonds shall be issued in series and all consolidated bonds of the same series shall be of like date, tenor, and effect except as to denominations, which shall be in such amounts as may be authorized by the Board. The form of each consolidated bond shall be prescribed by the Board. Consolidated bonds issued with maturities of 1 year or less may be designated consolidated notes.

[42 FR 56316, Oct. 25, 1977. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 910.3 Transactions in consolidated bonds.

The general regulations of the Department of Treasury now or hereafter in force governing transactions in United States securities, except 31 CFR part 357 (regarding book-entry procedure), are hereby incorporated into this part, so far as applicable and as necessarily modified to relate to consolidated Federal Home Loan Bank bonds, as the regulations of the Board for similar transactions in consolidated Federal Home Loan Bank bonds. The book-entry procedure for consolidated Federal Home Loan Bank bonds is contained in part 912 of this subchapter.

[63 FR 8059, Feb. 18, 1998]

§ 910.4 Lost, stolen, destroyed, mutilated, or defaced bonds.

The statutes of the United States now or hereafter in force, and the regulations of the Treasury Department, now or hereafter in force, governing relief on account of the loss, theft, destruction, mutilation, or defacement of

United States securities, so far as applicable and as necessarily modified to relate to consolidated Federal Home Loan Bank bonds, are hereby adopted as the regulations of the Board for the issuance of substitute consolidated Federal Home Loan Bank bonds or the payment of lost, stolen, destroyed, mutilated, or defaced consolidated Federal Home Loan Bank bonds.

[23 FR 9878, Dec. 23, 1958. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 910.5 Administrative provision.

The Secretary of the Treasury, or the Acting Secretary of the Treasury, is hereby authorized and empowered, as the agent of the Board and the Federal Home Loan Banks, to administer the regulations of the Board adopted by §§ 910.3 and 910.4, and to delegate such authority at his discretion to other officers, employees, and agents of the United States Treasury Department. Any such regulations may be waived on behalf of the Board and the Federal Home Loan Banks by the Secretary of the Treasury or the Acting Secretary of the Treasury or by an officer of the United States Treasury Department authorized to waive similar regulations with respect to United States securities, but only in any particular case in which a similar regulation, with respect to United States Securities would be waived. The terms ''securities'' and ''bonds'' as used in this section shall, unless the context otherwise requires, include and apply to coupons and interim certificates.

[23 FR 9878, Dec. 23, 1958. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 55 FR 2229, Jan. 23, 1990]

§ 910.6 Reservation of right to revoke or amend; limitations thereon.

(a) *General.* The right to revoke or amend this part, or to prescribe and issue supplemental or amendatory rules and regulations thereto, is hereby reserved.

(b) *Limitation on amendment of leverage limit or negative pledge requirement.* No revocation or relaxation of any of the restrictions or requirements contained in or imposed by § 910.1 (b) or (c) shall be effected except:

(1) If there are no senior bonds then outstanding or if there shall have been deposited with the Treasurer of the United States, noncallable (or called) direct obligations of the United States of America or obligations fully guaranteed by the United States of America of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient to pay in full (together with any other moneys placed in trust and irrevocably committed for such payment and without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom) the principal of and interest to date of maturity or to such date designated for redemption and any redemption premium on all senior bonds the holders of which have not consented to such revocation or relaxation; or

(2) Section 910.1(b) may be changed by the Board in any manner if the Board receives either:

(i) Written evidence from at least one major nationally recognized securities rating agency which rates or makes an assessment of the senior bonds that such change in that provision will not result in the lowering of its then-current rating or assessment on senior bonds outstanding or next to be issued; or

(ii) A written opinion from an investment banking firm that such change would not have a materially adverse effect on the creditworthiness of senior bonds outstanding or next to be issued.

[57 FR 62186, Dec. 30, 1992]

PART 912—BOOK-ENTRY PROCEDURE FOR Federal HOME LOAN BANK SECURITIES

Sec.

912.1 Definitions.
912.2 Law governing rights and obligations of Federal Home Loan Banks, Finance Board, Office of Finance, United States and Federal Reserve Banks; rights of any Person against Federal Home Loan Banks, Finance Board, Office of Finance, United States and Federal Reserve Banks.
912.3 Law governing other interests.
912.4 Creation of Participant's Security Entitlement; security interests.
912.5 Obligations of Federal Home Loan Banks and the Office of Finance; no Adverse Claims.

912.6 Authority of Federal Reserve Banks.
912.7 Liability of Federal Home Loan Banks, Finance Board, Office of Finance and Federal Reserve Banks.
912.8 Additional requirements; notice of attachment for Book-entry Federal Home Loan Bank Securities.
912.9 Reference to certain Department of Treasury commentary and determinations.
912.10 Obligations of United States with respect to Federal Home Loan Bank Securities.

AUTHORITY: 12 U.S.C. 1422a, 1422b, 1431, 1435.

SOURCE: 63 FR 8059, Feb. 18, 1998, unless otherwise noted.

§ 912.1 Definitions.

For purposes of this part, unless the context otherwise requires or indicates:

(a) *Adverse Claim* means a claim that a claimant has a property interest in a Book-entry Federal Home Loan Bank Security and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Security.

(b) *Book-entry Federal Home Loan Bank Security* means a Federal Home Loan Bank Security maintained in the book-entry system of the Federal Reserve Banks.

(c) *Entitlement Holder* means a Person or a Federal Home Loan Bank to whose account an interest in a Book-entry Federal Home Loan Bank Security is credited on the records of a Securities Intermediary.

(d) *Federal Home Loan Bank Security* means a consolidated bond, debenture, note, or other obligation of the Federal Home Loan Bank issued by the Finance Board under authority of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431).

(e) *Federal Reserve Bank* means a Federal Reserve Bank or branch, acting as fiscal agent for the Office of Finance, unless otherwise indicated.

(f) *Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Federal Reserve Bank maintains Book-entry Securities accounts and transfers Book-entry Securities.

(g) *Finance Board* means the Federal Housing Finance Board.

(h) *Funds account* means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, Book-entry Securities transaction fees, or principal and interest payments.

(i) *Office of Finance* means the Office of Finance established under part 941 of this chapter, acting as agent of the Finance Board in all matters relating to the issuance of Book-entry Federal Home Loan Bank Securities, or as agent of the Federal Home Loan Banks in the performance of all other necessary and proper functions relating to Book-entry Federal Home Loan Bank Securities, including the payment of principal and interest due thereon.

(j) *Participant* means a Person or a Federal Home Loan Bank that maintains a Participant's Securities Account with a Federal Reserve Bank.

(k) *Participant's Securities Account* means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Federal Home Loan Bank Securities held for a Participant are or may be credited.

(l) *Person* means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include a Federal Home Loan Bank, the Finance Board, the Office of Finance, the United States, or a Federal Reserve Bank.

(m) *Revised Article 8* means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611.

(n) *Securities Intermediary* means:

(1) A Person that is registered as a ''clearing agency'' under the Federal securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a Book-entry Federal Home Loan Bank Security that would require

it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, it its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the Federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) *Security Entitlement* means the rights and property interest of an Entitlement Holder with respect to a Book-entry Federal Home Loan Bank Security.

(p) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(q) *Transfer Message* means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Federal Home Loan Bank Security, as set forth in Federal Reserve Bank Operating Circulars.

§912.2 Law governing rights and obligations of Federal Home Loan Banks, Finance Board, Office of Finance, United States and Federal Reserve Banks; rights of any Person against Federal Home Loan Banks, Finance Board, Office of Finance, United States and Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the rights and obligations of the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States and the Federal Reserve Banks with respect to: A Book-entry Federal Home Loan Bank Security or Security Entitlement and the operation of the Book-entry system, as it applies to Federal Home Loan Bank Securities; and the rights of any Person, including a Participant, against the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States and the Federal Reserve Banks with respect to: A Book-entry Federal Home Loan Bank Security or Security Entitlement and the operation of the Book-entry system, as it applies to Federal Home Loan Bank Securities; are governed solely by regulations of the Finance Board, including the regulations of this part 912, the applicable offering notice, applicable procedures established by the Office of Finance, and Federal Reserve Bank Operating Circulars.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to §912.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to §912.4(c)(1), is governed by the law determined in the manner specified in §912.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in the first sentence of paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

§912.3 Law governing other interests.

(a) To the extent not inconsistent with this part 912, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or

interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection, and priority of a security interest in a Security Entitlement.

(b) The following rules determine a ''Securities Intermediary's jurisdiction'' for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account is a clearing corporation, and the Participant's interest in a Federal Home Loan Bank Book-entry Security is a Security Entitlement.

§ 912.4 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book entry that a Book-entry Federal Home Loan Bank Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including, without limitation, deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the Securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the Security. For purposes of this paragraph (b), an ''authorized representative of the United States'' is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in a Security Entitlement in favor of any Person except

to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the Securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in §912.2(b) or §912.3. The perfection, effect of perfection or non-perfection, and priority of a security interest are governed by that applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under that law, including with respect to the effect of perfection and priority of the security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§912.5 Obligations of the Federal Home Loan Banks and the Office of Finance; no Adverse Claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in §912.4(c)(1), for the purposes of this part 912, the Federal Home Loan Banks, the Office of Finance and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Federal Home Loan Bank Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to the Security, notwithstanding any information or notice to the contrary. Neither the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States, nor the Federal Reserve Banks are liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Federal Home Loan Bank Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Federal Home Loan Bank Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Federal Home Loan Banks and the Office of Finance to make payments of interest and principal with respect to Book-entry Federal Home Loan Bank Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Federal Home Loan Bank Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at the Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry Federal Home Loan Bank Securities are paid, either at maturity or upon redemption, in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the proceeds, including both principal and interest, where applicable, to a Funds Account at the Federal Reserve Bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant is required in connection with the payment of a Book-entry Federal Home Loan Bank Security, unless otherwise expressly required.

§912.6 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Office of Finance: To perform functions

with respect to the issuance of Book-entry Federal Home Loan Bank Securities, in accordance with the terms of the applicable offering notice and with procedures established by the Office of Finance; to service and maintain Book-entry Federal Home Loan Bank Securities in accounts established for such purposes; to make payments of principal, interest and redemption premium (if any), as directed by the Office of Finance; to effect transfer of Book-entry Federal Home Loan Bank Securities between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Office of Finance.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this part 912, governing the details of its handling of Book-entry Federal Home Loan Bank Securities, Security Entitlements, and the operation of the Book-entry system under this part 912.

§ 912.7 Liability of Federal Home Loan Banks, Finance Board, Office of Finance and Federal Reserve Banks.

The Federal Home Loan Banks, the Finance Board, the Office of Finance and the Federal Reserve Banks may rely on the information provided in a tender, transaction request form, other transaction documentation, or Transfer Message, and are not required to verify the information. Neither the Federal Home Loan Banks, the Finance Board, the Office of Finance, the United States, nor the Federal Reserve Banks shall be liable for any action taken in accordance with the information set out in a tender, transaction request form, other transaction documentation, or Transfer Message, or evidence submitted in support thereof.

§ 912.8 Additional requirements; notice of attachment for Book-entry Federal Home Loan Bank Securities.

(a) *Additional requirements.* In any case or any class of cases arising under the regulations in this part 912, the Office of Finance may require such additional evidence and a bond of indemnity, with or without surety, as may in its judgment, or in the judgment of the Federal Home Loan Banks or the Finance Board, be necessary for the protection of the interests of the Federal Home Loan Banks, the Finance Board, the Office of Finance or the United States.

(b) *Notice of attachment.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The regulations in this part 912 do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

§ 912.9 Reference to certain Department of Treasury commentary and determinations.

(a) The Department of Treasury TRADES Commentary (31 CFR part 357, appendix B) addressing the Department of Treasury regulations governing book-entry procedure for Treasury Securities is hereby referenced, so far as applicable and as necessarily modified to relate to Book-entry Federal Home Loan Bank Securities, as an interpretive aid to this part 912.

(b) Determinations of the Department of Treasury regarding whether a State shall be considered to have adopted Revised Article 8 for purposes of 31 CFR part 357, as published in the FEDERAL REGISTER or otherwise, shall also apply to this part 912.

§ 912.10 Obligations of United States with respect to Federal Home Loan Bank Securities.

Federal Home Loan Bank Securities are not obligations of the United States and are not guaranteed by the United States.

PART 914—HEARINGS [RESERVED]

PART 916—PROMULGATION OF REGULATIONS AND AMENDMENTS [RESERVED]

PART 918—IMPLEMENTATION OF

THE EQUAL ACCESS TO JUSTICE ACT [RESERVED]

PART 920—USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN [RESERVED]

PART 924—PRACTICE BEFORE THE BOARD OF DIRECTORS [RESERVED]

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 931—DEFINITIONS

Sec.
931.1 Act.
931.2 Bank.
931.3 Board.
931.4 Creditor liabilities.
931.5 Obligations of the United States.
931.6 Paid-in value of stock in a bank.
931.7–10 [Reserved]

AUTHORITY: 12 U.S.C. 1422a and 1422b.

SOURCE: 43 FR 46836, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, unless otherwise noted.

§ 931.1 Act.

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

§ 931.2 Bank.

A Federal Home Loan Bank.

§ 931.3 Board.

The Federal Housing Finance Board or any official duly authorized to act in its behalf.

[55 FR 2229, Jan. 23, 1990]

§ 931.4 Creditor liabilities.

Obligations, secured or unsecured, of a member.

§ 931.5 Obligations of the United States.

All evidences of indebtedness issued, or fully guaranteed as to principal and interest, by the United States.

[43 FR 46836, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, and further redesignated at 63 FR 65687, Nov. 30, 1998]

§ 931.6 Paid-in value of stock in a bank.

Aggregate payments on the par value of stock.

[43 FR 46836, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, and further redesignated at 63 FR 65687, Nov. 30, 1998]

§ 931.7–10 [Reserved]

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

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Subpart B—Bank Directors

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932.4 Capital stock report.
932.5 Determination of member votes.
932.6 Elective director nominations.
932.7 Eligibility requirements for elective directors.
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932.10 Selection of appointive directors.
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932.16 Site of board of directors and committee meetings.
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Subpart C—Selection of Bank Officers and Employees

932.18 Selection of Bank officer and employees.
932.19 Compensation of Bank officers and employees.

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

Subpart A—Definitions

§ 932.1 Definitions.

For purposes of this part:

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

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

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

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

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

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

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

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

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

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

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

[63 FR 65688, Nov. 30, 1998]

§932.2 Dates.

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

[63 FR 65688, Nov. 30, 1998]

Subpart B—Bank Directors

§932.3 Director elections.

(a) *Responsibilities of the Banks.* Each Bank annually shall conduct an election the purpose of which is to fill all elective directorships designated by the Finance Board as commencing on January 1 of the calendar year immediately following the year of the election. Subject to the provisions of the Act and in accordance with the requirements of this part, the disinterested members of the board of directors of each Bank, or a committee of disinterested directors, shall administer and conduct the annual election of directors. In so doing, the disinterested directors may use Bank staff or independent contractors to perform ministerial and administrative functions concerning the elections process. The term of office of each elective directorship shall be 2 years and shall commence on January 1 of the calendar year immediately following the year in which the election is held. Each Bank shall complete the election in sufficient time to allow newly elected directors to assume their seats on January 1 of the year immediately following the election.

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

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

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

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

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

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

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

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

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

[63 FR 65688, Nov. 30, 1998]

§ 932.4 Capital stock report.

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

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

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

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

[63 FR 65689, Nov. 30, 1998]

§ 932.5 Determination of member votes.

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

(b) *Determination.* The number of votes a member may cast for any elective director nominee shall be the lesser of the number of shares of capital stock the member was required to hold as of the record date, as determined in accordance with § 932.4(b), or the average number of shares of capital stock required to be held by all of the members in its voting State as of the record date.

[63 FR 65689, Nov. 30, 1998]

§ 932.6 Elective director nominations.

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

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

(2) The name of each incumbent Bank director, the name and location of the

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

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

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

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

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

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

[63 FR 65689, Nov. 30, 1998]

§932.7 Eligibility requirements for elective directors.

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

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

(1) A citizen of the United States;

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

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

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

(1) Is an incumbent elective director, unless:

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

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

(2) Is a former elective director whose service would be barred by the term

limit provision of section 7(d) of the Act.

(3) Is an incumbent appointive director.

[63 FR 65689, Nov. 30, 1998]

§ 932.8 Election process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The name of each director-elect, the name and location of the member

at which he or she serves, and his or her title or position at the member;

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

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

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

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

[63 FR 65690, Nov. 30, 1998]

§932.9 Prohibition on actions to influence director elections.

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

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

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

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

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

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

[63 FR 65690, Nov. 30, 1998]

§932.10 Selection of appointive directors.

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

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

[63 FR 65690, Nov. 30, 1998]

§932.11 Conflict of interests policy for Bank directors.

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

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

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

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

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

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

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

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

(c) *Confidential Information.* Directors shall not disclose or use confidential information received by them solely by reason of their position with the Bank

to obtain a financial interest for themselves or for any other person.

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

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

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

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

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

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

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

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

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

(4) *Substantial Gifts* includes:

(i) Gifts of more than token value;

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

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

[63 FR 65690, Nov. 30, 1998]

§ 932.12 Reporting requirements for Bank directors.

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

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

[63 FR 65691, Nov. 30, 1998]

§ 932.13 Ineligible Bank directors.

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

(b) *Appointive directors.* Except as provided herein, upon a determination by the Finance Board that an appointive director no longer satisfies the eligibility requirements set forth in the Act, or has failed to comply with the reporting requirements of § 932.12, the

appointive directorship shall immediately become vacant. Notwithstanding the vacancy, an appointive director may continue to serve until a successor assumes the directorship or the term of office expires, whichever occurs first, and the Finance Board, in its sole discretion, may allow an appointive director up to 90 calendar days to comply with the eligibility or reporting requirements.

[63 FR 65691, Nov. 30, 1998]

§932.14 Vacant Bank directorships.

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

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

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

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

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

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

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

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

(i) The name of the new appointive director, the name and location of the organization with which the new director is affiliated, if any, and the new director's title or position with such organization; and

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

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

[63 FR 65691, Nov. 30, 1998]

§932.15 Minimum number of elective directorships.

Under section 7(c) of the Act, the number of elective directorships allocated to members located in each State cannot be less than the number of directorships that were filled by the members from that State on December 31, 1960. The following list sets forth the States whose members held more than one (1) seat on December 31, 1960:

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

[55 FR 1399, Jan. 16, 1990, as amended at 56 FR 55221, Oct. 25, 1991. Redesignated and amended at 63 FR 65692, Nov. 30, 1998]

§932.16 Site of board of directors and committee meetings.

Meetings of a Bank's board of directors and committees thereof usually should be held within the district served by the Bank. No meetings of a

Bank's board of directors and committees thereof may be held in any location that is not within the United States, including its possessions and territories.

[61 FR 43154, Aug. 21, 1996. Redesignated at 63 FR 65692, Nov. 30, 1998]

§ 932.17 Compensation and expenses of bank directors.

(a) *Definitions.* As used in this section:

(1) *Compensation* means any payment of money or provision of any other thing of value (or the accrual of a right to receive money or a thing of value in a subsequent year) in consideration of a director's performance of official duties for the Bank, including, without limitation, retainer fees, daily meeting fees, incentive payments and fringe benefits.

(2) *Maximum compensation* means the maximum total compensation that would be paid to a director in a given year under the Bank's policy on director compensation if that director attended all meetings and fulfilled all duties assigned to or otherwise expected of him or her for that year.

(3) *Average compensation per director* (ACPD) means the sum of the maximum compensation for all directors serving on a Bank's board of directors, divided by the total number of directors designated by the Federal Housing Finance Board to serve on the Bank's board for that year.

(b) *Annual compensation.* For 1997 and each subsequent year, each Bank's board of directors shall adopt annually by resolution a written policy to provide for the payment to Bank directors of reasonable compensation for the performance of their duties as members of the Bank's board, subject to the requirements set forth in paragraph (c) of this section. At a minimum, such policy shall address the activities or functions for which attendance is necessary and appropriate and may be compensated, and shall explain and justify the methodology for determining the amount of compensation to be paid to directors.

(c) *Policy requirements.* Payment to directors under each Bank's policy on director compensation may be based upon factors that the Bank determines to be appropriate, but each Bank's policy shall conform to the following requirements:

(1) The annual ACPD for each Bank shall not exceed the amount calculated in accordance with paragraph (c)(2) of this section. Within this limit:

(i) The total actual compensation received by each director in a year shall reflect both the amount of time spent on official Bank business and the level of responsibility assumed by that director, such that greater or lesser attendance at board and committee meetings and greater or lesser responsibility assumed by a director during a given year will be reflected in the actual compensation received by the director for that year; and

(ii) The maximum compensation for the chair of each Bank's board of directors in a given year shall not be equaled or exceeded by the maximum compensation of any other director for that year and shall not be less than 125 percent of the Bank's ACPD for that year.

(2) The limit on ACPD for each Bank shall be $28,000 for 1997. For 1998 and subsequent years, the limit on ACPD shall be adjusted annually to reflect the preceding year's change in the Consumer Price Index (CPI) for all urban consumers, as published by the Bureau of Labor Statistics. Each year, as soon as practicable after the publication of the previous year's CPI, the Board shall publish notice, by FEDERAL REGISTER, distribution of a memorandum, or otherwise, of the CPI-adjusted limit on ACPD.

(d) *Expenses.* Each Bank may pay its directors for such necessary and reasonable travel, subsistence and other related expenses incurred in connection with the performance of their official duties as are payable to senior officers of the Bank under the Bank's travel policy, except that directors may not be paid for gift or entertainment expenses.

(e) *Disclosure.* Each Bank shall, in its annual report:

(1) State the sum of the total actual compensation paid to its directors in that year;

(2) State the sum of the total actual expenses paid to its directors in that year; and

(3) Summarize its policy on director compensation.

[61 FR 43154, Aug. 21, 1996. Redesignated at 63 FR 65692, Nov. 30, 1998]

Subpart C—Selection of Bank Officers and Employees

§932.18 Selection of Bank officers and emplyees.

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

(1) No appointment of a new Bank President shall be effective until approved by the Finance Board;

(2) A President shall serve at the pleasure of the Bank; and

(3) A President may be suspended or removed by the Finance Board for cause, which shall be communicated in writing to the President and the Bank.

(b) *Bank employees other than the President.* Each Bank may appoint or elect officers other than the President and may hire other employees of the Bank without prior Financial Board approval.

(c) *Prohibition on employment contracts.* A Bank shall not enter into an employment contract with an employee.

[62 FR 9, Jan. 2, 1997. Redesignated and amended at 63 FR 65692, Nov. 30, 1998]

§932.19 Compensation of Bank officers and employees.

(a) *Definitions.* The following definitions apply for purposes of this section:

Incentive payment means a direct or indirect transfer of funds by a Bank to a Bank employee, in addition to base salary, based on the employee's on-the-job performance.

Nondiscriminatory means that the plan, contract or arrangement in question applies to all employees of a Bank who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract, or arrangement may provide different benefits based only on objective criteria such as base salary, total compensation, length of service, job grade or classification, which are applied on a proportionate basis.

Payment. (1) the term *payment* means:

(i) Any direct or indirect transfer of any funds or any asset;

(ii) Any forgiveness of any debt or other obligation; and

(iii) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of, or arrangement for, any letter of credit or other instrument for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(A) The determination, after such date, of the liability for the payment of such amount; or

(B) The liquidation, after such date, of the amount of such payment.

(2) The term *payment* does not mean:

(i) Reimbursement of an employee by the Bank for necessary and customary expenses incurred by the employee in the scope of his or her employment while carrying out the business of the Bank; or

(ii) Benefits.

Severance pay plan means a severance pay plan or arrangement as that term is defined in the Employee Retirement Income Security Act of 1974 (as amended) (29 U.S.C. 1002(1)) (ERISA) and regulations thereunder which is nondiscriminatory and which provides for payment of severance benefits to all eligible employees upon involuntary termination, provided that no employee shall receive any such payment which exceeds the base compensation paid to such employee during the twelve (12) months immediately preceding termination of employment.

(b) *Base salaries of Bank employees*—(1) *Bank President.* (i) The Finance Board annually will determine and publish by November 30 caps on the base salary paid to the Bank President for the subsequent calendar year for each of the 12 Banks.

(ii) The base salary cap for each Bank shall be based on the average base salary of a chief executive officer of a subsidiary financial institution in the Bank's primary metropolitan statistical area with an asset size comparable to that of the Bank, as of June of the prior year, reduced by five percent and rounded to the nearest $5,000.

(iii) Each Bank shall establish, on an annual basis, a reasonable base salary for its President, not to exceed 100 percent of the applicable base salary cap published by the Finance Board, except that for a Bank President whose approved base salary for the calendar year 1997 exceeds the cap published by the Finance Board for 1997, the Bank shall establish, on an annual basis, a reasonable base salary not exceeding the greater of the Bank President's approved base salary for the calendar year 1997 or the base salary cap published by the Finance Board for the year.

(iv) By January 31 of each year, a Bank must report to the Finance Board the approved base salary of its President for that year.

(2) *Other Bank employees.* Each Bank shall establish base salaries for employees other than the President that are reasonable and comparable with the base salaries of employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities.

(3) *Documentation.* Each Bank shall maintain documentation supporting the reasonableness and comparability of their employees' base salaries.

(c) *Incentive payments for Bank employees*—(1) *In general.* A Bank may establish an incentive payment program or programs for its employees.

(2) *Bank President.* (i) The maximum incentive payment to a Bank President may not exceed the difference between that President's base annual salary approved by the Bank and 125 percent of the annual base salary cap, as published by the Finance Board.

(ii) At least 50 percent of the Bank President's incentive payment shall be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to the Bank's achievement of its housing finance mission, which shall include substantial consideration of innovative products directed at unmet credit needs, Community Investment Cash Advances (including Community Investment Program advances) as defined in § 935.1 of this chapter, non-advance credit support and risk management products for members, as well as advances, including long-term advances. The remaining portion of the Bank President's incentive payment shall be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to achievement of goals established by the board of directors, in its discretion.

(iii) Any incentive payment made to a Bank President shall be based solely upon the extent to which a Bank achieves the performance targets established by the board of directors.

(iv) By January 31 of each year, the board of directors of each Bank that intends to make any incentive payment to its President for such year shall adopt a resolution establishing the performance measures and targets on which such incentive payment will be based.

(v) By March 1 of each year, the board of directors of each Bank making any incentive payment to its President for the prior year shall adopt and submit to the Finance Board a resolution showing the results for the individual performance measures and the amount of the incentive payment to the Bank President for the prior year.

(vi) A Bank shall not make any incentive payment to its President if the most recent examination of the Bank by the Finance Board identified an unsafe or unsound practice or condition with regard to the Bank, provided that if the finding of an unsafe or unsound practice or condition subsequently is resolved in favor of the Bank by the Finance Board, the Bank may pay its President the incentive payment that he or she otherwise would have received.

(3) *Incentive payments for other Bank employees.* (i) Each Bank may make incentive payments to employees other than the President, provided that such incentive payments are reasonable and

comparable with incentive payments made to employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. Each Bank shall maintain documentation supporting the reasonableness and comparability of their employees' incentive payments.

(ii) The sum of annual base salary and all incentive payments received in a single calendar year by an employee other than the Bank President shall not exceed 125 percent of the annual base salary cap for the Bank President, as published by the Finance Board.

(iii) An incentive payment for an employee other than the Bank President shall be based on the extent to which the employee meets objective performance targets related to performance criteria established by the Bank's board of directors under the Bank's incentive compensation program or programs.

(iv) All Bank incentive compensation plans in effect on May 1, 1998, shall be submitted to the Finance Board no later than June 1, 1998. Any subsequent amendments to such plans shall not become effective until submitted to the Finance Board.

(d) *Severance plans.* A Bank may make payments in the nature of severance to its President and to other Bank employees only pursuant to a severance pay plan.

(e) *General limits on payments.* (1) No Bank shall make any payment to a Bank employee, except as provided in this section.

(2) The total amount of base salaries, incentive payments, and benefits paid to Bank employees shall be within the limit set forth in the Bank's approved budget. The board of directors of each Bank shall review annually the compensation for its employees, including appropriate documentation, prior to approving the Bank's annual budget.

(f) *Determination of employee status.* A Bank shall not treat an employee as an independent contractor in order to avoid complying with the requirements of this section.

[62 FR 9, Jan. 2, 1997, as amended at 63 FR 30587, June 5, 1998; 63 FR 65544, Nov. 27, 1998. Redesignated at 63 FR 65692, Nov. 30, 1998]

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

SOURCE: 58 FR 43542, Aug. 17, 1993, unless otherwise noted.

Subpart A—Definitions

§ 933.1 Definitions.

For purposes of this part:

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

(b) *Adjusted net income* means net income, excluding extraordinary items such as income received from or expense incurred in sales of securities or fixed assets, reported on a regulatory financial report.

(c) *Aggregate unpaid loan principal* means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts, and similar obligations.

(d) *Allowance for loan and lease losses* means a specified balance-sheet account held to fund potential losses on loans or leases, that is reported on a regulatory financial report.

(e) *Appropriate Federal banking agency* has the same meaning as used in 12 U.S.C. 1813(q) and, for federally insured credit unions, shall mean the National Credit Union Administration.

(f) *Appropriate state regulator* means any state officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, an applicant for Bank membership.

(g) *Bank* means a Federal Home Loan Bank established under the authority of the Act.

(h) *Board* means the Federal Housing Finance Board.

(i) *Combination business or farm property* means real property for which the total appraised value is attributable to residential, and business or farm uses.

(j) *Composite regulatory examination rating* means a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Rating System (Issued by the Federal Financial Institutions Examination Council; for availability contact the Federal Housing Finance Board, FOIA Office, 1777 F Street, NW., Washington, DC 20006.), including a CAMEL rating, a MACRO rating, or other similar rating, contained in a written regulatory examination report.

(k) *Dwelling unit* means a single room or a unified combination of rooms designed for residential use.

(l) *Enforcement action* means any written notice, directive, order or agreement initiated by an applicant for Bank membership or by its appropriate regulator to address any operational, financial, managerial or other deficiencies of the applicant identified by such regulator, but does not include a board of directors resolution adopted by the applicant in response to examination weaknesses identified by such regulator.

(m) *Funded residential construction loan* means the portion of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property disbursed to the borrower.

(n) *Home mortgage loan* means:

(1) A loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust, or other security agreement that creates a first lien on one of the following interests in property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years that is renewable, or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the

residential portion of the property or, in the case of any community financial institution, combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property. For purposes of this subparagraph, the term *community financial institution* means an institution that has average total assets of $500,000,000 or less, based on an average of total assets over the three preceding years. The Board shall adjust the limit annually based on the annual increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor; or

(2) A mortgage pass-through security that represents an undivided ownership interest in:

(i) Long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (n)(1) of this section; or

(ii) A security that represents an undivided ownership interest in long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (n)(1) of this section.

(o) *Institutions which are eligible to make application to become members* means, for purposes of 12 U.S.C. 1431(e)(2)(A), any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution, regardless of whether the institution applies for or would be approved for membership.

(p) *Insured depository institution* means an insured depository institution as defined in 12 U.S.C. 1422(12).

(q) *Long-term* means a term to maturity of five years or greater.

(r) *Manufactured housing* means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

(s) *Member* means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 or 933.25 of this part.

(t) *Multifamily property* means:

(1) Real property that is solely residential and includes five or more dwelling units; or

(2) Real property that includes five or more dwelling units combined with commercial units, provided that the property is primarily residential; or

(3) Nursing homes, dormitories, or homes for the elderly.

(u) *Nonperforming loans and leases* means the sum of the following, reported on a regulatory financial report: Loans and leases that have been past due for 90 days (60 days in the case of credit union applicants) or longer but are still accruing; loans and leases on a nonaccrual basis; and restructured loans and leases (not already reported as nonperforming).

(v) *Nonresidential real property* means real property that is not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institution buildings or facilities, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property.

(w) *One-to-four family property* means:

(1) Real property that is solely residential, including one-to-four family dwelling units or more than four family dwelling units if each dwelling unit is separated from the other dwelling units by dividing walls that extend from ground to roof, such as row houses, townhouses or similar types of property;

(2) Manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four family dwelling units combined with commercial units, provided the property is primarily residential.

(x) *Other real estate owned* means all other real estate owned (*i.e.*, foreclosed and repossessed real estate), reported on a regulatory financial report, and

does not include direct and indirect investments in real estate ventures.

(y) *Appropriate regulator* means a regulatory entity listed in § 933.8, as applicable.

(z) *Regulatory examination report* means a written report of examination prepared by the applicant's appropriate regulator, containing, in the case of insured depository institution applicants, a composite rating assigned to the institution following the guidelines of the Uniform Financial Institutions Rating System, including a CAMEL rating, a MACRO rating, or other similar rating.

(aa) *Regulatory financial report* means a financial report that an applicant is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks, thrift financial report for savings associations, quarterly or semi-annual call report for credit unions, the National Association of Insurance Commissioners' annual or quarterly report for insurance companies, or other similar report, including such report maintained by the appropriate regulator on a computer on-line database.

(bb) *Residential mortgage loan* means any one of the following types of loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Loans secured by manufactured housing whether or not defined by state law as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family property or multifamily property;

(5) Mortgage pass-through securities representing an undivided ownership interest in:

(i) Loans that meet the requirements of paragraphs (bb) (1) through (4) of this section at the time of issuance of the security;

(ii) Securities representing an undivided ownership interest in loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraphs (bb) (1) through (4) of this section; or

(iii) Mortgage debt securities as defined in paragraph (bb)(6) of this section;

(6) Mortgage debt securities secured by:

(i) Loans, provided that, at the time of issuance of the security, substantially all of the loans meet the requirements of paragraphs (bb) (1) through (4) of this section;

(ii) Securities that meet the requirements of paragraph (bb)(5) of this section; or

(iii) Securities secured by assets, provided that, at the time of issuance of the security, all of the assets meet the requirements of paragraphs (bb) (1) through (5) of this section;

(7) Home mortgage loans secured by a leasehold interest, as defined in paragraph (n)(1)(ii) of this section, except that the period of the lease term may be for any duration; or

(8) Loans that finance properties or activities that, if made by a member, would satisfy the statutory requirements for the Community Investment Program established under section 10(i) of the Act, or the regulatory requirements established for any community investment cash advance program authorized by section 10(j)(10) of the Act.

(cc) *State* includes a State of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the District of Columbia, Guam, Puerto Rico, or the Virgin Islands of the United States.

(dd) *Total assets* means the total assets reported on a regulatory financial report.

(ee) *Consolidation* includes a consolidation, a merger, or a purchase of all of the assets and assumption of all of the liabilities of an entity by another entity.

[61 FR 42542, Aug. 16, 1996, as amended at 63 FR 3455, Jan. 23, 1998; 63 FR 35127, June 29, 1998; 63 FR 40023, July 27, 1998]

Subpart B—Membership Application Process

SOURCE: 61 FR 42543 Aug. 16, 1996, unless otherwise noted.

§933.2 Membership application requirements.

(a) *Application*. An applicant for membership in a Bank shall submit to that Bank an application that satisfies the requirements of this part. The application shall include a written resolution or certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, of the following:

(1) *Applicant review*. Applicant has reviewed the requirements of this part and, as required by this part, has provided to the best of applicant's knowledge the most recent, accurate and complete information available; and

(2) *Duty to supplement*. Applicant will promptly supplement the application with any relevant information that comes to applicant's attention prior to the Bank's decision on whether to approve or deny the application, and if the Bank's decision is appealed pursuant to §933.5 of this part, prior to resolution of any appeal by the Board.

(b) *Digest*. The Bank shall prepare a written digest for each applicant stating whether or not the applicant meets each of the requirements in §§933.6 to 933.18 of this part, the Bank's findings and the reasons therefor.

(c) *File*. The Bank shall maintain a membership file for each applicant for at least three years after the Bank decides whether to approve or deny membership and the resolution of any appeal to the Board. The membership file shall contain at a minimum:

(1) *Digest*. The digest required by paragraph (b) of this section.

(2) *Required documents*. All documents required by §§933.6 to 933.18 of this part, including those documents required to establish or rebut a presumption under this part, shall be described in and attached to the digest. The Bank may retain in the file only the relevant portions of the regulatory financial reports required by this part. If an applicant's appropriate regulator requires return or destruction of a regulatory examination report, the date that the report is returned or destroyed shall be noted in the file.

(3) *Additional documents*. Any additional document submitted by the applicant, or otherwise obtained or generated by the Bank, concerning the applicant.

(4) *Decision resolution*. The decision resolution described in §933.3(b) of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42543, Aug. 16, 1996, as amended at 63 FR 40023, July 27, 1998]

§933.3 Decision on application.

(a) *Authority*. The Board authorizes the Banks to approve or deny all applications for membership, subject to the requirements of this part. The Bank may delegate the authority to approve membership applications only to a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) *Decision resolution*. For each applicant, the Bank shall prepare a written resolution duly adopted by the Bank's board of directors, by a committee of the board of directors, or by an officer with delegated authority to approve membership applications. The decision resolution shall state:

(1) That the statements in the digest are accurate to the best of the Bank's knowledge, and are based on a diligent and comprehensive review of all available information identified in the digest; and

(2) The Bank's decision and the reasons therefor. Decisions to approve an application should state specifically that: the applicant is authorized under the laws of the United States and the laws of the appropriate state to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank to which the applicant has applied; and the applicant meets all of the membership eligibility criteria of the Act and this part.

(c) *Action on applications*. The Bank shall act on an application within 60 calendar days of the date the Bank deems the application to be complete. An application is ''complete'' when a Bank has obtained all the information required by this part, and any other information the Bank deems necessary,

to process the application. If an application that was deemed complete subsequently is deemed incomplete because the Bank determines during the review process that additional information is necessary to process the application, the Bank may stop the 60-day clock until the application again is deemed complete, and then resume the clock where it left off. The Bank shall notify an applicant in writing when its application is deemed by the Bank to be complete, and shall maintain a copy of such letter in the applicant's membership file. The Bank shall notify an applicant if the 60-day clock is stopped, and when the clock is resumed, and shall maintain a written record of such notifications in the applicant's membership file. Within 3 business days of a Bank's decision on an application, the Bank shall provide the applicant and the Board's Executive Secretary with a copy of the Bank's decision resolution.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42543, Aug. 16, 1996, as amended at 63 FR 40023, July 27, 1998]

§ 933.4 Automatic membership.

(a) *Automatic membership for mandatory members.* Any institution required by law to become a member of a Bank automatically shall become a member of the Bank of the district in which its principal place of business is located upon the purchase of stock in that Bank pursuant to § 933.20(b)(1) of this part.

(b) *Automatic membership for certain charter conversions.* An insured depository institution member that converts from one charter type to another automatically shall become a member of the Bank of which the converting institution was a member on the effective date of such conversion, provided that the converting institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are not materially different. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue.

(c) *Automatic membership for transfers.* Any member whose membership is transferred pursuant to § 933.18(d) of this part automatically shall become a member of the Bank to which it transfers.

(d) *Automatic membership, in the Bank's discretion, for certain consolidations.* (1) If a member institution (or institutions) and a nonmember institution are consolidated and the consolidated institution has its principal place of business in a state in the same Bank district as the disappearing institution (or institutions), and the consolidated institution will operate under the charter of the nonmember institution, on the effective date of the consolidation, the consolidated institution may, in the discretion of the Bank of which the disappearing institution (or institutions) was a member immediately prior to the effective date of the consolidation, automatically become a member of such Bank upon the purchase of stock in that Bank pursuant to § 933.20, provided that:

(i) 90 percent or more of the total assets of the consolidated institution are derived from the total assets of the disappearing member institution (or institutions); and

(ii) The consolidated institution provides written notice to such Bank, within 60 calendar days after the effective date of the consolidation, that it desires to be a member of the Bank.

(2) The provisions of § 933.25(d)(1)(i) shall apply, and upon approval of automatic membership by the Bank, the provisions of §§ 933.25(d)(2)(i), (e) and (f) shall apply.

[61 FR 42543, Aug. 16, 1996, as amended at 63 FR 40024, July 27, 1998]

§ 933.5 Appeals.

(a) *Appeals by applicants*—(1) *Filing procedure.* Within 90 calendar days of the date of a Bank's decision to deny an application for membership, the applicant may file a written appeal of the decision with the Board.

(2) *Documents.* The applicant's appeal shall be addressed to the Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, with a copy to the Bank, and shall include the following documents:

(i) *Bank's decision resolution.* A copy of the Bank's decision resolution; and

(ii) *Basis for appeal.* A statement of the basis for the appeal by the applicant with sufficient facts, information, analysis and explanation to rebut any applicable presumptions and otherwise support the applicant's position.

(b) *Record for appeal*—(1) *Copy of membership file.* Upon receiving a copy of an appeal, the Bank whose action has been appealed (appellee Bank) shall provide the Board with a copy of the applicant's complete membership file. Until the Board resolves the appeal, the appellee Bank shall supplement the materials provided to the Board as any new materials are received.

(2) *Additional information.* The Board may request additional information or further supporting arguments from the appellant, the appellee Bank or any other party that the Board deems appropriate.

(c) *Deciding appeals.* The Board shall consider the record for appeal described in paragraph (b) of this section and shall resolve the appeal based on the requirements of the Act and this part within 90 calendar days of the date the appeal is filed with the Board. In deciding the appeal, the Board shall apply the presumptions in this part, unless the appellant or appellee Bank presents evidence to rebut a presumption as provided in §933.17 of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

Subpart C—Eligibility Requirements

SOURCE: 61 FR 42545, Aug. 16, 1996, unless otherwise noted.

§933.6 General eligibility requirements.

(a) *Requirements.* Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution, upon application satisfying all of the requirements of the Act and this part, shall be eligible to become a member of a Bank if:

(1) It is duly organized under the laws of any State or of the United States;

(2) It is subject to inspection and regulation under the banking laws, or under similar laws, of any State or of the United States;

(3) It makes long-term home mortgage loans;

(4) Its financial condition is such that advances may be safely made to it;

(5) The character of its management is consistent with sound and economical home financing; and

(6) Its home financing policy is consistent with sound and economical home financing.

(b) *Additional eligibility requirement for insured depository institutions.* In order to be eligible to become a member of a Bank, an insured depository institution applicant also must have at least 10 percent of its total assets in residential mortgage loans.

(c) *Additional eligibility requirement for applicants that are not insured depository institutions.* In order to be eligible to become a member of a Bank, an applicant that is not an insured depository institution also must have mortgage-related assets that reflect a commitment to housing finance, as determined by the Bank in its discretion.

(d) *Ineligibility.* Except as otherwise provided in this part, if an applicant does not satisfy the requirements of this part, the applicant is ineligible for membership.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.7 Duly organized requirement.

An applicant shall be deemed to be duly organized as required by section 4(a)(1)(A) of the Act and §933.6(a)(1) of this part, if it is chartered by a state or federal agency as a building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank or insured depository institution.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§ 933.8 Subject to inspection and regulation requirement.

An applicant shall be deemed to be subject to inspection and regulation as required by section 4(a)(1)(B) of the Act and § 933.6(a)(2) of this part, if, in the case of a depository institution applicant, it is subject to inspection and regulation by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or other appropriate state regulator, and, in the case of an insurance company applicant, it is subject to inspection and regulation by an appropriate state regulator accredited by the National Association of Insurance Commissioners.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§ 933.9 Makes long-term home mortgage loans requirement.

An applicant shall be deemed to make long-term home mortgage loans as required by section 4(a)(1)(C) of the Act and § 933.6(a)(3) of this part, if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant originates or purchases long-term home mortgage loans.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40023, July 27, 1998]

§ 933.10 10 percent requirement for insured depository institution applicants.

An insured depository institution applicant shall be deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and § 933.6(b) of this part, if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans, except that any assets used to secure mortgage debt securities as described in § 933.1(bb)(6) of this part shall not be used to meet this requirement.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40023, July 27, 1998]

§ 933.11 Financial condition requirement for applicants other than insurance companies.

(a) *Review requirement.* In determining whether an applicant other than an insurance company has complied with the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part, the Bank shall obtain as a part of the membership application and review each of the following documents:

(1) *Regulatory financial reports.* The regulatory financial reports filed by the applicant with its appropriate regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application;

(2) *Financial statement.* In order of preference: the most recent independent audit of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the applicant; the most recent independent audit of the applicant's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company but not on the applicant separately; the most recent Directors' examination of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm; the most recent Directors' examination of the applicant performed by other external auditors; the most recent review of the applicant's financial statements by external auditors; the most recent Compilation of the applicant's financial statements by external auditors; or the most recent audit of other procedures of the applicant;

(3) *Regulatory examination report.* The applicant's most recent available regulatory examination report prepared by its appropriate regulator, a summary

prepared by the Bank of the applicant's strengths and weaknesses as cited in the regulatory examination report, and a summary prepared by the Bank or applicant of actions taken by the applicant to respond to examination weaknesses;

(4) *Enforcement actions.* A description prepared by the Bank or applicant of any outstanding enforcement actions against the applicant, responses by the applicant, reports as required by the enforcement action, and verbal or written indications, if available, from the appropriate regulator of how the applicant is complying with the terms of the enforcement action; and

(5) *Additional information.* Any other relevant document or information concerning the applicant that comes to the Bank's attention in reviewing the applicant's financial condition.

(b) *Standards.* An applicant other than an insurance company shall be deemed to be in compliance with the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part, if:

(1) *Recent composite regulatory examination rating.* The applicant has received a composite regulatory examination rating from its appropriate regulator within two years preceding the date the Bank receives the application;

(2) *Capital requirement.* The applicant meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end regulatory financial report filed with its appropriate regulator; and

(3) *Minimum performance standard.* (i) The applicant's most recent composite regulatory examination rating from its appropriate regulator within the past two years was ''1;'' or, was ''2'' or ''3'' and, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant satisfied all of the following performance trend criteria:

(A) *Earnings.* The applicant's adjusted net income was positive in four of the six most recent calendar quarters;

(B) *Nonperforming assets.* The applicant's nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter; and

(C) *Allowance for loan and lease losses.* The applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during 4 of the 6 most recent calendar quarters.

(ii) For applicants that are not required to report financial data to their appropriate regulator on a quarterly basis, the information required in paragraph (b)(3)(i) of this section may be reported on a semiannual basis.

(c) *Eligible collateral not considered.* The availability of sufficient eligible collateral to secure advances to the applicant is presumed and shall not be considered in determining whether an applicant is in the financial condition required by section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40023, 40024, July 27, 1998]

§ 933.12 Character of management requirement.

An applicant shall be deemed to be in compliance with the character of management requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(5) of this part, if the applicant provides to the Bank an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(a) *Enforcement actions.* Neither the applicant nor any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator;

(b) *Criminal, civil or administrative proceedings.* Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report; and

(c) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40023, July 27, 1998]

§ 933.13 Home financing policy requirement.

(a) *Standard.* An applicant shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part, if the applicant has received a Community Reinvestment Act (CRA) rating of ''Satisfactory'' or better on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(b) *Written justification required.* An applicant that is not subject to the CRA shall file as part of its application for membership a written justification acceptable to the Bank of how and why the applicant's home financing policy is consistent with the Bank System's housing finance mission.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§ 933.14 De novo insured depository institution applicants.

(a)(1) *Duly organized, subject to inspection and regulation, financial condition and character of management requirements.* An insured depository institution applicant whose date of charter approval is within three years prior to the date the Bank receives the applicant's application for membership in the Bank, is deemed to meet the requirements of §§ 933.7, 933.8, 933.11 and 933.12.

(2) *Makes long-term home mortgage loans requirement.* The applicant shall be deemed to make long-term home mortgage loans as required by § 933.9 of this part, if it has filed as part of its application for membership a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

(3) *10 percent requirement.* The applicant shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10 of this part.

(4) *Home financing policy requirement*—(i) *Conditional approval.* An applicant that has not received its first formal, or if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, shall be conditionally deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part, if the applicant has filed as part of its application for membership a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community. An applicant that receives such conditional membership approval is subject to the stock purchase requirements of § 933.20 of this part and the advances provisions of 12 CFR part 935.

(ii) *Approval.* The applicant shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part upon receipt by the Bank of evidence from the applicant that it received a CRA rating of ''Satisfactory'' or better on its first formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(iii) *Conditional approval deemed null and void.* If the applicant's first such CRA rating is ''Needs to Improve'' or ''Substantial Non-Compliance,'' the applicant shall be deemed to be in noncompliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part, subject to rebuttal by the applicant under § 933.17(f) of this part, and its conditional membership approval is deemed null and void.

(iv) *Treatment of outstanding advances and Bank stock.* If the applicant's conditional membership approval is deemed null and void pursuant to paragraph (a)(4)(iii) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with §933.29 of this part.

(b) [Reserved]

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40024, July 27, 1998]

§933.15 Recent merger or acquisition applicants.

An applicant that merged with or acquired another institution prior to the date the Bank receives its application for membership is subject to the requirements of §§933.7 to 933.13 of this part except as provided in this section.

(a) *Financial condition requirement*—(i) *Regulatory financial reports.* For purposes of §933.11(a)(1) of this part, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed regulatory financial reports with its appropriate regulator for the last six calendar quarters and three year-ends preceding such date, shall provide any regulatory financial reports that the applicant has filed with its appropriate regulator.

(ii) *Performance trend criteria.* For purposes of §933.11(b)(3)(i) (A) to (C) of this part, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed combined regulatory financial reports with its appropriate regulator for the last six calendar quarters preceding such date, shall provide pro forma combined financial statements for those calendar quarters in which actual combined regulatory financial reports are unavailable.

(b) *Home financing policy requirement.* For purposes of §933.13 of this part, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not received its first formal, or if unavailable, informal or preliminary, Community Reinvestment Act performance evaluation, shall file as part of its application a written justification acceptable to the Bank of how and why the applicant's home financing credit policy and lending practices will meet the credit needs of its community.

(c) *Makes long-term home mortgage loans requirement; 10 percent requirement.* For purposes of determining compliance with §§933.9 and 933.10, a Bank may, in its discretion, permit an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed a consolidated regulatory financial report as a combined entity with its appropriate regulator, to provide the combined pro forma financial statement for the combined entity filed with the regulator that approved the merger or acquisition.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40023, 40024, July 27, 1998]

§933.16 Financial condition requirement for insurance company applicants.

An insurance company applicant shall be deemed to meet the financial condition requirement of section 4(a)(2)(B) of the Act and §933.6(a)(4) of this part, if, based on the information contained in the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the National Association of Insurance Commissioners.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40023, July 27, 1998]

§933.17 Rebuttable presumptions.

(a) *Rebutting presumptive compliance.* The presumption that an applicant meeting the requirements of §§933.7 to

933.16 of this part is in compliance with section 4(a) of the Act and § 933.6 (a) and (b) of this part, may be rebutted, and the Bank may deny membership to the applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

(b) *Rebutting presumptive noncompliance.* The presumption that an applicant not meeting a particular requirement of §§ 933.8, 933.11, 933.12, 933.13, or 933.16 of this part is in noncompliance with section 4(a) of the Act and § 933.6(a) (2), (4), (5) or (6) of this part, may be rebutted, and the applicant shall be deemed to meet such requirement, if the applicable requirements in this section are satisfied.

(c) *Presumptive noncompliance by insurance company applicant with ''subject to inspection and regulation'' requirement of § 933.8.* If an insurance company applicant is not subject to inspection and regulation by an appropriate state regulator accredited by the National Association of Insurance Commissioners (NAIC), as required by § 933.8 of this part, the applicant or the Bank shall prepare a written justification that provides substantial evidence acceptable to the Bank that the applicant is subject to inspection and regulation as required by § 933.6(a)(2) of this part, notwithstanding the lack of NAIC accreditation.

(d) *Presumptive noncompliance with financial condition requirements of §§ 933.11 and 933.16*—(1) *Applicants other than insurance companies.* For applicants other than insurance companies, in the case of an applicant's lack of a composite regulatory examination rating within the two-year period required by § 933.11(b)(1) of this part, a variance from the rating required by § 933.11(b)(3)(i) of this part, or a variance from a performance trend criterion required by § 933.11(b)(3)(i) of this part, the applicant or the Bank shall prepare a written justification pertaining to such requirement that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4) of this part, notwithstanding the lack of rating or variance.

(2) *Insurance company applicants.* In the case of an insurance company applicant's variance from a capital requirement or standard of § 933.16 of this part, the applicant or the Bank shall prepare a written justification pertaining to such requirement or standard that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4) of this part, notwithstanding the variance.

(e) *Presumptive noncompliance with character of management requirement of § 933.12*—(1) *Enforcement actions.* If an applicant or any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action. The written analysis shall state each action the applicant or its directors or senior officers are required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance with all aspects of the enforcement action.

(2) *Criminal, civil or administrative proceedings.* If an applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the proceedings will not likely result in enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the proceedings will not likely result in enforcement action. The written analysis shall state the severity of

the charges, and any mitigating action taken by the applicant or its directors or senior officers.

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* If there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§933.11(b)(2) and 933.16 of this part; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§933.11(b)(2) and 933.16 of this part. The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

(f) *Presumptive noncompliance with home financing policy requirements of §§933.13, 933.14(a)(4), and 933.14(b)(3).* If an applicant received a ''Substantial Non-Compliance'' rating on its most recent formal, or if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, or a ''Needs to Improve'' CRA rating on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation and a CRA rating of ''Needs to Improve'' or better on any immediately preceding CRA performance evaluation, the applicant shall provide or the Bank shall obtain:

(1) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator of the applicant's recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in the most recent CRA performance evaluation(s); or

(2) *Written analysis.* A written analysis acceptable to the Bank demonstrating that the CRA rating is unrelated to home financing, and providing substantial evidence of how and why the applicant's home financing credit policy and lending practices meet the credit needs of its community.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 40023, July 27, 1998]

§ 933.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) An institution eligible to become a member of a Bank under the Act and this part may become a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section. A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another state and the Bank shall inform the Finance Board in writing of any such relocation.

(2) An institution eligible to become a member of a Bank under the Act and this part may become a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of the Board.

(b) *Principal place of business.* Except as otherwise designated in accordance with this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

(c) *Designation of principal place of business.* (1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a state other than the state in which it maintains its home office be designated as its principal place of business. Within 90 calendar days of receipt of such written request, the board of directors of the Bank in the district

where the institution maintains its home office shall designate a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following criteria are satisfied:

(i) At least 80 percent of the institution's accounting books, records and ledgers are maintained, located or held in such designated state;

(ii) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated state; and

(iii) A majority of the institution's five highest paid officers have their place of employment located in such designated state.

(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated state, the Board and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the state designated as the principal place of business and the resulting Bank to which membership will be transferred.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that the Board make the designation.

(d) *Transfer of membership.* (1) No transfer of membership from one Bank to another Bank shall take effect until the Banks involved reach agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, the Board shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the year of the transfer and shall not be subject to the provisions on termination of membership set forth in section 6 of the Act or §§ 933.26, 933.27, and 933.28, nor the restriction on reacquiring Bank membership within 10 years set forth in § 933.30.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

[61 FR 42545, Aug. 16, 1996, as amended at 63 FR 65692, Nov. 30, 1998]

Subpart D—Stock Requirements

SOURCE: 58 FR 43542, Aug. 17, 1993, unless otherwise noted. Redesignated at 61 FR 42542, Aug. 16, 1996.

§ 933.19 Par value and price of stock.

The capital stock of each Bank shall be sold at par, unless the Board has fixed a higher price.

§ 933.20 Stock purchase.

(a) *Minimum stock purchase.* (1) Each member shall purchase stock in the Bank in which it is a member in an amount equal to one percent of the member's aggregate unpaid loan principal, but not less than $500.

(2) If a member has less than 30 percent of its total assets in home mortgage loans, it shall purchase stock in an amount that would be required under paragraph (a)(1) of this section if at least 30 percent of such member's total assets were home mortgage loans.

(b) *Timing of minimum stock purchase.* (1) Within 60 calendar days after an institution is approved for membership in a Bank pursuant to § 933.3 of this part, or an institution is automatically approved for membership pursuant to § 933.4 (a) or (d) of this part, the institution shall purchase its minimum stock requirement as set forth in paragraph (a) of this section.

(2) At the election of an institution approved for membership, including those automatically approved under § 933.4 (a) or (d) of this part, the institution may purchase its minimum stock requirement in installments, provided that not less than one-fourth of the total amount shall be purchased within 60 calendar days of the date of approval of membership, and that a further sum of not less than one-fourth of such total shall be purchased at the end of each succeeding period of four months

from the date of approval of membership.

(c) *Commencement of membership.* An institution that has been approved for membership shall become a member at the time it purchases its minimum stock requirement or the first installment thereof pursuant to this section.

(d) *Failure to purchase minimum stock requirement.* If an institution that has submitted an application and been approved for membership fails to purchase its minimum stock requirement or its first installment within 60 calendar days of the date of its approval for membership, such approval shall be null and void and the institution, if it wants to be a member, shall be required to submit a new application for membership.

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

[58 FR 43542, Aug. 17, 1993; 58 FR 47181, Sept. 7, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996; 63 FR 40024, July 27, 1998; 63 FR 65692, Nov. 30, 1998]

§933.21 Issuance and form of stock.

(a) A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of stock purchased and paid for in full.

(b) If the member purchases stock in installments, the stock shall be issued in installments with the appropriate number of shares issued after each payment is made.

(c) Stock may be issued in certificated or uncertificated form at the discretion of the Bank.

(d) A Bank may convert all outstanding certificated stock to uncertificated form at its discretion.

§933.22 Adjustments in stock holdings.

(a) *Adjustment in general.* A Bank may from time to time increase or decrease the amount of stock any member is required to hold.

(b)(1) *Annual adjustment.* A Bank shall calculate annually, in the manner set forth in §933.20(a) of this part, each member's required minimum holdings of stock in the Bank in which it is a member using calendar year-end financial data provided by the member to the Bank, pursuant to §933.31(d) of this part, and shall notify each member of the adjustment. The notice shall clearly state that the Bank's calculation of each member's minimum stock holdings is to be used to determine the number of votes that the member may cast in that year's election of directors and shall identify the state within the district in which the member will vote. A member that does not agree with the Bank's calculation of the minimum stock requirement or with the identification of its voting state may request the Finance Board to review the Bank's determination. The Finance Board shall promptly determine the member's minimum required holdings and its proper voting state, which determination shall be final.

(2) *Redemption of excess shares.* If, after the annual adjustment required by paragraph (b)(1) of this section is made, the amount of stock that a member is required to hold is decreased, the Bank may, in its discretion and upon proper application of the member, retire such excess stock, and the Bank shall pay for each share upon surrender of the stock an amount equal to the par value thereof (except that if at any time the Board finds that the paid-in capital of a Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Board) or, at its election, the Bank may credit any part of such payment against the member's debt to the Bank.

(c) A member's stock holdings shall not be reduced under this section to an amount less than required by sections

6(b), 10(c) and 10(e) of the Act, 12 U.S.C. 1426(b), 1430(c), 1430(e).

(The information collection requirements contained in this section have been approved where applicable by the Office of Management and Budget under control number 3069–0004)

[58 FR 43542, Aug. 17, 1993, as amended at 58 FR 50837, Sept. 29, 1993; 58 FR 53023, Oct. 13, 1993; 58 FR 58231, Oct. 29, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996; 63 FR 65692, Nov. 30, 1998]

§ 933.23 Purchase of excess stock.

A member may purchase stock in excess of the minimum amount required by § 933.20(a) of this part as long as such purchase is approved by the member's Bank and the laws under which the member operates permit such purchase.

[58 FR 43542, Aug. 17, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

Subpart E—Consolidations Involving Members

SOURCE: 58 FR 43542, Aug. 17, 1993, unless otherwise noted. Redesignated at 61 FR 42542, Aug. 16, 1996.

§ 933.24 Consolidations of members.

(a) *Consolidation of members in same district*—(1) Upon consolidation of two or more member institutions which are all members of the same Bank district into one institution operating under the charter of one of the consolidating institutions, the transfer of the Bank stock held by the disappearing institution(s) to the consolidated institution shall be deemed approved by the Board pursuant to section 6(f) of the Act, 12 U.S.C. 1426(f).

(2) The stock of the disappearing institution(s) held by a consolidated institution under this section may be redeemed, provided that the consolidated institution holds the minimum amount of stock calculated in the manner set forth in § 933.20(a) of this part based on the consolidated institution's total assets and the consolidated institution's stock holdings are not reduced to an amount less than required by sections 6(b), 10(c) and 10(e) of the Act, 12 U.S.C. 1426(b), 1430(c), 1430(e).

(b) *Consolidation of members in different districts*—(1) *Termination of membership*. Upon consolidation of two member institutions which are members of different Banks into one institution operating under the charter of one of the consolidating institutions, the disappearing institution's membership terminates upon cancellation of its charter, except that if more than 80 percent of the assets of the consolidated institution are derived from the assets of the disappearing institution, then the consolidated institution shall continue to be a member of the Bank of which the disappearing institution was a member prior to the consolidation and the membership of the other institution terminates upon consummation of the consolidation.

(2) *Treatment of outstanding advances and Bank stock*. The liquidation of any outstanding indebtedness owed to the disappearing institution's Bank and redemption of stock of such Bank shall be carried out in accordance with § 933.29 of this part.

(3) *Dividends on acquired Bank stock*. The consolidated institution is entitled to receive dividends on outstanding Bank stock acquired in the consolidation from the disappearing institution in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 934.17 of this chapter.

[58 FR 43542, Aug. 17, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996; 63 FR 65692, Nov. 30, 1998]

§ 933.25 Consolidations involving nonmembers.

(a) *Termination of membership*. If a member is consolidated into an institution that is not a member, its membership in the Bank terminates upon cancellation of its charter.

(b) *Notification of decision to seek membership*. When a consolidated institution resulting from a consolidation described in paragraph (a) of this section has its principal place of business in a state in the same Bank district as the disappearing institution, the consolidated institution shall have 60 calendar days after the cancellation of the charter of the disappearing institution to notify the disappearing institution's Bank that it intends to apply for membership in such Bank.

(c) *Application for membership.* If the consolidated institution has provided notification pursuant to paragraph (b) of this section, it must apply for membership pursuant to subpart B of this part within 60 calendar days of the notification.

(d) *Treatment of outstanding advances, Bank stock and minimum stock requirements*—(1) *Prior to membership approval.* The disappearing institution's Bank may permit the consolidated institution to continue to hold any outstanding Bank advances and stock, and the consolidated institution shall have the limited rights associated with such stock in accordance with paragraphs (e) and (f) of this section: (i) During the initial 60-day notification period; (ii) for 60 calendar days after receipt of notification that the consolidated institution intends to apply for membership; and (iii) during the processing of an application for membership.

(2) *Upon membership approval.* (i) If the application of the consolidated institution for membership is approved, the transfer of the Bank stock held by the disappearing institution to the consolidated institution shall be deemed approved by the Board pursuant to section 6(f) of the Act, 12 U.S.C. 1426(f).

(ii) If the application of the consolidated institution for membership is approved:

(A) The consolidated institution shall purchase any additional amount of stock required to meet the minimum stock requirement of §933.20(a) of this part, based on the consolidated institution's total assets, within 60 calendar days of the date of approval of membership; or

(B) At the election of the consolidated institution, the amount of stock required to be purchased to meet the requirement of §933.20(a) of this part may be purchased in installments, provided that not less than one-fourth of such total additional amount shall be purchased within 60 calendar days of the date of approval of membership, and that a further sum of not less than one-fourth of such total additional amount shall be purchased at the end of each succeeding period of four months from the date of approval of membership.

(iii) A consolidated institution that has been approved for membership shall become a member at the time it purchases the additional amount of stock required to meet the minimum stock requirement of §933.20(a) of this part or the first installment thereof.

(3) *Upon failure to apply for or be approved for membership.* If the consolidated institution does not apply for membership, or if its application for membership is denied, then the liquidation of any outstanding indebtedness owed to the disappearing institution's Bank and redemption of stock of such Bank shall be carried out in accordance with §933.29 of this part, and the consolidated institution shall have the limited rights associated with such stock in accordance with paragraphs (e) and (f) of this section.

(e) *Dividends on acquired Bank stock.* The consolidated institution is entitled to receive dividends on outstanding Bank stock acquired in the consolidation from the disappearing institution in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and §934.17 of this chapter.

(The information collection requirements contained in this section have been approved where applicable by the Office of Management and Budget under control number 3069–0004)

[58 FR 43542, Aug. 17, 1993, as amended at 58 FR 50837, Sept. 29, 1993. Rdesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996; 63 FR 65692, Nov. 30, 1998]

Subpart F—Withdrawal and Removal From Membership

SOURCE: 58 FR 43542, Aug. 17, 1993, unless otherwise noted. Redesignated at 61 FR 42542, Aug. 16, 1996.

§933.26 Procedure for withdrawal.

(a) *Notice of withdrawal.* Any member that is eligible under applicable law to withdraw from Bank membership may do so after providing the Board and its Bank at least six months written notice of the member's intention to withdraw from membership.

(b) *Cancellation of notice of withdrawal.* A member may cancel its notice of withdrawal by providing both the Board and its Bank written notice

of cancellation any time before the effective date of the withdrawal.

(c) *Treatment of outstanding advances and Bank stock.* The liquidation of any outstanding indebtedness owed to the Bank in which membership has been terminated and redemption of stock of such Bank shall be carried out in accordance with § 933.29 of this part.

(d) *Dividends on Bank stock.* An institution that has withdrawn from Bank membership pursuant to this section is entitled to receive dividends on outstanding stock of the Bank in which membership has been terminated in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 934.17 of this chapter.

(The information collection requirements contained in this section have been approved where applicable by the Office of Management and Budget under control number 3069–0004)

[58 FR 43542, Aug. 17, 1993, as amended at 58 FR 50837, Sept. 29, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996; 63 FR 65692, Nov. 30, 1998]

§ 933.27 Procedure for removal.

(a) *Bank request for removal.* If a Bank believes that any of the grounds for removal of a member from membership contained in paragraph (b) of this section exists, the Bank may submit a written request to the Board stating the grounds for removal and recommending removal of the member from membership.

(b) *Grounds.* The following are grounds for removing a member from membership in a Bank:

(1) Failure by the member to comply with any provision of the Act or any regulation of the Board adopted under the Act;

(2) Insolvency of the member. A member is deemed insolvent if its assets are less than its liabilities;

(3) The member's management or home-financing policies are inconsistent with sound and economical home financing or with the purposes of the Act; or

(4) Any other condition exists with respect to the member that the Board believes would jeopardize the safety and soundness of the member's Bank.

(c) *Procedure.* (1) If the Board believes that any of the grounds for removal contained in paragraph (b) of this section exist, and it believes that the member should be removed from membership, it shall provide the member with at least 30 calendar days written notice of its intention to remove the member from membership.

(2) Such notice shall be served as determined by the Board and shall state the grounds for such removal action and the time and place of a hearing at which the member may be heard.

(3) A hearing on such removal action shall be conducted in accordance with procedures established by the Board.

(d) *Removal by Board.* If the Board determines, in its sole discretion and after complying with the requirements of paragraph (c) of this section, that any of the grounds for removal of a member contained in paragraph (b) of this section exists, it may remove the member from membership.

(e) *Treatment of outstanding advances and Bank stock.* The liquidation of any outstanding indebtedness owed to the Bank in which membership has been terminated and redemption of stock of such Bank shall be carried out in accordance with § 933.29 of this part.

(f) *Dividends on Bank stock.* An institution that has been removed from Bank membership pursuant to this section is entitled to receive dividends on outstanding stock of the Bank in which membership has been terminated in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 934.17 of this chapter.

[58 FR 43542, Aug. 17, 1993; 58 FR 47181, Sept. 7, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996; 63 FR 65692, Nov. 30, 1998]

§ 933.28 Automatic termination of membership for institutions placed in receivership.

(a) *Automatic termination.* As of the effective date of being placed in receivership, an institution's Bank membership automatically terminates.

(b) *Treatment of outstanding advances and Bank stock.* The liquidation of any outstanding indebtedness owed to the Bank in which membership has been terminated and redemption of stock of such Bank shall be carried out in accordance with § 933.29 of this part.

(c) *Dividends on Bank stock.* The receiver is entitled to receive dividends on outstanding Bank stock of the institution placed in receivership in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and §934.17 of this chapter.

[58 FR 43542, Aug. 17, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996; 63 FR 65692, Nov. 30, 1998]

Subpart G—Orderly Liquidation of Advances and Redemption of Stock

§933.29 Orderly liquidation of advances and redemption of stock.

(a)(1) If an institution ceases to be a member of a Bank pursuant to §§933.26, 933.27 or 933.28 of this part, the institution, or its receiver under §933.28 of this part, may continue to hold the stock of the Bank of which such institution is no longer a member so long as the Bank requires that the stock be held as collateral for any outstanding indebtedness owed to the Bank. If an institution ceases to be a member of a Bank pursuant to §§933.24(b) or 933.25(d)(3) of this part, the consolidated institution may continue to hold the stock of the disappearing institution's Bank so long as such Bank requires that the stock be held as collateral for any outstanding indebtedness owed to the Bank.

(2) The indebtedness of the institution that has ceased to be a member of a Bank owed to such Bank shall be liquidated in an orderly manner as determined by the Bank in accordance with §935.19 of this chapter, and upon completion of such liquidation, such institution's remaining stock in the Bank shall be surrendered and canceled.

(b) If an institution that has ceased to be a member of a Bank has no outstanding indebtedness owed to the Bank, such institution's stock in the Bank shall be surrendered and canceled.

(c) An institution that has ceased to be a member shall receive for stock redeemed under paragraphs (a)(2) or (b) of this section a sum equal to the original amount paid for the stock redeemed, except that if at any time the Board finds that the paid-in capital of the Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held by the Bank, the Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Board.

[58 FR 43542, Aug. 17, 1993; 58 FR 53023, Oct. 13, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

Subpart H—Reacquisition of Membership

§933.30 Reacquisition of membership.

An institution which withdraws from membership pursuant to §933.26 of this part may acquire membership in a Bank only after the expiration of a period of 10 years thereafter, except:

(a) Such institution may acquire membership in a Bank if such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between Banks pursuant to §933.18 of this part; or

(b) Such institution shall acquire membership in a Bank in connection with obtaining a charter as a federally chartered savings association (as defined in 12 U.S.C. 1813), or if otherwise required by law to become a member of a Bank, which institution is automatically approved for Bank membership pursuant to §933.4(a) of this part.

[58 FR 43542, Aug. 17, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

Subpart I—Bank Access to Information

§933.31 Reports and examinations.

As a condition precedent to Bank membership, each member:

(a) Consents to such examinations as the Bank or the Board may require for purposes of the Act;

(b) Agrees that reports of examinations by local, state or federal agencies or institutions may be furnished by such authorities to the Bank or the Board upon request;

(c) Agrees to give the Bank or the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency may need to compile and publish cost of funds indices and to

publish other reports or statistical summaries pertaining to the activities of Bank members;

(d) Agrees to provide the Bank with calendar year-end financial data each year, for purposes of making the calculation described in § 933.22(b)(1) of this part; and

(e) Agrees to provide the Bank with copies of reports of condition and operations required to be filed with the member's appropriate Federal banking agency, if applicable, within 20 calendar days of filing, as well as copies of any annual report of condition and operations required to be filed.

(The information collection requirements contained in this section have been approved where applicable by the Office of Management and Budget under control number 3069–0004)

[58 FR 43542, Aug. 17, 1993; 58 FR 50837, Sept. 29, 1993; 58 FR 53023, Oct. 13, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

Subpart J—Membership Insignia

§ 933.32 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising and quarters, and likewise use the words ''Member Federal Home Loan Bank System.''

[58 FR 43542, Aug. 17, 1993. Redesignated at 61 FR 42542, Aug. 16, 1996]

PART 934—OPERATIONS OF THE BANKS

Sec.

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

SOURCE: 43 FR 46841, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, unless otherwise noted.

§ 934.1 Investments.

(a) Banks may acquire or dispose of securities with prior approval of the Board or its designated representative or in conformity with:

(1) Authorizations of the Board or such representative or (2) stated Board policy. A Bank's board of directors may authorize Bank officer(s) to acquire or dispose of securities qualifying as liquidity for deposits under the investment policy of the Board as in the judgment of the officer(s) is necessary in the operation of the Bank. Any other acquisition or disposition must be authorized in advance by a majority of the board of directors, executive committee, or investment committee consisting of three or more persons a majority of whom are directors of the Bank. Single acquisitions or dispositions may be so authorized, or acquisitions and/or dispositions of securities of a stated amount maturing within specified dates as in the judgment of the officer(s) designated in the authorization are necessary in the operation of the Bank, may be so authorized, for periods of 90 days or less.

(b) Compliance with sections 11 and 16 of the act shall be determined based on the principal amount of obligations of the United States.

(c) Secured advances to members maturing within five years are investments in compliance with section 11(g) of the Act.

(d) Cash reserves may be held temporarily, awaiting investment opportunity, without violating section 16 of the Act.

[43 FR 46841, Oct. 11, 1978, as amended at 49 FR 34198, Aug. 29, 1984. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 934.2 Loans guaranteed under the Foreign Assistance Act of 1961.

With prior approval of the Board, a Bank's board of directors may authorize it to acquire, hold, or dispose of any of the following loans, or interests

therein, primarily to facilitate acquisition of participation interests in such loans by members authorized to make such investment:

(a) Housing project loans with any guaranty under section 221 of the Foreign Assistance Act of 1961, as in effect before December 30, 1969;

(b) Loans with any guaranty under section 224 of such Act, as in effect before December 30, 1969; or

(c) Loans with any guaranty under section 221 or 222 of such Act, as in effect after December 29, 1969.

Prior approval of the Board is not required to repurchase a participation interest previously sold to a member.

§934.3 Transfer of funds between Banks.

Interbank borrowing shall be through unsecured deposits bearing interest at rates negotiated between Banks. If agreement on terms cannot be reached, the Board may establish terms.

[43 FR 46841, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 55 FR 2229, Jan. 23, 1990]

§934.4 Deposits in banks or trust companies.

For purposes of section 11(g) of the Act, the term ''deposits in banks or trust companies'' means:

(a) A deposit in another Bank;

(b) A demand account in a Federal Reserve Bank; and

(c) A deposit in, or a sale of federal funds to:

(1) An insured depository institution, as defined in section 2(12)(A) of the Act, that is designated by a Bank's board of directors;

(2) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation, and is designated by a Bank's board of directors; or

(3) A U.S. branch or agency of a foreign bank, as defined in the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*), that is subject to the supervision of the Board of Governors of the Federal Reserve System, and is designated by a Bank's board of directors.

[62 FR 26922, May 16, 1997]

§934.5 Deposits from members.

Banks may accept demand and time deposits from members, reserving the right to require notice of intention to withdraw any part of time deposits. Rates of interest paid on all deposits shall be set by the Bank's board of directors (or, between regular meetings thereof, by a committee of directors selected by the board) or by the Bank President, if so authorized by the board. Unless otherwise specified by the board, a Bank President may delegate to any officer or employee of the Bank any authority he possesses under this section.

[46 FR 49107, Oct. 6, 1981. Redesignated at 54 FR 36759, Sept. 5, 1989, and further redesignated at 62 FR 26922, May 16, 1997]

§934.6 Trustee powers.

A Bank may act, and make reasonable charges for doing so, as trustee of any trust affecting the business of any member or any institution or group applying for membership or for insurance of accounts, or any group applying for a charter for a Federal Savings Association, if:

(a) Such trust is created or arises for the benefit of the institution or its savers, investors, or borrowers, or for promotion of sound and economical home financing; and

(b) In the case of applicants, the Bank ceases to act as trustee if the application is withdrawn or rejected.

[43 FR 46841, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 55 FR 2229, Jan. 23, 1990. Redesignated at 62 FR 26922, May 16, 1997]

§934.7 Budget preparation and reporting requirements.

(a) *Adoption of annual Bank budgets.* (1) Each Bank's board of directors shall be responsible for the adoption of an annual operating expense budget and a capital expenditures budget for the Bank, and any subsequent amendments thereto, consistent with the requirements of the Act, this section, other regulations and policies of the Board, and with the Bank's responsibility to protect both its members and the public interest by keeping its costs to an efficient and effective minimum.

(2) Pursuant to the requirement of section 12(a) of the Act (12 U.S.C. 1432(a)), a Bank must obtain prior approval of the Board before purchasing or erecting, or leasing for a term of more than 10 years, a building to house the Bank.

(3) A Bank's board of directors may not delegate the authority to approve the Bank's annual budgets, or any subsequent amendments thereto, to Bank officers or other Bank employees.

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

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

(b) *Budget reports.* Each Bank shall submit to the Board, by January 31 of each year, in a format and as further prescribed by the Board, such Bank budgets and other financial information as the Board shall require, including the following:

(1) Balance sheet projections;

(2) Income statement projections, including operating expense budget data and staffing levels;

(3) Capital expenditures budget data;

(4) Management discussion of expected financial performance;

(5) Strategic or business plan;

(6) Interest rate assumptions; and

(7) A copy of the FHLBank's board of directors resolution adopting the FHLBank's annual operating expense budget and capital expenditures budget.

(c) *Report on amendments to total annual budgets.* A Bank shall submit promptly to the Board a copy of the Bank's board of directors resolution adopting any amendment increasing a Bank's total annual operating expense budget or total annual capital expenditures budget above originally approved budget limits.

(d) *Mid-year reforecasting report.* Each Bank shall submit to the Board, by July 31 of each year, in a format and as further prescribed by the Board, a report containing a balance sheet and income statement setting forth reforecasted projections for the year relative to the budget projections for that year as originally approved or amended, including a management discussion explaining any significant changes in the reforecasted projections from the budget projections as originally approved or amended.

(e) *Annual actual performance results report.* Each Bank shall submit to the Board, by January 31 of each year, in a format and as further prescribed by the Board, a report containing a balance sheet and income statement setting forth the actual performance results for the prior year relative to the budget projections for that year as originally approved or amended, including a management discussion explaining any significant changes in the actual performance results from the budget projections as originally approved or amended.

[61 FR 55880, Oct. 30, 1996. Redesignated at 62 FR 26922, May 16, 1997]

§ 934.8 Surety bonds.

Each Bank shall maintain surety bonds covering all officers, employees, attorneys, or agents having control over, or access to, monies or securities owned by the Bank or in its possession.

[49 FR 34198, Aug. 29, 1984, as amended at 54 FR 6113, Feb. 7, 1989. Redesignated at 54 FR 36759, Sept. 5, 1989, and further redesignated at 62 FR 26922, May 16, 1997]

§ 934.9 Insurance.

Each bank shall maintain insurance required by law, and may maintain any additional insurance its board of directors considers necessary for its protection.

[43 FR 46841, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, and further redesignated at 62 FR 26922, May 16, 1997]

§ 934.10 Safe-keeping accounts.

Securities owned by each Bank shall be held at any Federal Reserve Bank or, with prior Board approval, at any depository commercial bank that is a member of a Federal Reserve Bank.

[45 FR 31046, May 12, 1980. Redesignated at 54 FR 36759, Sept. 5, 1989, and further redesignated at 62 FR 26922, May 16, 1997]

§934.11 Securities held in trust or as collateral.

Bonds and negotiable securities held by a Bank as collateral or in trust shall be placed in the custody of a Federal Reserve Bank or branch thereof, a financial institution which is a member of the Federal Reserve System or of the Federal Deposit Insurance Corporation, or under such other arrangement approved by the Board. However this section shall not apply to bonds and negotiable securities held in custody under the plan for holding security transactions of member institutions approved August 13, 1943.

[43 FR 46841, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, and further redesignated at 62 FR 26922, May 16, 1997]

§934.12 Accounting.

Each Bank's accounting system is subject to approval by the Board, and its accounting forms are subject to approval by the Board or its designee.

[43 FR 46841, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 55 FR 2229, Jan. 23, 1990. Redesignated at 60 FR 65516, Dec. 20, 1995, and further redesignated at 62 FR 26922, May 16, 1997]

§934.13 Gold and gold-related transactions.

No Bank may engage in any capacity or manner in any transaction or activity involving gold (including gold coin) or gold related instruments or securities, except for purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985), and activities reasonably incident thereto.

[51 FR 34951, Oct. 1, 1986. Redesignated at 54 FR 36759, Sept. 5, 1989. Redesignated at 60 FR 65516, Dec. 20, 1995, and further redesignated at 62 FR 26922, May 16, 1997]

§934.14 Office of Thrift Supervision assessments.

At the request of, and in accordance with the instructions of, the Director of the Office of Thrift Supervision, the Federal home loan banks shall remit funds made available by their members to satisfy Office of Thrift Supervision assessments.

[54 FR 36760, Sept. 5, 1989. Redesignated at 60 FR 65516, Dec. 20, 1995, and further redesignated at 62 FR 26922, May 16, 1997]

§934.15 Bank requests for information.

This section governs the procedure by which a Federal Home Loan Bank will request and receive Confidential Information, as defined in paragraph (a)(4) of this section, pursuant to section 22 of the Federal Home Loan Bank Act.

(a) *Definitions.* As used in this section:

(1) *Board* means the Federal Housing Finance Board.

(2) *Bank* means a Federal Home Loan Bank, including its directors, officers, employees or agents.

(3) *Financial Regulatory Agency* means any of the following:

(i) The Department of the Treasury, including either the Office of the Comptroller of the Currency or the Office of Thrift Supervision;

(ii) The Board of Governors of the Federal Reserve System;

(iii) The National Credit Union Administration; or

(iv) The Federal Deposit Insurance Corporation.

(4) *Confidential Information* means any record, data, or report, including but not limited to examination reports, or any part thereof, that is non-public, privileged or otherwise not intended for public disclosure which is in the possession or control of a Financial Regulatory Agency and which contains information regarding members of a Bank or financial institutions with which a Bank has had or contemplates having transactions under the Bank Act.

(5) *Third party* means any person or entity except a director, officer, employee or agent of either:

(i) A Bank in possession of any particular confidential information; or

(ii) The Financial Regulatory Agency that supplied the particular confidential information to such Bank.

(b) *Request for confidential information.* A bank shall make all requests for confidential information to a Financial

Regulatory Agency, or to a regional office of such Agency if mutually agreeable, in accordance with the procedures contained in this section as well as any procedures of general applicability for requesting information promulgated by such Financial Regulatory Agency. This section and its procedures may be supplemented by a confidentiality agreement between a Bank and a Financial Regulatory Agency.

(c) *Form of Request.* A request by a Bank to a Financial Regulatory Agency for confidential information shall be made in writing or by such other means as may be agreed upon between the Bank and the Financial Regulatory Agency. The request shall reference section 22 of the Bank Act, as amended, and this regulation, and shall describe the confidential information requested and identify its intended use pursuant to the Bank Act. The request shall be signed or otherwise made by any duly authorized Bank officer or employee.

(d) *Storage of Confidential Information.* Each Bank will store all identified confidential information in secure storage areas or filing cabinets or other secured facilities generally used by such Bank and limit access thereto in the same manner as it maintains the confidentiality of its own members' privileged or non-public information. Each Bank shall have in place a written set of procedures and policies designed to insure the confidentiality of confidential information in its possession, and shall establish an internal review of its procedures for storing confidential information and maintaining its confidentiality, as a part of its internal audit process.

(e) *Access to Confidential Information.* A Bank will insure that access to the Confidential Information stored at its facility is limited to those with a need to know such information and that employees with access maintain the confidentiality of the confidential information in accordance with the Bank's own procedures for maintaining the confidentiality of its members' privileged or non-public information.

(f) *Third party requests for Confidential Information*—(1) *In general.* In the event a Bank receives a request for confidential information in its possession from any third party, the Bank shall forward such requests to the Financial Regulatory Agency from which the confidential information was obtained.

(2) *By subpoena.* In the event a Bank receives a subpoena for confidential information issued by a Federal, state or local government department, agency, court or bureau, the Bank shall give timely written notice of such subpoena to the Financial Regulatory Agency from which the confidential information was obtained, unless such notice is prohibited by applicable law.

Except as limited herein, the Bank may disclose confidential information pursuant to the subpoena, after giving timely written notice, when:

(i) The Financial Regulatory Agency gives written approval to the disclosure; or

(ii) A binding order to produce the confidential information has become final with all rights of appeal either exhausted or lapsed.

(3) *Nondisclosure to third parties.* Except as provided in paragraph (f)(2) of this section, a Bank shall not disclose confidential information to any third party. A Bank shall refer all third party requests for such confidential information to the Financial Regulatory Agency that released the confidential information to the Bank.

(4) *Disclosure to Board.* (i) Neither this section nor any confidentiality agreement executed between a Bank and a Financial Regulatory Agency shall prevent a Bank from disclosing confidential information in its possession to the Board whenever disclosure is necessary to accomplish the Board's supervision of Bank membership applications or Bank director eligibility issues, or disclosing any confidential information in its possession if such disclosure is made pursuant to an audit conducted pursuant to paragraph (d) of this section or section 20 of the Bank Act.

(ii) The Board shall keep all confidential information received under paragraph (f)(4) of this section in strict confidence.

(g) *Computer data.* This section shall not preclude a bank from arranging with any Financial Regulatory Agency to transmit or allow access to confidential information with the consent

of such agency by means of an electronic computer system. Any such arrangement shall insure the security of the computerized data stored in a bank's computer and restrict access to such data in order to preserve confidentiality in a manner agreed upon by the bank and the Financial Regulatory Agency.

[55 FR 50545, Dec. 7, 1990. Redesignated at 60 FR 65516, Dec. 20, 1995, and further redesignated at 62 FR 26922, May 16, 1997]

§934.16 Approval of Bank bylaws.

The board of directors of a Bank may prescribe, amend, or repeal bylaws governing the manner in which the Bank administers its affairs without the Board's prior approval provided that the bylaws or amendments are consistent with applicable statutes, regulations, and Board policies.

[62 FR 65198, Dec. 11, 1997]

§934.17 Dividends.

The board of directors of each Bank may, with the approval of the Board, declare and pay a dividend from net earnings, including previously retained earnings, on the paid-in value of capital stock held during the dividend period. The divided period may be quarterly, semiannually, or annually ending on March 31, June 30, September 30, or December 31. Dividends on such stock shall be computed without preference and only for the period such stock was outstanding during the dividend period. Dividends may be paid in cash or in the form of stock.

[57 FR 6190, Feb. 21, 1992. Redesignated at 63 FR 65687, Nov. 30, 1998]

PART 935—ADVANCES

Subpart A—Advances to Members

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AUTHORITY: 12 U.S.C. 1422a(a)(3), 1422(b)(a)(1), 1426, 1429, 1430, 1430b, and 1431.

SOURCE: 58 FR 29469, May 20, 1993, unless otherwise noted.

Subpart A—Advances to Members

§935.1 Definitions.

As used in this part:

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

Actual thrift investment percentage or *ATIP* has the same meaning as used in section 10(m)(4) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)), except that the ATIP will be calculated and applied for purposes of this part to all members of the Banks, whether or not they are savings associations.

Advance means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

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

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

Affordable Housing Program or *AHP* means the program described in section 10(j) of the Act (12 U.S.C. 1430(j)) and part 960 of the Board's regulations.

Appropriate Federal banking agency. The term *appropriate Federal banking agency* has the same meaning as used

in 12 U.S.C. 1813(q) and for federally insured credit unions shall mean the National Credit Union Administration.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board means the Federal Housing Finance Board established under the authority of the Act, its governing Board of Directors, or an official duly authorized to act on its behalf.

Capital deficient member means a member that fails to meet its minimum regulatory capital requirements as defined or otherwise required by the member's appropriate federal banking agency, insurer or, in the case of members that are not federally insured depository institutions, state regulator.

Combination business or farm property means real property for which the total appraised value is attributable to the combination of residential, and business or farm uses.

Community Investment Cash Advance or *CICA* means any advance made through a program offered by a Bank under section 1430 of the Act and parts 960 and 970 of this chapter to provide advances for community lending and affordable housing, including advances made under: A Bank's Rural Development Advance (RDA) program, offered under section 1430(j)(10) of the Act; a Bank's Urban Development Advance (UDA) program, offered under section 1430(j)(10) of the Act; a Bank's Affordable Housing Program (AHP), offered under section 1430(j) of the Act; a Bank's Community Investment Program (CIP), offered under section 1430(i) of the Act; or any other program offered by a Bank that meets the requirements of part 970 of this chapter.

Depository institution means a bank or savings association, as defined in 12 U.S.C. 1813, or a credit union, as defined in 12 U.S.C. 1752.

Dwelling unit means, for purposes of this part, a single room or a unified combination of rooms designed for residential use by one household.

FDIC means the Federal Deposit Insurance Corporation.

GAAP means Generally Accepted Accounting Principles.

HUD means the Department of Housing and Urban Development.

Improved residential real property means residential real property excluding real property to be improved, or in the process of being improved, by the construction of dwelling units.

Insurer means the Federal Deposit Insurance Corporation for ''insured depository institutions'' as defined in 12 U.S.C. 1813(c)(2) and the National Credit Union Administration for federally insured credit unions.

Long-term advance means, for the purposes of this part, an advance with an original term to maturity greater than five years.

Manufactured housing means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Member means an institution that has been admitted to membership in a Bank and, pursuant to requirements established by the Board, has purchased capital stock in the Bank.

Mortgage-backed security means, for purposes of this part:

(1) An equity security representing an ownership interest in:

(i) Fully disbursed, whole first mortgage loans on improved residential real property; or

(ii) Mortgage pass-through or participation securities which are themselves backed entirely by fully disbursed, whole first mortgage loans on improved residential real property; or

(2) A collateralized mortgage obligation, mortgage-backed bond or other debt security backed entirely by the assets described in paragraph (1)(i) or (ii) of this section.

Multifamily property means, for purposes of this part:

(1)(i) Real property that is solely residential and which includes five or more dwelling units; or

(ii) Real property which includes five or more dwelling units with commercial units combined, provided the property is primarily residential.

(2) Multifamily property as defined in this section includes nursing homes, dormitories and homes for the elderly.

Non-Qualified Thrift Lender member means any member that does not meet the Qualified Thrift Lender test as defined in this part.

Nonresidential real property means, for purposes of this part, real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institutions, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board in its discretion.

OCC means the Office of the Comptroller of the Currency.

One-to-four family property means any of the following:

(1) Real property containing:

(i) One-to-four dwelling units; or

(ii) More than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row houses, townhouses or similar types of property;

(2) Manufactured housing if:

(i) Applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property; and

(ii) The loan to purchase the manufactured housing is secured by that manufactured housing;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

OTS means the Office of Thrift Supervision.

Qualified Thrift Lender or *QTL* means the term as defined in section 10(m)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(1)). A non-savings association member which meets the QTL test as applied by the Banks will be treated as a QTL for purposes of this part.

Qualified Thrift Lender test or *QTL test* means the asset test described in section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)), except that the QTL test will be applied for purposes of this part to all members of the Banks, whether or not they are savings associations.

Residential housing finance assets means any of the following:

(1) Loans secured by residential real property;

(2) Mortgage-backed securities;

(3) Participations in loans secured by residential real property;

(4) Loans or investments financed by advances made pursuant to a CICA program;

(5) Loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or

(6) Any loans or investments which the Board, in its discretion, otherwise determines to be residential housing finance assets.

Residential real property means:

(1) Any of the following:

(i) One-to-four family property;

(ii) Multifamily property;

(iii) Real property to be improved by the construction of dwelling units;

(iv) Real property in the process of being improved by the construction of dwelling units;

(v) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property or, in the case of any community financial institution, combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property. For purposes of this subparagraph, the term *community financial institution* means an institution that has average total assets of $500,000,000 or less, based on an average of total assets over the three preceding years. The Board shall adjust the limit annually based on the annual increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

(2) The term residential real property does not include nonresidential real property as defined in this section.

Savings association means a savings association as defined in section 3(b) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(b)).

State means a state of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

State housing finance agency or *SHFA* means:

(1) A public agency, authority, or publicly sponsored corporation that serves as an instrumentality of any state or political subdivision of any state, and functions as a source of residential mortgage loan financing in that state; or

(2) A legally established agency, authority, corporation, or organization that serves as an instrumentality of any Indian tribe, band, group, nation, community, or Alaskan Native village recognized by the United States or any state, and functions as a source of residential mortgage loan financing for the Indian or Alaskan Native community.

State regulator means a state insurance commissioner or state regulatory entity with primary responsibility for supervising a member borrower that is not a federally insured depository institution.

Tangible capital means:

(1) Capital, calculated according to GAAP, less ''intangible assets'' except for purchased mortgage servicing rights to the extent such assets are included in a member's core or Tier 1 capital, as reported in the member's Thrift Financial Report for members whose primary federal regulator is the OTS, or as reported in the Report of Condition and Income for members whose primary federal regulator is the FDIC, the OCC, or the Board of Governors of the Federal Reserve System.

(2) Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members which are not regulated by the OTS, the FDIC, the OCC, or the Board of Governors of the Federal Reserve System; provided that a Bank shall include a member's purchased mortgage servicing rights to the extent such assets are included for the purpose of meeting regulatory capital requirements.

[58 FR 29469, May 20, 1993, as amended at 58 FR 29477, May 20, 1993; 59 FR 2949, Jan. 20, 1994; 62 FR 8871, Feb. 27, 1997; 62 FR 12079, Mar. 14, 1997; 63 FR 35128, June 29, 1998; 63 FR 65545, Nov. 27, 1998]

§ 935.2 Bank credit mission.

(a) The primary credit mission of the Banks shall be to enhance the availability of residential mortgage credit.

(b) Each Bank shall fulfill its primary credit mission by:

(1) Providing a readily available, economical and affordable source of funds in the form of advances to its members; and

(2) Offering such advances products and programs that satisfy the credit needs of its members.

(c) Notwithstanding paragraph (b) of this section, each Bank shall place such limitations on the making of advances to its members as shall:

(1) Be specifically prescribed by statute, regulation or policy;

(2) Protect the financial integrity of the Bank and accommodate the practical constraints associated with the Bank's ability to raise funds; or

(3) Be required by the Board.

§ 935.3 Bank advances policy.

(a) Each Bank's board of directors shall adopt, and review at least semiannually, a policy on advances to members consistent with the requirements of the Act, this part, and policy guidelines of the Board. Each Bank shall provide a copy of its advances policy, and any revisions thereto, to the Board.

(b) A Bank's board of directors may designate officers authorized to extend or deny credit and take other action consistent with the Bank's advances policy.

(c) A Bank may make exceptions to its advances policy only with the approval of its board of directors, a committee thereof, or officers specifically authorized by the board of directors to approve such exceptions, provided that any such exceptions shall comply with the Act, this part and policy guidelines of the Board.

(d) A Bank's board of directors shall:

(1) Require the officers designated pursuant to paragraph (b) of this section to report promptly to it, or a designated committee of the board, all actions taken under this section; and

(2) Review such actions for compliance with this section.

§935.4 Authorization and application for advances; obligation to repay advances.

(a) *Application for advances.* A Bank may accept oral or written applications for advances from its members.

(b) *Obligation to repay advances.* (1) A Bank shall require any member to which an advance is made to enter into a primary and unconditional obligation to repay such advance and all other indebtedness to the Bank, together with interest and any unpaid costs and expenses in connection therewith, according to the terms under which such advance was made or other indebtedness incurred.

(2) Such obligations shall be evidenced by a written advances agreement that shall be reviewed by the Bank's legal counsel to ensure such agreement is in compliance with applicable law.

(c) *Secured advances.* (1) Each Bank shall make only fully secured advances to its members as set forth in the Act, the provisions of this part and policy guidelines established by the Board.

(2) The Bank shall execute a written security agreement with each borrowing member which establishes the Bank's security interest in collateral securing advances.

(3) Such written security agreement shall, at a minimum, describe the type of collateral securing the advances and give the Bank a perfectible security interest in the collateral.

(d) *Approval*—(1) *By the Bank's board of directors.* Applications for advances, advances agreements and security agreements shall be in substantially such form as approved by the Bank's board of directors, or a committee thereof specifically authorized by the board of directors to approve such forms.

(2) *By the Board.* Each Bank's forms for all advances applications, advances agreements and security agreements are deemed approved by the Board if such forms are consistent with the requirements of this part. Each Bank shall provide copies of its current forms for all advances agreements and security agreements, and any substantive revisions thereto, to the Board.

§935.5 Limitations on access to advances.

(a) *Credit underwriting.* A Bank, in its discretion, may:

(1) Limit or deny a member's application for an advance if, in the Bank's judgment, such member:

(i) Is engaging or has engaged in any unsafe or unsound banking practices;

(ii) Has inadequate capital;

(iii) Is sustaining operating losses;

(iv) Has financial or managerial deficiencies, as determined by the Bank, that bear upon the member's creditworthiness; or

(v) Has any other deficiencies, as determined by the Bank; or

(2) Approve a member's application for an advance subject to such additional terms as the Bank may prescribe, pursuant to the provisions of the Act, this part and any policy guidelines of the Board; and

(3) Make advances and renewals only if the Bank determines that it may safely make such advance or renewal to the member, including advances and renewals made pursuant to this section.

(b) *New advances to members without positive tangible capital.* (1) A Bank shall not make a new advance to a member without positive tangible capital unless the member's appropriate federal banking agency or insurer requests in writing that the Bank make such advance. The Bank shall promptly provide the Finance Board with a copy of any such request.

(2) A Bank shall use the most recently available Thrift Financial Report, Report of Condition, and Income or other regulatory report of financial condition to determine whether a member has positive tangible capital.

(c) *Renewals of advances to members without positive tangible capital*—(1) *Renewal for 30-day terms.* A Bank may renew outstanding advances, for successive terms of up to 30 days each, to a member without positive tangible capital; provided, however, that a Bank shall honor any written request of the appropriate federal banking agency or insurer that the Bank not renew such advances.

(2) *Renewal for longer than 30-day terms.* A Bank may renew outstanding advances to a member without positive

tangible capital for a term greater than 30 days at the written request of the appropriate federal banking agency or insurer.

(d) *Advances to capital deficient but solvent members.* (1) Except as provided in paragraph (d)(2)(i) of this section, a Bank may make a new advance or renew an outstanding advance to a capital deficient member that has positive tangible capital.

(2)(i) A Bank shall not lend to a capital deficient member that has positive tangible capital if it receives written notice from the appropriate federal banking agency or insurer that the member's use of Bank advances has been prohibited. The Bank shall promptly provide the Finance Board with a copy of any such notice.

(ii) A Bank may resume lending to such a capital deficient member if the Bank receives a written statement from the appropriate federal banking agency or insurer which re-establishes the member's ability to use advances.

(e) *Reporting.* (1) Each Bank shall provide the Finance Board with a monthly report of the advances and commitments outstanding to each of its members.

(2) Such monthly report shall be in a format or on a form prescribed by the Finance Board.

(3) Each Bank shall, upon written request from a member's appropriate federal banking agency or insurer, provide to such entity information on advances and commitments outstanding to the member.

(f) *Members without federal regulators.* In the case of members that are not federally insured depository institutions, the references in paragraphs (b), (c), (d) and (e) of this section to ''appropriate federal banking agency or insurer'' shall mean the member's state regulator acting in a capacity similar to an appropriate federal banking agency or insurer.

(g) *Advance commitments.* (1) In the event that a member's access to advances from a Bank is restricted pursuant to this section, the Bank shall not fund outstanding commitments for advances not exercised prior to the imposition of the restriction. This requirement shall apply to all advance commitments made by a Bank after August 25, 1993.

(2) Each Bank shall include the stipulation contained in paragraph (g)(1) of this section as a clause in either:

(i) The written advances agreement required by § 935.4(b)(2) of this part; or

(ii) The written advances application required by § 935.4(a) of this part.

[58 FR 29469, May 20, 1993, as amended at 59 FR 2949, Jan. 20, 1994]

§ 935.6 Terms and conditions for advances.

(a) *Advance maturities.* Each Bank shall offer advances with maturities of up to ten years, and may offer advances with longer maturities consistent with the safe and sound operation of the Bank.

(b) *Advance pricing*—(1) *General.* Each Bank shall price its advances to members taking into account the following factors:

(i) The marginal cost to the Bank of raising matching maturity funds in the marketplace; and

(ii) The administrative and operating costs associated with making such advances to members.

(2) *Differential pricing.* (i) Each Bank may, in pricing its advances, distinguish among members based upon its assessment of:

(A) The credit and other risks to the Bank of lending to any particular member; or

(B) Other reasonable criteria that may be applied equally to all members.

(ii) Each Bank shall include in the advances policy required by § 935.3(a) of this part, standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3) *Affordable Housing Program advances.* The advance pricing policies and procedures contained in paragraph (b)(1) of this section shall not apply in the case of a Bank's AHP advances made pursuant to part 960 of this chapter.

(c) *Authorization for pricing advances.* (1) A Bank's board of directors, a committee thereof, or the Bank's president, if so authorized by the Bank's board of directors, shall set the rates of

interest on advances consistent with paragraph (b) of this section.

(2) A Bank president authorized to set interest rates on advances pursuant to this paragraph (c) may delegate any part of such authority to any officer or employee of the Bank.

(d) *Putable advances*—(1) *Disclosure.* A Bank that offers a putable advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable advance funding. The disclosure should include detail sufficient to describe such risks.

(2) *Replacement funding.* If a Bank terminates a putable advance prior to the stated maturity date of such advance, the Bank shall offer to provide replacement funding to the member.

(i) *Term to maturity.* At the option of the member, a Bank shall offer replacement funding:

(A) For the remaining term to maturity of the putable advance; or

(B) For a term to maturity agreed upon between the Bank and the member.

(ii) *Interest rate.* At the option of the member, a Bank shall price replacement funding:

(A) At the market rate of interest; or

(B) At a predetermined rate of interest agreed upon between the Bank and the member.

(iii) *Conversion.* For purposes of this part, replacement funding shall be considered the conversion of an outstanding advance, and shall not be considered the renewal of an existing advance or the extension of a new advance.

(3) *Definition.* For purposes of this paragraph (d), the term *putable advance* means an advance that a Bank may, at its discretion, terminate and require the member to repay prior to the stated maturity date of the advance.

[58 FR 29469, May 20, 1993, as amended at 61 FR 52687, Oct. 8, 1996]

§935.7 [Reserved]

§935.8 Fees.

(a) *Fees in advances policy.* All fees charged by each Bank and any schedules or formulas pertaining to such fees shall be included in the Bank's advances policy required by §935.3(a) of this part. Any such fee schedules or formulas shall be applied consistently and without discrimination to all members.

(b) *Prepayment fees.* (1) Each Bank shall establish and charge a prepayment fee pursuant to a specified formula which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

(2) Prepayment fees are not required for:

(i) Advances with original terms to maturity or repricing periods of six months or less;

(ii) Advances funded by callable debt; or

(iii) Advances which are otherwise appropriately hedged so that the Bank is financially indifferent to their prepayment.

(3) The board of directors of each Bank, a designated committee thereof, or officers specifically authorized by the board of directors, may waive a prepayment fee only if such prepayment will not result in an economic loss to the Bank. Any such waiver must subsequently be ratified by the board of directors.

(4) A Bank, in determining whether or not to waive a prepayment fee, shall apply consistent standards to all of its members.

(c) *Commitment fees.* Each Bank may charge a fee for its commitment to fund an advance.

(d) *Other fees.* Each Bank is authorized to charge other fees as it deems necessary and appropriate.

§935.9 Collateral.

(a) *Eligible security for advances.* At the time of origination or renewal of an advance, each Bank shall obtain, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

(1) *Mortgage loans and privately issued securities.* (i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; or

(ii) Privately issued mortgage-backed securities, excluding the following:

(A) Securities which represent a share of only the interest payments or only the principal payments from the underlying mortgage loans;

(B) Securities which represent a subordinate interest in the cash flows from the underlying mortgage loans;

(C) Securities which represent an interest in any residual payments from the underlying pool of mortgage loans; or

(D) Such other high-risk securities as the Board in its discretion may determine.

(2) *Agency securities.* Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation mortgage-backed securities, as defined in § 935.1 of this part, issued or guaranteed by:

(i) The Federal Home Loan Mortgage Corporation;

(ii) The Federal National Mortgage Association; or

(iii) The Government National Mortgage Association.

(3) *Deposits.* Deposits in a Bank.

(4) *Other collateral.* (i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank if:

(A) Such collateral has a readily ascertainable value; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

(b) *Bank restrictions on eligible collateral.* A Bank at its discretion may further restrict the types of eligible collateral acceptable to the Bank as security for an advance, based upon the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria.

(c) *Additional collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraph (a) of this section or section 10 of the Act (12 U.S.C. 1430).

(d) *Bank stock as collateral.* (1) Pursuant to section 10(c) of the Act (12 U.S.C. 1430(c)), a Bank shall have a lien upon, and shall hold, the stock of a member in the Bank as further collateral security for all indebtedness of the member to the Bank.

(2) The written security agreement used by the Bank shall provide that the borrowing member's Bank stock is assigned as additional security by the member to the Bank.

(3) The security interest of the Bank in such member's Bank stock shall be entitled to the priority provided for in section 10(f) of the Act (12 U.S.C. 1430(f)).

(e) *Collateral security requiring formal approval.* No home mortgage loan otherwise eligible to be accepted as collateral for an advance by a Bank under this section shall be accepted as collateral for an advance if any director, officer, employee, attorney or agent of the Bank or of the borrowing member is personally liable thereon, unless the board of directors of the Bank has specifically approved such acceptance by formal resolution, and the Board has endorsed such resolution.

§ 935.10 Banks as secured creditors.

(a) Except as provided in paragraph (b) of this section, notwithstanding any other provision of law, any security interest granted to a Bank by a member, or by an affiliate of such member, shall be entitled to priority over the claims and rights of any party, including any receiver, conservator, trustee or similar party having rights of a lien creditor, to such collateral.

(b) A Bank's security interest as described in paragraph (a) of this section shall not be entitled to priority over the claims and rights of a party that:

(1) Would be entitled to priority under otherwise applicable law; and

(2) Is an actual bona fide purchaser for value of such collateral or is an actual secured party whose security interest in such collateral is perfected in accordance with applicable state law.

§935.11 Pledged collateral; verification.

(a) *Collateral safekeeping.* (1) A Bank may permit a member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided that the Bank and such member have executed a written security agreement pursuant to §935.4(c) of this part whereby such collateral is retained solely for the Bank's benefit and subject to the Bank's control and direction.

(2) A Bank shall take any steps necessary to ensure that its security interest in all collateral pledged by non-depository institutions for an advance is as secure as its security interest in collateral pledged by depository institutions.

(3) A Bank may at any time perfect its security interest in collateral securing an advance to a member.

(b) *Collateral verification.* Each Bank shall establish written procedures, with standards similar to those established by the Auditing Standards Board of the American Institute of Certified Public Accountants, for verifying the existence of collateral securing the Bank's advances, and shall regularly verify the existence of the collateral securing its advances in accordance with such procedures.

§935.12 Collateral valuation; appraisals.

(a) Each Bank shall establish written procedures for determining the value of the collateral securing the Bank's advances, and shall determine the value of such collateral in accordance with such procedures.

(b) Each Bank shall apply the valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

§935.13 Restrictions on advances to members that are not qualified thrift lenders.

(a) *Restrictions on advances to non-QTL members.* (1) Except as provided in paragraphs (a)(4) and (a)(5) of this section, a Bank may make or renew an advance to a non-QTL member only under the following conditions:

(i) The advance is for the purpose of purchasing or funding new or existing residential housing finance assets, as determined pursuant to paragraph (a)(2) of this section;

(ii) The member holds Bank stock at the time it receives the advance in an amount equal to at least five percent of the outstanding principal amount of the member's total advances, divided by such member's ATIP, calculated pursuant to paragraph (a)(3) of this section; and

(iii) Making the advance will not cause the aggregate amount of advances issued by the twelve Banks to non-QTL members to exceed 30 percent of the aggregate amount of the twelve Banks' total outstanding advances.

(2) Prior to approving an application for an advance by a non-QTL member, a Bank shall determine that the principal amount of all advances outstanding to the member at the time the advance is requested does not exceed the total book value of residential housing finance assets held by such member, which shall be determined using the most recent Report of Condition and Income or financial statement made available by the member.

(3)(i) A Bank shall calculate each non-savings association member's ATIP at least annually, between July 1 and October 31, based upon financial data as of June 30 of that calendar year. The Bank may, in its discretion, calculate a member's ATIP more frequently than annually.

(ii) In determining a non-savings association member's annual ATIP, a

Bank shall use the financial information from the member's June 30 call report as the primary source of information. A Bank making ATIP determinations other than as part of the annual QTL determination (whether for existing members or new members) shall use the member's most recent call report, except that in determining the amount of a member's loan to small businesses a Bank may use the information for such loans on the member's most recent June 30 call report. If any information necessary for determining the member's ATIP is not separately identified on a member's call report, the Bank may rely on a written certification provided by the member that attests to the dollar amount and composition of those other assets that meet the definitions of ''qualified thrift investments'' or ''portfolio assets'' as of the date of the call report. Notwithstanding the preceding two sentences, a Bank may, at its option, accept from a non-savings association member preliminary information as to the dollar amount and composition of assets that meet the definitions of ''qualified thrift investments'' or ''portfolio assets,'' provided that the Bank thereafter verifies against the most recent call report the accuracy of any items that are also available from the call report. In any case in which a Bank relies on a certification from a non-savings association member as to its level of ''qualified thrift investments'' or ''portfolio assets,'' the certification must recite that the information is accurate as of the date specified, must be in writing and be signed and dated by the chief executive officer of the member. The chief executive officer may delegate authority to sign and date the certification to the chief financial officer, chief operating officer, or controller of the member.

(iii) For purposes of this section, the term''call report'' shall include:

(A) With respect to a commercial bank, the annual or quarterly ''Report of Condition and Income'' submitted to its appropriate Federal banking agency;

(B) With respect to a credit union, the quarterly or semi-annual call report submitted to the National Credit Union Administration; and

(C) With respect to an insurance company, its National Association of Insurance Commissioners annual regulatory filing.

(iv) For purposes of this section, the amount of a member's ''loans to small businesses'' shall include any commercial business loan (or series of loans to the same borrower) in the original amount of $1 million or less, any farm loan (or series of loans to the same borrower) in the original amount of $500,000 or less, and any loan to a ''small business'' as that term is defined by section 3(a) of the Small Business Act, 15 U.S.C. 632(a), and implemented by the Small Business Administration at 13 CFR part 121, or any successor provisions.

(4) The requirements of paragraphs (a) (1), (2), and (3) of this section shall not apply to:

(i) A savings bank, as defined in section 3(g) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(g)); or

(ii) A Federal savings association in existence as such on August 9, 1989 that:

(A) Was a state chartered savings bank or cooperative bank before October 15, 1982; or

(B) Acquired its principal assets from an institution that was a state chartered savings bank or cooperative bank before October 15, 1982.

(5) The requirements of paragraph (a)(2) of this section shall not apply to applications from non-savings association members for CICA advances.

(b) *Priority for QTL members.* (1) Except as provided in paragraph (b)(3) of this section, if a Bank is unable to meet the aggregate advance demand of all of its members, the Bank shall give priority to applications for advances from its QTL members, subject to the following considerations:

(i) The effect of making the advances on the financial integrity of the Bank;

(ii) The member's creditworthiness;

(iii) The availability of funding with maturities compatible with advances applications; and

(iv) Any other factors that the Bank determines to be relevant.

(2) The institutions identified in paragraph (a)(4) of this section shall be

treated as QTLs for purposes of this paragraph (b).

(3) The requirement of paragraph (b)(1) of this section shall not apply to a Bank's special, or otherwise limited, advance offerings.

(c) *Additional restrictions on advances to non-QTL savings associations.* (1) Either the Bank's written advances agreement required by §935.4(b)(2) of this part or the written advances application authorized in §935.4(a) of this part shall require that each savings association member, which pursuant to the QTL requirements of the OTS becomes ineligible for Bank advances, immediately provide its Bank with written notification of its ineligibility.

(2) Except as requested in writing by the OTS, or as authorized in §935.18(c) of this part, a Bank shall not make an advance to a savings association member after receiving written notification from such member or from the OTS that such member is ineligible for advances pursuant to the QTL requirements of the OTS.

(d) *Repayment of advances by non-QTL savings association members.* (1) Each Bank, if informed by a savings association member or the OTS that the member has failed to regain its QTL status and is required to repay said member's advances prior to maturity, shall, in conjunction with the non-QTL savings association member, develop a schedule for the prompt and prudent repayment of any outstanding advances held by that member, consistent with the member's and the Bank's safe and sound operations.

(2) The schedule agreed to under paragraph (d)(1) of this section shall be provided promptly by the Bank to the Board and the OTS.

(e) *Advance commitments.* Either the Bank's written advances agreement required by §935.4(b)(2) of this part or the written advances application authorized in §935.4(a) of this part shall stipulate that the Bank shall not honor advance commitments previously made to members whose access to advances is subsequently restricted pursuant to paragraphs (a) or (c) of this section.

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069–0057 with an expiration date of April 30, 2000)

[58 FR 29469, May 20, 1993, as amended at 62 FR 52015, Oct. 6, 1997; 63 FR 65545, Nov. 27, 1998]

§935.14 Limitations on long-term advances.

(a) A Bank shall make long-term advances only for the purpose of enabling a member to purchase or fund new or existing residential housing finance assets.

(b)(1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member.

(2) Applications for CICA advances are exempt from the requirements of paragraph (b)(1) of this section.

[58 FR 29469, May 20, 1993, as amended at 63 FR 65545, Nov. 27, 1998]

§935.15 Capital stock requirements; unilateral redemption of excess stock.

(a) *Capital stock requirement for advances.* (1) At no time shall the aggregate amount of outstanding advances made by a Bank to a member exceed 20 times the amount paid in by such member for capital stock in the Bank.

(2) A non-QTL member shall hold stock in the Bank at the time it receives an advance in an amount equal to at least the amount of stock required to be held pursuant to §935.13(a)(1)(ii) of this part.

(b) *Unilateral redemption of excess stock.* A Bank, after providing 15 calendar days advance written notice to a member, may unilaterally redeem that amount of the member's Bank stock that exceeds the stock requirements set forth in paragraph (a) of this section or, in the case of a non-QTL member, the stock requirements set forth in § 935.13(a)(1)(ii) of this part, provided the minimum amount required in sections 6(b)(1) and 10(e)(3) of the Act is maintained. The Banks shall have the discretion to determine the timing of such unilateral redemption, provided that the Bank's redemption policy is consistent with the requirement of section 7(j) of the Act (12 U.S.C. 1427(j)) which provides for fair and impartial treatment of all members.

§ 935.16 Advance participations.

A Bank may allow any other Bank to purchase a participation interest in any advance, and any other Bank may accept a participation interest therein, together with an appropriate assignment of security therefor, subject to the approval of the boards of directors of the relevant Banks.

§ 935.17 Intradistrict transfer of advances.

(a) *Advances held by members.* A Bank may allow one of its members to assume an advance extended by the Bank to another of its members, provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

(b) *Advances held by nonmembers.* A Bank may allow one of its members to assume an advance held by a nonmember, provided the advance was originated by the Bank and provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

[59 FR 2950, Jan. 20, 1994]

§ 935.18 Special advances to savings associations.

(a) *Eligible institutions.* (1) A Bank, upon receipt of a written request from the Director of the OTS, may make short-term advances to a savings association member.

(2) Such request must certify that the member:

(i) Is solvent but presents a supervisory concern to the OTS because of the member's financial condition; and

(ii) Has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

(b) *Terms and conditions.* Advances made by a Bank to a member savings association under this section shall:

(1) Be subject to all applicable collateral requirements of the Bank, this part and section 10(a) of the Act (12 U.S.C. 1430(a)); and

(2) Be at the interest rate applicable to advances of similar type and maturity that are made available to other members that do not pose such a supervisory concern.

§ 935.19 Liquidation of advances upon termination of membership.

If an institution's membership in a Bank is terminated, the Bank shall determine an orderly schedule for liquidating any indebtedness of such member to the Bank; this section shall not require a Bank to call any such indebtedness prior to maturity of the advance. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment.

Subpart B—Advances to Nonmembers

SOURCE: 62 FR 12079, Mar. 14, 1997, unless otherwise noted.

§ 935.20 Advances to the Savings Association Insurance Fund.

(a) *Authority.* Upon receipt of a written request from the FDIC, a Bank may make advances to the FDIC for the use of the SavingsAssociation Insurance Fund. The Bank shall provide a copy of such request to the Board.

(b) *Requirements.* Advances to the FDIC for the use of the Savings Association Insurance Fund shall:

(1) Bear a rate of interest not less than the Bank's marginal cost of funds,

taking into account the maturities involved and reasonable administrative costs;

(2) Have a maturity acceptable to the Bank;

(3) Be subject to any prepayment, commitment, or other appropriate fees of the Bank; and

(4) Be adequately secured by collateral acceptable to the Bank.

§935.21 Scope.

With the exception of §935.13, and except as otherwise provided in §935.20 and §935.24, the requirements of subpart A of this part apply to this subpart.

§935.22 Nonmember mortgagee eligibility requirements.

(a) *Authority.* Subject to the provisions of the Act and this subpart, a Bank may make advances to an entity that is not a member of the Bank if the Bank has certified the entity as a nonmember mortgagee.

(b) *Eligibility requirements.* A Bank may certify as a nonmember mortgagee any applicant that meets the following requirements:

(1) The applicant is approved under title II of the National Housing Act (12 U.S.C. 1707, *et seq.*);

(2) The applicant is a chartered institution having succession;

(3) The applicant is subject to the inspection and supervision of some governmental agency;

(4) The principal activity of the applicant in the mortgage field consists of lending its own funds; and

(5) The financial condition of the applicant is such that advances may be safely made to it.

(c) *Satisfaction of eligibility requirements*—(1) *HUD approval requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and paragraph (b)(1) of this section that it be approved under title II of the National Housing Act if it submits a current HUD Yearly Verification Report or other documentation issued by HUD stating that the Federal Housing Administration of HUD has approved the applicant as a mortgagee.

(2) *Charter requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and paragraph (b)(2) of this section that it be a chartered institution having succession if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations under which the applicant was created, that:

(i) The applicant is a government agency; or

(ii) The applicant is chartered under state, federal, local, tribal, or Alaska Native village law as a corporation or other entity that has rights, characteristics, and powers under applicable law similar to those granted a corporation.

(3) *Inspection and supervision requirement.* An applicant shall be deemed to meet the inspection and supervision requirement in section 10b(a) of the Act and paragraph (b)(3) of this section if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, relevant statutes and/or regulations, that, pursuant to statute or regulation, the applicant is subject to the inspection and supervision of a federal, state, local, tribal, or Alaska native village governmental agency. An applicant shall be deemed to meet the inspection requirement if there is a statutory or regulatory requirement that the applicant be audited or examined periodically by a governmental agency or by an external auditor. An applicant shall be deemed to meet the supervision requirement if the governmental agency has statutory or regulatory authority to remove an applicant's officers or directors for cause or otherwise exercise enforcement or administrative control over actions of the applicant. For purposes of this paragraph (c)(3), the term ''governmental agency'' includes the governor, legislature, and any other component of a federal, state, local, tribal, or Alaska native village government with authority to act for or on behalf of that government.

(4) Mortgage activity requirement. An applicant shall be deemed to meet the mortgage activity requirement in section 10b(a) of the Act and paragraph (b)(4) of this section if it provides documentary evidence satisfactory to the Bank, such as a financial statement or other financial documents that include the applicant's mortgage loan assets and their funding liabilities, that it

lends its own funds as its principal activity in the mortgage field. Lending funds includes, but is not limited to, the purchase of whole mortgage loans. In the case of a federal, state, local, tribal, or Alaska Native village government agency, appropriated funds shall be considered an applicant's own funds. An applicant shall be deemed to satisfy this requirement notwithstanding that the majority of its operations are unrelated to mortgage lending if its mortgage activity conforms to this requirement. An applicant that acts principally as a broker for others making mortgage loans, or whose principal activity is to make mortgage loans for the account of others, does not meet this requirement.

(5) *Financial condition requirement.* An applicant shall be deemed to meet the financial condition requirement in paragraph (b)(5) of this section if the Bank determines that advances may be safely made to the applicant. The applicant shall submit to the Bank copies of its most recent regulatory audit or examination report, or external audit report, and any other documentary evidence, such as financial or other information, that the Bank may require to make the determination.

(d) *State housing finance agencies.* In addition to meeting the requirements in paragraph (b) of this section, any applicant seeking access to advances as a SHFA pursuant to § 935.24(b)(2) shall provide evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations describing the applicant's structure and responsibilities, that the applicant is a state housing finance agency as defined in § 935.1.

(e) *Ineligibility.* Except as otherwise provided in this subpart, if an applicant does not satisfy the requirements of this subpart, the applicant is ineligible to be certified as a nonmember mortgagee.

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 1999)

§ 935.23 Nonmember mortgagee application process.

(a) *Authority.* The Banks are authorized to approve or deny all applications for certification as a nonmember mortgagee, subject to the requirements of the Act and this subpart. A Bank may delegate the authority to approve applications for certification as a nonmember mortgagee only to a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) *Application requirements.* An applicant for certification as a nonmember mortgagee shall submit an application that satisfies the requirements of the Act and this subpart to the Bank of the district in which the applicant's principal place of business, as determined in accordance with part 933 of this chapter, is located.

(c) *Application process*—(1) *Action on applications.* A Bank shall approve or deny an application for certification as a nonmember mortgagee within 60 calendar days of the date the Bank deems the application to be complete. A Bank shall deem an application complete, and so notify the applicant in writing, when it has obtained all of the information required by this subpart and any other information it deems necessary to process the application. If a Bank determines during the review process that additional information is necessary to process the application, the Bank may deem the application incomplete and stop the 60-day time period by providing written notice to the applicant. When the Bank receives the additional information, it shall again deem the application complete, so notify the applicant in writing, and resume the 60-day time period where it stopped.

(2) *Decision on applications.* The Bank or a duly delegated committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development shall approve, or the board of directors of a Bank shall deny, each application for certification as a nonmember mortgagee by a written decision resolution

stating the grounds for the decision. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and the Board with a copy of the Bank's decision resolution.

(3) *File.* The Bank shall maintain a certification file for each applicant for at least three years after the date the Bank decides whether to approve or deny certification or the date the Board resolves any appeal, whichever is later. At a minimum, the certification file shall include all documents submitted by the applicant or otherwise obtained or generated by the Bank concerning the applicant, all documents the Bank relied upon in making its determination regarding certification, including copies of statutes and regulations, and the decision resolution.

(4) *Appeals.* Within 90 calendar days of the date of a Bank's decision to deny an application for certification as a nonmember mortgagee, the applicant may submit a written appeal to the Board that includes the Bank's decision resolution and a statement of the basis for the appeal with sufficient facts, information, analysis, and explanation to support the applicant's position. Appeals shall be sent to the Federal Housing Finance Board, 1777 F Street, N.W., Washington D.C. 20006, with a copy to the Bank.

(i) *Record for appeal.* Upon receiving a copy of an appeal, the Bank whose action has been appealed shall provide to the Board a complete copy of the applicant's certification file maintained by the Bank under paragraph (c)(3) of this section. Until the Board resolves the appeal, the Bank shall promptly provide to the Board any relevant new materials it receives. The Board may request additional information or further supporting arguments from the applicant, the Bank, or any other party that the Board deems appropriate.

(ii) *Deciding appeals.* Within 90 calendar days of the date an applicant files an appeal with the Board, the Board shall consider the record for appeal described in paragraph (c)(4)(i) of this section and resolve the appeal based on the requirements of the Act and this subpart.

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 1999)

§935.24 Advances to nonmember mortgagees.

(a) *Authority.* Subject to the provisions of the Act and this subpart, a Bank may make advances only to a nonmember mortgagee whose principal place of business, as determined in accordance with part 933 of this chapter, is located in the Bank's district.

(b) *Collateral requirements*—(1) *Advances to nonmember mortgagees.* A Bank may make an advance to any nonmember mortgagee upon the security of the following collateral:

(i) Mortgage loans insured by the Federal Housing Administration of HUD under title II of the National Housing Act; or

(ii) Securities representing a whole interest in the principal and interest payments due on a pool of mortgage loans insured by the Federal Housing Administration of HUD under title II of the National Housing Act. A Bank may only accept as collateral the securities described in this paragraph (b)(1)(ii) if the nonmember mortgagee provides evidence that such securities are backed solely by mortgages of the type described in paragraph (b)(1)(i) of this section.

(2) *Certain advances to SHFAs.* (i) In addition to the collateral described in paragraph (b)(1) of this section, a Bank may make an advance to a nonmember mortgagee that has satisfied the requirements of §935.22(d) for the purpose of facilitating residential or commercial mortgage lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code (26 U.S.C. 142(d) or 143(f)) upon the security of the following collateral:

(A) The collateral described in §935.9(a) (1) or (2).

(B) The collateral described in §935.9(a)(3). Solely for the purpose of facilitating acceptance of such collateral, a Bank may establish a cash collateral account for a nonmember mortgagee that has satisfied the requirements of §935.22(d).

(C) The real estate related collateral described in §935.9(a)(4), provided that such collateral is comprised of mortgage loans on one-to-four family or multifamily residential property and the acceptance of such collateral will not increase the total amount of advances outstanding to the SHFA secured by such collateral beyond 30 percent of its GAAP capital, as computed by the Bank.

(ii) Prior to making an advance pursuant to this paragraph (b)(2), a Bank shall obtain a written certification from the nonmember mortgagee that it shall use the proceeds of the advance for the purposes described in paragraph (b)(2)(i) of this section.

(c) *Terms and conditions*—(1) *General.* Subject to the provisions of this paragraph (c), a Bank, in its discretion, shall determine whether, and on what terms, it will make advances to a nonmember mortgagee.

(2) *Advance pricing.* (i) A Bank shall price advances to nonmember mortgagees in accordance with the requirements for pricing advances to members set forth in §935.6(b). Wherever the term ''member'' appears in §935.6(b), the term shall be construed also to mean ''nonmember mortgagee.''

(ii) A Bank shall apply the pricing criteria identified in §936.5(b)(2) equally to all of its member and nonmember mortgagee borrowers.

(3) *Limit on advances.* The principal amount of any advance made to a nonmember mortgagee may not exceed 90 percent of the unpaid principal of the mortgage loans or securities pledged as security for the advance. This limit does not apply to an advance made to a nonmember mortgagee under paragraph (b)(2) of this section.

(d) *Transaction accounts.* Solely for the purpose of facilitating the making of advances to a nonmember mortgagee, a Bank may establish a transaction account for each nonmember mortgagee.

(e) *Loss of eligibility*—(1) *Notification of status changes.* A Bank shall require a nonmember mortgagee that applies for an advance to agree in writing that it will promptly inform the Bank of any change in its status as a nonmember mortgagee.

(2) *Verification of eligibility.* A Bank may, from time to time, require a nonmember mortgagee to provide evidence that it continues to satisfy all of the eligibility requirements of the Act and this subpart.

(3) *Loss of eligibility.* A Bank shall not extend a new advance or renew an existing advance to a nonmember mortgagee that no longer meets the eligibility requirements of the Act and this subpart until the entity has provided evidence satisfactory to the Bank that it is in compliance with such requirements.

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 1999)

PART 936—COMMUNITY SUPPORT REQUIREMENTS

Sec.
936.1 Definitions.
936.2 Community support requirement.
936.3 Community support standards.
936.4 Decision on community support statements.
936.5 Restrictions on access to long-term advances.
936.6 Bank community support programs.
936.7 Reports.

AUTHORITY: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), 1429, and 1430.

SOURCE: 62 FR 28988, May 29, 1997, unless otherwise noted.

§936.1 Definitions.

For purposes of this part:

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

(b) *Advance* has the same meaning as in §935.1 of this chapter.

(c) *Advisory Council* means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Act and part 960 of this chapter.

(d) *Affordable Housing Program* or *AHP* means the program each Bank is required to establish pursuant to section 10(j) of the Act and part 960 of this chapter.

(e) *Appropriate federal financial supervisory agency* means the Office of the

Comptroller of the Currency for national banks; the Board of Governors of the Federal Reserve System for state chartered banks that are members of the Federal Reserve System and bank holding companies; the Federal Deposit Insurance Corporation for state chartered banks and savings banks that are not members of the Federal Reserve System and the deposits of which are insured by the Federal Deposit Insurance Corporation; and the Office of Thrift Supervision for savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation and savings and loan holding companies.

(f) *Bank* or *Banks* means a Federal Home Loan Bank or the Federal Home Loan Banks.

(g) *CICA* or *Community Investment Cash Advance* has the same meaning as in § 935.1 of this chapter.

(h) *Community lending* has the same meaning as in § 970.3 of this chapter.

(i) *CRA* means the Community Reinvestment Act of 1977, as amended (12 U.S.C. 2901, *et seq.*).

(j) *CRA evaluation* means the public disclosure portion of the CRA performance evaluation provided by a member's appropriate federal financial supervisory agency.

(k) *Finance Board* means the agency established as the Federal Housing Finance Board.

(l) *First-time homebuyer* means:

(1) An individual and his or her spouse, if any, who has had no present ownership interest in a principal residence during the three-year period prior to purchase of a principal residence.

(2) A displaced homemaker who, except for owning a residence with his or her spouse or residing in a residence owned by his or her spouse, meets the requirements of paragraph (l)(1) of this section. For purposes of this paragraph (l)(2), the term *displaced homemaker* means an adult who has not worked full-time, full-year in the labor force for a number of years and, during that period, worked primarily without remuneration to care for a home and family, and currently is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(3) A single parent who, except for owning a residence with his or her spouse or residing in a residence owned by his or her spouse, meets the requirements of paragraph (l)(1) of this section. For purposes of this paragraph (l)(3), the term *single parent* means an individual who is unmarried or legally separated from a spouse and has custody or joint custody of one or more minor children or is pregnant.

(m) *Long-term advance* means an advance with a term to maturity greater than one year.

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

(o) *Restriction on access to long-term advances* means a member may not borrow long-term advances or renew any maturing advance for a term to maturity greater than one year.

[62 FR 28988, May 29, 1997, as amended at 63 FR 65545, Nov. 27, 1998]

§ 936.2 Community support requirement.

(a) *Selection for community support review.* The Finance Board shall select a member for community support review approximately once every two years.

(b) *Notice*—(1) *By the Finance Board.* The Finance Board concurrently shall:

(i) Notify each Bank of the members within its district that are required to submit community support statements during the calendar quarter; and

(ii) Publish a notice in the FEDERAL REGISTER that includes the name and address of each member required to submit a community support statement during the calendar quarter, and the deadline for submission of the community support statement to the Finance Board. The deadline for submission of a community support statement shall be no earlier than 45 calendar days after the date of publication of the notice in the FEDERAL REGISTER.

(2) *By the Banks.* Within 15 calendar days of the date of publication in the FEDERAL REGISTER of the notice required by paragraph (b)(1)(ii) of this section, a Bank shall provide written notice:

(i) To each member within its district that is named in the FEDERAL REGISTER notice, that the member is

required to submit a community support statement to the Finance Board by the deadline stated in the FEDERAL REGISTER notice; and

(ii) Its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the name and address of each member within its district that is required to submit a community support statement during the calendar quarter.

(c) *Required documents.* Each member selected for community support review shall submit a completed Community Support Statement Form executed by an appropriate senior officer to the Finance Board and any other information the Finance Board may require to determine whether a member meets the community support standards.

(d) *Public comments.* In reviewing a member for compliance with the community support requirement, the Finance Board shall take into consideration any public comments it has received concerning the member.

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069–0003 with an expiration date of December 31, 1999.)

§ 936.3 Community support standards.

(a) *In general.* In reviewing a community support statement, the Finance Board shall take into account a member's performance under the CRA if the member is subject to the requirements of the CRA, and the member's record of lending to first-time homebuyers.

(b) *CRA standard*—(1) *Adequate performance.* A member that is subject to the requirements of the CRA shall be deemed to meet the CRA standard if the rating in the member's most recent CRA evaluation is ''outstanding'' or ''satisfactory.''

(2) *Probationary performance.* A member that is subject to the requirements of the CRA shall be subject to a probationary period if the rating in the member's most recent CRA evaluation is ''needs to improve.'' The probationary period shall extend until the member's appropriate federal financial supervisory agency completes its next CRA evaluation and issues a rating. The member will be eligible to receive long-term advances during the probationary period. If the member does not meet the CRA standard at the end of the probationary period, the Finance Board shall restrict the member's access to long-term advances in accordance with § 936.5.

(3) *Inadequate performance.* A member's access to long-term advances shall be restricted in accordance with § 936.5 if the rating in the member's most recent CRA evaluation is ''substantial noncompliance.''

(c) *First-time homebuyer standard*—(1) *Adequate performance.* In the absence of public comments or other information to the contrary, a member shall be presumed to meet the first-time homebuyer standard if the member is subject to the requirements of the CRA and the rating in the member's most recent CRA evaluation is ''outstanding.'' In determining whether other members meet the first-time homebuyer standard, the Finance Board shall consider a member's description of its efforts to assist first-time or potential first-time homebuyers or its explanation of factors that affect its ability to assist first-time or potential first-time homebuyers. A member shall be deemed to meet the first-time homebuyer standard if the member otherwise demonstrates to the satisfaction of the Finance Board that it:

(i) Has an established record of lending to first-time homebuyers; or

(ii) Has a program whereby it actively seeks to lend or support lending to first-time homebuyers, including, but not limited to, the following:

(A) Providing special credit products with flexible underwriting standards for first-time homebuyers;

(B) Participating in federal, state, or local government, or nationwide homeownership lending programs that benefit, serve, or are targeted to, first-time homebuyers;

(C) Participating in loan consortia for first-time homebuyer loans or loans that serve predominantly low- or moderate-income borrowers; or

(iii) Has a program whereby it actively seeks to assist or support organizations that assist potential first-time homebuyers to qualify for mortgage loans, including, but not limited to, the following:

(A) Providing, participating in, or supporting special counseling programs or other homeownership education activities that benefit, serve, or are targeted to, first-time homebuyers;

(B) Providing or participating in marketing plans and related outreach programs targeted to first-time homebuyers;

(C) Providing technical assistance of financial support to organizations that assist first-time homebuyers;

(D) Participating with or financially supporting community or nonprofit groups that assist first-time homebuyers;

(E) Holding investments or making loans that support first-time homebuyer programs;

(F) Holding mortgage-backed securities that may include a pool of loans to low- and moderate-income homebuyers;

(G) Participating or investing in service organizations that assist credit unions in providing mortgages; or

(H) Participating in Bank community lending programs; or

(iv) Has any combination of the elements described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2) *Probationary performance.* If the evidence of first-time homebuyer performance is deemed to be unsatisfactory by the Finance Board, the member shall be subject to a one-year probationary period. The member will be eligible to receive long-term advances during the probationary period. If the member does not demonstrate compliance with the first-time homebuyer standard before the probationary period ends, the Finance Board shall restrict the member's access to long-term advances in accordance with §936.5.

(3) *Inadequate performance.* A member's access to long-term advances shall be restricted in accordance with §936.5 if the member provides no evidence of first-time homebuyer performance.

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069–0003 with an expiration date of December 31, 1999.)

§936.4 Decision on community support statements.

(a) *Action on community support statements.* The Finance Board shall act on each community support statement in accordance with the requirements of §936.3 within 75 calendar days of the date the Finance Board deems the community support statement to be complete. The Finance Board shall deem a community support statement complete when it has obtained all of the information required by this part and any other information it deems necessary to process the community support statement. If the Finance Board determines during the review process that additional information is necessary to process the community support statement, the Finance Board may deem the community support statement incomplete and stop the 75-day time period by providing written notice to the member. When the Finance Board receives the additional information, it shall again deem the community support statement complete and resume the 75-day time period where it stopped. The Finance Board shall have 10 calendar days in addition to the 75-day time period to act on a community support statement if the Finance Board receives the additional information on or after the seventieth day of the 75-day time period.

(b) *Decision on community support statements.* The Finance Board shall provide written notice to the member and the member's Bank of its determination regarding the community support statement submitted by the member. The notice shall identify the reasons for the Finance Board's determination.

§936.5 Restrictions on access to long-term advances.

(a) *Requirement.* The Finance Board shall restrict a member's access to long-term advances if the member:

(1) Failed to comply with the requirements of this part;

(2) Submitted a community support statement that was not approved by the Finance Board;

(3) Did not receive a rating in a CRA evaluation of ''outstanding'' or ''satisfactory'' at the end of the probationary period described in §936.3(b)(2); or

(4) Failed to provide evidence satisfactory to the Finance Board of its first-time homebuyer performance before the end of the probationary period described in § 936.3(c)(2).

(b) *Notice.* The Finance Board shall provide written notice to a member and the member's Bank of its determination to restrict the member's access to long-term advances, the member by certified mail, return receipt requested, and the member's Bank by facsimile and by regular mail.

(c) *Effective date.* Restrictions on access to long-term advances shall take effect 30 days after the date the notices required under paragraph (b) of this section are mailed unless the member complies with the requirements of this part before the end of the 30-day period.

(d) *Removing restrictions.* (1) The Finance Board may remove restrictions on a member's access to long-term advances imposed under this section:

(i) If the Finance Board determines that application of the restriction may adversely affect the safety and soundness of the member. A member may submit a written request to the Finance Board to remove a restriction on access to long-term advances under this paragraph (d)(1)(i). Such written request shall contain a clear and concise statement of the basis for the request, and a statement that application of the restriction may adversely affect the safety and soundness of the member from the member's appropriate federal financial supervisory agency, or the National Credit Union Administration for a federally insured credit union member, or the member's *appropriate state regulator* for a member that is not subject to regulation or supervision by a federal regulator. The Finance Board shall consider each written request within 30 calendar days of receipt. For purposes of this paragraph (d)(1)(i), the term *appropriate state regulator* means any state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a member.

(ii) If the Finance Board determines that the member subsequently has complied with the requirements of this part. A member may submit a written request to the Finance Board to remove a restriction on access to long-term advances under this paragraph (d)(1)(ii). Such written request shall state with specificity how the member has complied with the requirements of this part. The Finance Board shall consider each written request within 30 calendar days of receipt.

(2) The Finance Board shall place a member on probation in accordance with § 936.3(b)(2), if:

(i) The member's access to long-term advances was restricted on the basis of the member's inadequate performance under the CRA standard, as described in § 936.3(b)(3);

(ii) The rating in the member's subsequent CRA evaluation is ''needs to improve;'' and

(iii) The member did not receive either a ''substantial noncompliance'' CRA rating or a ''needs to improve'' CRA rating immediately preceding the CRA rating on which the member's inadequate performance under the CRA standard was based.

(3) The Finance Board shall provide written notice to the member and the member's Bank of its determination under this paragraph (d), the member by certified mail, return receipt requested, and the member's Bank by facsimile and by regular mail. The Finance Board's determination shall take effect on the date the notices are mailed.

(e) *CICA.* A member that is subject to a restriction on access to long-term advances under this part shall not be eligible to participate in a CICA program offered under parts 960 and 970 of this chapter. The restriction in this paragraph (e) shall not apply to CICA applications or funding approved before the date the restriction is imposed.

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069–0003 with an expiration date of December 31, 1999.)

[62 FR 28988, May 29, 1997, as amended at 62 FR 46872, Sept. 5, 1997; 63 FR 65545, Nov. 27, 1998]

§ 936.6 Bank community support programs.

(a) *Requirement.* Consistent with the safe and sound operation of the Bank,

each Bank shall establish and maintain a community support program. A Bank's community support program shall:

(1) Provide technical assistance to members;

(2) Promote and expand affordable housing finance;

(3) Identify opportunities for members to expand financial and credit services in underserved neighborhoods and communities; and

(4) Encourage members to increase their community lending and affordable housing finance activities by providing incentives such as awards or technical assistance to nonprofit housing developers or community groups with outstanding records of participation in community lending or affordable housing finance partnerships with members;

(5) Include an annual Community Lending Plan, approved by the Bank's board of directors and subject to modification, which shall require the Bank to:

(i) Conduct market research in the Bank's district;

(ii) Describe how the Bank will address identified credit needs and market opportunities in the Bank's district for community lending;

(iii) Consult with its Advisory Council and with members, nonmember borrowers, and public and private economic development organizations in the Bank's district in developing and implementing its Community Lending Plan; and

(iv) Establish quantitative community lending performance goals.

(b) *Notice.* A Bank shall provide annually to each of its members a written notice:

(1) Identifying CICA programs and other Bank activities that may provide opportunities for a member to meet the community support requirements and to engage in community lending; and

(2) Summarizing community lending and affordable housing activities undertaken by members, nonmember borrowers, nonprofit housing developers, community groups, or other entities in the Bank's district, that may provide opportunities for a member to meet the community support requirements and to engage in community lending.

[62 FR 28988, May 29, 1997, as amended at 63 FR 65545, Nov. 27, 1998]

§936.7 Reports.

Each Advisory Council annual report required to be submitted to the Finance Board pursuant to section 10(j)(11) of the Act shall include an analysis of the Bank's community lending and affordable housing activities.

[63 FR 65545, Nov. 27, 1998]

PART 937—FINANCIAL STATEMENTS OF THE BANKS

Sec.
937.1 Definitions.
937.2 Requirement to provide financial and other information to the Finance Board.
937.3 Requirement for voluntary bank disclosure.

AUTHORITY: 12 U.S.C. 1422a, 1422b, 1426, 1431, and 1440.

SOURCE: 63 FR 39704, July 24, 1998, unless otherwise noted.

§937.1 Definitions.

As used in this part:

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

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

§937.2 Requirement to provide financial and other information to the Finance Board.

In order to facilitate the preparation by the Finance Board of combined Bank System annual and quarterly reports, each Bank shall provide to the Finance Board in such form and within such timeframes as the Finance Board shall specify, all financial and other information the Finance Board shall request for that purpose.

§937.3 Requirement for voluntary bank disclosure.

Any financial statements contained in an annual or quarterly financial report issued by an individual Bank must be consistent in both form and content

with the financial statements presented in the combined Bank System annual or quarterly financial reports prepared and issued by the Finance Board.

PART 938—STANDBY LETTERS OF CREDIT

Sec.
938.1 Definitions.
938.2 Standby letters of credit on behalf of members.
938.3 Standby letters of credit on behalf of nonmember mortgagees.
938.4 Obligation to Bank under all standby letters of credit.
938.5 Additional provisions applying to all standby letters of credit.

AUTHORITY: 12 U.S.C. 1422b, 1429, 1430, 1430b, 1431.

SOURCE: 63 FR 65699, Nov. 30, 1998, unless otherwise noted.

§938.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421–49).

Applicant means a person or entity at whose request or for whose account a standby letter of credit is issued.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Beneficiary means a person or entity who, under the terms of a standby letter of credit, is entitled to have its complying presentation honored.

Community Lending has the meaning set forth in §970.4 of this chapter.

Confirm means to undertake, at the request or with the consent of the issuer, to honor a presentation under a standby letter of credit issued by a member or nonmember mortgagee.

Document means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion that is presented under the terms of a standby letter of credit.

Finance Board means the agency established by the Act as the Federal Housing Finance Board.

Issuer means a person or entity that issues a standby letter of credit.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§933.20 and 933.24 of this chapter.

Nonmember mortgagee means an entity certified as a nonmember mortgagee pursuant to §935.22(b) of this chapter.

Nonmember SHFA means a nonmember mortgagee that is a ''state housing finance agency,'' as that term is defined in §935.1 of this chapter, and that has met the requirements of §935.22(d) of this chapter.

Presentation means delivery of a document to an issuer, or an entity that has undertaken a confirmation at the request or with the consent of the issuer, for the giving of value under a standby letter of credit.

Residential housing finance means:

(1) The purchase or funding of ''residential housing finance assets,'' as that term is defined in §935.1 of this chapter; or

(2) Other activities that support the development or construction of residential housing.

Small business means a ''small business concern,'' as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration at 13 CFR part 121, or any successor provisions.

Standby letter of credit means a definite undertaking by an issuer on behalf of an applicant that represents an obligation to the beneficiary, pursuant to a complying presentation: to repay money borrowed by, advanced to, or for the account of the applicant; to make payment on account of any indebtedness undertaken by the applicant; or to make payment on account of any default by the applicant in the performance of an obligation. The term *standby letter of credit* does not include a commercial letter of credit, or any short-term self-liquidating instrument used to finance the movement of goods.

§938.2 Standby letters of credit on behalf of members.

(a) *Authority and purposes.* Each Bank is authorized to issue or confirm on behalf of members standby letters of

credit that comply with the requirements of this part, for any of the following purposes:

(1) To assist members in facilitating residential housing finance;

(2) To assist members in facilitating community lending that is eligible for any of the Banks' CICA programs under part 970 of this chapter;

(3) To assist members with asset/liability management; or

(4) To provide members with liquidity or other funding.

(b) *Fully secured.* A Bank, at the time it issues or confirms a standby letter of credit on behalf of a member, shall obtain and maintain a security interest in collateral that is sufficient to secure fully the member's unconditional obligation described in §938.4(a)(2) of this part, and that complies with the requirements set forth in paragraph (c) of this section.

(c) *Eligible collateral.* (1) Any standby letter of credit issued or confirmed on behalf of a member may be secured by collateral that is eligible to secure advances under §935.9(a) of this chapter. Only standby letters of credit issued for the purposes described in paragraphs (a)(3) or (a)(4) of this section shall be counted in making the calculation required under §935.9(a)(4)(iii).

(2) A standby letter of credit issued or confirmed on behalf of a member for a purpose described in paragraph (a)(1) or (a)(2) of this section may, in addition to the collateral described in paragraph (c)(1) of this section, be secured by:

(i) Secured or federally-guaranteed loans to small businesses or securities representing interests in such loans; or

(ii) Obligations of state or local government units or agencies, rated as investment grade by a nationally-recognized rating agency.

§938.3 Standby letters of credit on behalf of nonmember mortgagees.

(a) *Nonmember mortgagees.* Each Bank is authorized to issue or confirm on behalf of nonmember mortgagees standby letters of credit that are fully secured by collateral described in §§935.24(b)(1)(i) or (ii) of this chapter, and that otherwise comply with the requirements of this part, for any of the following purposes:

(1) To assist nonmember mortgagees in facilitating residential housing finance;

(2) To assist nonmember mortgagees in facilitating community lending that is eligible for any of the Banks' CICA programs under part 970 of this chapter;

(3) To assist nonmember mortgagees with asset/liability management; or

(4) To provide nonmember mortgagees with liquidity or other funding.

(b) *Nonmember SHFAs.* Each Bank is authorized to issue or confirm on behalf of nonmember SHFAs standby letters of credit that are fully secured by collateral described in §935.24(b)(2)(i)(A), (B) or (C) of this chapter, and that otherwise comply with the requirements of this part, for the purpose of facilitating residential or commercial mortgage lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code (26 U.S.C. 142(d) or 143(f)).

§938.4 Obligation to Bank under all standby letters of credit.

(a) *Obligation to reimburse.* A Bank may issue or confirm a standby letter of credit only on behalf of a member or nonmember mortgagee that has:

(1) Established with the Bank a cash account pursuant to §§934.5, 935.24(b)(2)(i)(B) or 935.24(d) of this chapter; and

(2) Assumed an unconditional obligation to reimburse the Bank for value given by the Bank to the beneficiary under the terms of the standby letter of credit by depositing immediately available funds into the account described in paragraph (a)(1) of this section not later than the date of the Bank's payment of funds to the beneficiary.

(b) *Prompt action to recover funds.* If a member or nonmember mortgagee fails to fulfill the obligation described in paragraph (a)(2) of this section, the Bank shall take action promptly to recover the funds that such member or nonmember mortgagee is obligated to repay.

(c) *Obligation financed by advance.* Notwithstanding the obligations and duties of the Bank and its member or

nonmember mortgagee under paragraphs (a) and (b) of this section, the Bank may, at its discretion, permit such member or nonmember mortgagee to finance repayment of the obligation described in paragraph (a)(2) of this section by receiving an advance that complies with sections 10 or 10b of the Act and part 935 of this chapter.

§ 938.5 Additional provisions applying to all standby letters of credit.

(a) *Written policy; other requirements.* Each standby letter of credit issued or confirmed by a Bank shall:

(1) Be issued or confirmed only in compliance with a written policy, developed and implemented by the Bank to govern its standby letter of credit programs, that:

(i) Is consistent with the provisions of the Act and this part;

(ii) Sets forth credit underwriting criteria, consistent with the provisions of § 935.5 of this chapter, to be applied in evaluating applications for standby letters of credit and renewals thereof;

(iii) Sets forth criteria regarding the pricing of standby letters of credit, including any special pricing provisions for letters of credit that facilitate the financing of projects that are eligible for any of the Banks' CICA programs under part 970 of this chapter; and

(iv) Provides that, for any draw made by a beneficiary under a standby letter of credit, the applicant will be charged a processing fee calculated in accordance with the requirements of § 943.6(b) of this chapter;

(2) Contain a specific expiration date, or be for a specific term; and

(3) Require approval in advance by the Bank of any transfer of the standby letter of credit from the original beneficiary to another person or entity;

(b) *Additional collateral provisions.* (1) A Bank may take such steps as it deems necessary to protect its secured position on standby letters of credit, including requiring additional collateral, whether or not such additional collateral conforms to the requirements of §§ 938.2 or 938.3 of this part.

(2) Collateral pledged by a member or nonmember mortgagee to secure a letter of credit issued or confirmed on its behalf by a Bank shall be subject to the provisions of §§ 935.9(b), 935.9(d), 935.9(e), 935.10, 935.11 and 935.12 of this chapter.

PARTS 939–940 [RESERVED]

PART 941—OPERATIONS OF THE OFFICE OF FINANCE

Sec.
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941.11 Budget, funding and expenses.
941.12 Savings clause.

AUTHORITY: 12 U.S.C. 1422b, 1431.

SOURCE: 57 FR 2834, Jan. 24, 1992, unless otherwise noted.

§ 941.1 Definitions.

In this part, the following terms mean:

Bank. A Federal Home Loan Bank.

Bank Act. The Federal Home Loan Bank Act.

Bank System. The Federal Home Loan Bank System, consisting of the twelve Federal Home Loan Banks and including the Office of Finance as a joint office of the Federal Home Loan Banks.

Chair. The Chairperson of the Office of Finance Board of Directors.

Consolidated obligation. A Federal Home Loan Bank consolidated debenture, bond or note issued under authority of section 11 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1431).

Director. The Director of the Office of Finance.

Finance Board. The Federal Housing Finance Board.

OF Board of Directors. The three member administrative body responsible for management of the Office of Finance.

§941.2 General.

This part reorganizes the Office of Finance, a joint office of the Bank System, establishes the OF Board of Directors as the body responsible for the management and operations of the Office of Finance, and defines their respective duties and responsibilities.

§941.3 Federal Housing Finance Board oversight.

(a) Section 12(a) of the Bank Act (12 U.S.C. 1432(a)) provides that all activities of a Bank are subject to the approval of the Finance Board. The Finance Board retains the same oversight authority over the Office of Finance and the OF Board of Directors as it has over a Bank and its respective board of directors.

(b) Pursuant to section 20 of the Bank Act (12 U.S.C. 1440), the Finance Board shall audit and examine the Office of Finance, the OF Board of Directors and the Office of Finance Operations Imprest Fund.

§941.4 Office of Finance.

(a) *Establishment.* An Office of Finance is hereby established which shall have the responsibilities, duties and functions described herein.

(b) *Status.* The Office of Finance is recognized as a joint office of the Bank System.

(c) *Mission.* The Office of Finance shall:

(1) Issue the consolidated obligations pursuant to section 11 of the Bank Act, as amended (12 U.S.C. 1431);

(2) Perform all other necessary and proper functions in relation to the consolidated obligations, as fiscal agent on behalf of the Banks; and

(3) Undertake any other activities expressly approved by the Finance Board.

§941.5 Functions of the Office of Finance.

Subject to limitations set by the OF Board of Directors, the Office of Finance shall have the following duties and functions:

(a) Conduct all negotiations relating to the public or private offering and sale of consolidated obligations, and perform such other related functions as may be authorized by resolution of the Finance Board;

(b) Perform such functions for the Financing Corporation and/or the Resolution Funding Corporation, on behalf of the Banks, as may be requested by each such entity; and

(c) Make timely payments on behalf of the Banks of principal and interest due on all consolidated obligations issued pursuant hereto.

§941.6 Director of the Office of Finance.

(a) The Office of Finance shall be headed by a Director who shall be responsible for the overall daily management of the Office of Finance functions and organization, including:

(1) Implementation of the OF Board of Directors' plans and policies for the administration of the Office of Finance;

(2) Organization and development of the personnel structure of the Office of Finance;

(3) Employment and management of personnel;

(4) Preparation of the budget for presentation to the OF Board of Directors pursuant to §941.11; and

(5) Performance of any duty assigned by the OF Board of Directors, including providing it any records, reports or other data in the possession of the Office of Finance whenever requested to do so.

(b) The Director shall perform the duties described herein and the functions of the Office of Finance subject to the policies adopted by the OF Board of Directors.

(c) The Director shall be:

(1) The Fiscal Agent of the Federal Home Loan Banks;

(2) A member of the Directorate of the Financing Corporation, pursuant to section 21(b)(1)(A) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1441(b)(1)(A)); and

(3) A member of the Directorate of the Resolution Funding Corporation, pursuant to section 21B(c)(1)(A) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1441b(c)(1)(A)).

[57 FR 2834, Jan. 24, 1992, as amended at 57 FR 11429, Apr. 3, 1992]

§ 941.7 Office of Finance Board of Directors.

(a) *Establishment.* The Office of Finance Board of Directors is hereby created.

(b) *Use of facilities or personnel.* The OF Board of Directors may utilize the facilities or personnel of the Office of Finance or any Bank in order to perform its functions.

(c) *Membership.* The OF Board of Directors shall consist of three part-time members appointed by the Finance Board as follows:

(1) *Bank System.* Two Bank Presidents; and

(2) *Private Citizen.* A citizen of the United States with a demonstrated expertise in financial markets. Such appointee may not be an officer, director or employee of a Bank or Bank System member, hold shares, or any other financial interest in, any member of a Bank, or be affiliated with any FHLBank consolidated obligation selling or dealer group member under contract with the Office of Finance.

(d) *Terms*—(1) *Length.* Except is provided in paragraphs (d)(3) and (4) of this section, the OF Board of Directors shall serve at the pleasure of the Finance Board or for terms, which shall be staggered, of three years beginning on April 1.

(2) *Vacancy.* The Finance Board shall fill any vacancy occurring on the OF Board of Directors. An appointment to fill a vacancy shall be only for the remainder of the term during which the vacancy occurred.

(3) *Holdover.* At the direction of the Finance Board, any member of the OF Board of Directors is authorized to continue to serve on the OF Board of Directors after the expiration of the member's term until a successor has been appointed by the Finance Board.

(4) *Initial terms.* Notwithstanding paragraph (d)(1) herein, the terms of the members of the first OF Board of Directors convened pursuant to this part shall be as follows:

(i) One of the Bank President members shall serve from the date of appointment until March 31, 1993 or at the pleasure of the Finance Board and the other shall serve from the date of appointment until March 31, 1994 or at the pleasure of the Finance Board.

(ii) The Private Citizen member shall serve from the date of appointment until March 31, 1995 or at the pleasure of the Finance Board.

(e) *Chair.* (1) The Finance Board shall designate one member of the OF Board of Directors as the Chair, and another member as the Vice Chair.

(2) The Chair shall preside over the meetings of the OF Board of Directors. In the absence of the Chair, the Vice Chair shall preside.

(3) The Chair shall be responsible for ensuring that the directives and resolutions of the OF Board of Directors are drafted and maintained and for keeping the minutes of all meetings.

(f) *Compensation*—(1) *Bank System members.* (i) The Bank President members shall not receive any additional compensation or reimbursement as a result of their service on the OF Board of Directors.

(ii) Each Bank is authorized to continue to pay its President a salary during attendance at the OF Board of Directors meetings and to pay in accordance with the travel and expense reimbursement policies in effect at such President's Bank such President's travel and *per diem* expenses for attendance at OF Board of Directors meetings.

(iii) Each Bank shall be entitled to be reimbursed by the Office of Finance for its expenditure of travel and *per diem* expenses associated with its Bank President's attendance at OF Board of Directors meetings as a member thereof.

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

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

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

(iii) The terms ''average compensation per director'' and ''ACPD,'' as used in § 932.17 of this chapter, shall be

deemed to mean ''maximum compensation of the Private Citizen member''.

[57 FR 2834, Jan. 24, 1992, as amended at 57 FR 11429, Apr. 3, 1992; 61 FR 43155, Aug. 21, 1996; 63 FR 65693, Nov. 30, 1998]

§941.8 Powers of the Office of Finance Board of Directors.

(a) *General.* The OF Board of Directors shall enjoy such incidental powers under section 12(a) of the Bank Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient operation and management of the Office of Finance pursuant to this part.

(b) *Agent.* Subject to any limitations set by the Finance Board, the OF Board of Directors, in the performance of its duties, shall have the power to act:

(1) On behalf of the Finance Board in the issuing of consolidated obligations; and

(2) On behalf of the Banks in the paying of principal and interest due on the consolidated obligations.

(c) *Delegation.* The OF Board of Directors shall be empowered to delegate any of its powers to any employee of the Office of Finance in order to enable the Office of Finance to carry out its functions.

(d) *Indemnification.* (1) The OF Board of Directors is empowered to determine the terms and conditions under which its members, the Director, and other officers and employees of the Office of Finance will be indemnified by the Office of Finance, provided: that such terms and conditions will not be inconsistent with terms and conditions of indemnification of directors, officers and employees of the Bank System, generally.

(2) Such indemnification procedures, when duly adopted, may be supplemented by a contract of insurance, and all expenses incident to indemnification will be treated as an expense of the Office of Finance.

[57 FR 2834, Jan. 24, 1992, as amended at 57 FR 11429, Apr. 3, 1992]

§941.9 Duties of the Office of Finance Board of Directors.

(a) *General*—(1) *Bylaws.* The OF Board of Directors shall adopt bylaws governing its operations and issue such guidance or instructions as will promote the efficient operation of the Office of Finance.

(2) *Conduct of Business.* The OF Board of Directors shall conduct its business by majority vote of its members convened at a meeting in accordance with its bylaws.

(b) *Oversight.* The OF Board of Directors shall:

(1) Have overall responsibility for the performance of the duties and functions of the Office of Finance pursuant hereto and for its efficient and effective operation;

(2) Set policies for the Office of Finance;

(3) Approve a strategic business plan for the Office of Finance and monitor the progress of its operations under such plan;

(4) Subject to Finance Board approval, review, adopt and monitor the annual operating budget of the Office of Finance including any supplemental expenditure thereto;

(5) Develop and implement the pricing mechanism by which the Office of Finance will make private or public offerings of consolidated obligations, in consultation with the Finance Board or its designee;

(6) Subject to Finance Board approval, select and employ the Director under an annual contract of employment;

(7) Review and approve all contracts of the Office of Finance; and

(8) Assume any other responsibilities that may from time to time be delegated to it by the Finance Board.

§941.10 Meetings of the Office of Finance Board of Directors.

(a) *Meetings.* (1) The OF Board of Directors shall adopt procedures for holding meetings which shall be set forth in the bylaws and such meetings shall be held not less than once each quarter of each year.

(2) Due notice shall be given to the Finance Board by the Chair prior to each meeting.

(b) *Quorum.* A quorum for purposes of OF Board of Directors meetings shall be at least two members.

[57 FR 2834, Jan. 24, 1992, as amended at 57 FR 11429, Apr. 3, 1992]

§ 941.11 Budget, funding and expenses.

(a) *General.* The budget of the Office of Finance shall be calculated on a calendar year basis.

(b) *Initial review.* The OF Board of Directors shall be responsible for initially reviewing and approving the budget of the Office of Finance, which shall include the budget for the OF Board of Directors.

(c) *Agency review.* After its approval of the budget, pursuant to paragraph (b) herein, the OF Board of Directors annually shall submit the Office of Finance budget to the Finance Board for its review and approval. Upon approval by the Finance Board, the OF Board of Directors shall transmit a copy of the budget to each of the Bank Presidents.

(d) *Expenses.* Upon the approval of the budget by the Finance Board in accordance with paragraph (c) herein, the OF Board of Directors may authorize the Director to make payments pursuant to the budget as necessary.

(e) *Imprest fund*—(1) *Checking account.* The Office of Finance shall establish a checking account in a financial depository institution approved by the OF Board of Directors, to be called the ''Office of Finance Operations Imprest Fund.'' The Director shall maintain an amount therein approved by the OF Board of Directors.

(2) *Use.* The funds in such checking account shall be:

(i) Available for expenses of the Office of Finance and the OF Board of Directors, according to their approved budgets; and

(ii) Subject to withdrawal by check or draft signed by the Director or other person designated by the OF Board of Directors.

(f) *Funding*—(1) *General.* The Bank System is responsible for funding the expenses of the Office of Finance and the OF Board of Directors.

(2) *Method.* (i) The Banks shall jointly fund the Office of Finance by periodically reimbursing the Office of Finance Operations Imprest Fund in order to maintain in such Fund the amount approved in paragraph (e)(1) herein.

(ii) Each Bank's respective *pro rata* share of the reimbursement described in paragraph (f)(2)(i) herein shall be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System.

(iii) Notwithstanding the formula devised herein, the OF Board of Directors may devise an alternative formula for determining each Bank's respective share of Office of Finance expenses. Upon approval by the Finance Board, such alternative formula shall supersede the formula devised herein.

(3) *Payment.* Each Bank from time to time shall promptly forward funds to the Office of Finance in an amount representing its share of the reimbursement described in paragraph (f)(2)(i) herein when directed to do so by the Director pursuant to procedures of the OF Board of Directors.

(4) *Receipt.* All Bank funds received by the Office of Finance pursuant to this section shall be promptly deposited into the checking account described in paragraph (e)(1) herein and disbursed according to this part.

(5) *Procedures.* The OF Board of Directors shall adopt procedures governing the payment or reimbursement of expenses of the Office of Finance and the OF Board of Directors.

§ 941.12 Savings clause.

(a) The Office of Finance Operations Imprest Fund is available to pay for all expenses of the Office of Finance existing prior to the adoption of this part.

(b) All actions taken by the Office of Finance as it existed prior to the adoption of this part continue to be valid as regards the Finance Board and the Bank System.

(c) Notwithstanding any provision of this part, the Office of Finance or its Director may continue to exercise any powers delegated to it by the Finance Board or the former Federal Home Loan Bank Board, which they exercise on the date of the adoption of this part, until the first meeting of the OF Board of Directors created pursuant hereto.

PART 942 [RESERVED]

PART 943—COLLECTION, SETTLEMENT, AND PROCESSING OF PAYMENT INSTRUMENTS

Sec.
943.1 Authority and scope.

943.2 Definitions.
943.3 General provisions.
943.4 Incidental powers.
943.5 Operations.
943.6 Pricing of services.
943.7 Rights, powers, responsibilities, duties, and liabilities.

AUTHORITY: 12 U.S.C. 1430, 1431.

SOURCE: 45 FR 64164, Sept. 29, 1980, unless otherwise noted. Redesignated at 54 FR 36759, Sept. 5, 1989.

§943.1 Authority and scope.

(a) Pursuant to section 11(e)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e)(2)) (Bank Act), the Board has promulgated this part governing the collection, processing, and settlement, and services incidental thereto, of drafts, checks, and other negotiable and nonnegotiable items and instruments by Federal Home Loan Banks. Settlement, collection, and processing include the following activities as defined in this part: Account processing, data processing, data communication, issuance of forms, transportation of items, and storage services.

(b) Any activity authorized by section 11(e)(2) of the Bank Act shall be governed by the provisions of this part.

§943.2 Definitions.

(a) Unless otherwise defined in this part, the terms used in this part shall conform, in the following order, to: Regulations of the Board, the Uniform Commercial Code, regulations of the Federal Reserve System, and general banking usage.

(b) The term *account processing* includes charging, crediting, and settling of member or eligible institution accounts, excluding individual customer accounts.

(c) As used in this part, the term *assets* includes furniture and equipment, leasehold improvements, and capitalized start-up costs.

(d) The term *data processing* includes capture, storage, and assembling of, and computation of, data from payment instruments received from Federal Reserve offices, Federal Home Loan Banks, clearinghouse associations, depository institutions, and other direct sending entities.

(e) The term *data communication* means transmitting and receiving of data to or from Federal Home Loan Banks, Federal Reserve offices, clearinghouse associations, depository institutions or their service bureaus, and other direct sending entities, arrangement for delivery of information; and telephone inquiry service.

(f) The term *eligible institution* means any institution eligible to make application to become a member of a Federal Home Loan Bank under section 4 of the Bank Act (12 U.S.C. 1424).

(g) The term *issuance of forms* means the designation and distribution of standardized forms for use in collection, processing, and settlement services.

(h) The term *presentment* means a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder, and may involve the use of electronic transmission of an instrument or item or transmission of data from the instrument or item by electronic or mechanical means.

(i) The term *statement packaging* includes receiving statement information from members or eligible institutions or their service bureaus on respective customer cycle dates; printing statements; matching customer account statements; packaging the statements with appropriate items and informational materials, as authorized by individual members and eligible institutions, for distribution to their customers; sending the packages to the members or eligible institutions or mailing the packages directly to their customers.

(j) The term *storage services* includes filing, storage, and truncation of items.

(k) The term *transportation of items* includes transporting items from Federal Reserve offices, other Federal Home Loan Banks clearinghouse associations, depository institutions, and other direct sending entities to a Federal Home Loan Bank; forwarding items to financial institutions after sorting and forwarding cash items or return items to Federal Reserve offices and other sending entities.

§943.3 General provisions.

The Federal Home Loan Banks are authorized (a) to engage in, be agents

or intermediaries for, or otherwise participate or assist in, the processing, collection, and settlement of checks, drafts, or any other negotiable or nonnegotiable items and instruments of payment drawn on eligible institutions or Bank members; and (b) to be drawees of checks, drafts, and other negotiable and nonnegotiable items and instruments issued by eligible institutions or Bank members.

§ 943.4 Incidental powers.

In connection with the collection, processing, and settlement of items and instruments drawn on or issued by eligible institutions or Bank members, a Federal Home Loan Bank may also perform the following services, as defined in § 943.2:

(a) Statement packaging; and

(b) Any other activity that the Board shall, from time to time, after notice and comment, find necessary for the exercise of the authority of this part.

[45 FR 64164, Sept. 29, 1980, as amended at 55 FR 2231, Jan. 23, 1990]

§ 943.5 Operations.

A Federal Home Loan Bank may utilize the services of a Federal Reserve Bank and may become a member or use the services of a clearinghouse, public or private financial institution, or agency in the exercise of any powers or functions under this part.

§ 943.6 Pricing of services.

(a) *General.* Federal Home Loan Banks shall charge for services authorized in this part in a manner consistent with the principles of section 11(A)(c) of the Federal Reserve Act (12 U.S.C. 248a(c)), as interpreted by this part.

(b) *Payment instrument account services.* (1) In determining the fees for services provided under this part, a Federal Home Loan Bank must take into account all direct and indirect costs of providing the services.

(2) Prices must reflect the imputed rate of return that would have been earned and the taxes that would have been paid if the Bank were a private corporation, by using a cost of capital adjustment factor applied to those assets used in providing services authorized under this part.

(c) *Review and publication.* The Finance Board shall from time to time and at least annually review the cost of capital adjustment factor and review prices for services authorized in this part for compliance with the principles set forth in paragraphs (a) and (b) of this section. All prices for Bank services authorized in this part will be published annually in the FEDERAL REGISTER, except those for fees charged to an applicant for draws made by a beneficiary under a standby letter of credit.

(12 U.S.C. 1431(e); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

[45 FR 64164, Sept. 29, 1980, as amended at 46 FR 38900, July 30, 1981. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 58 FR 59936, Nov. 12, 1993; 60 FR 57682, Nov. 17, 1995; 63 FR 65700, Nov. 30, 1998]

§ 943.7 Rights, powers, responsibilities, duties, and liabilities.

To the extent it is not inconsistent with other provisions of this part, the Uniform Commercial Code governs the rights, powers, responsibilities, duties, and liabilities of Federal Home Loan Banks in the exercise of their authority under this part. For purposes of this paragraph, the term ''bank,'' as used in the Uniform Commercial Code and clearinghouse rules, includes Federal Home Loan Banks and their members and eligible institutions.

PART 944 [RESERVED]

SUBCHAPTER C—FINANCING CORPORATION

PART 950—OPERATIONS

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950.10 Review of books and records.

AUTHORITY: 12 U.S.C. 1441(b)(8), (c), and (j).

SOURCE: 62 FR 50248, Sept. 25, 1997, unless otherwise noted.

§ 950.1 Definitions.

For purposes of this part:

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

(b) *Administrative expenses:*

(1) Include general office and operating expenses such as telephone and photocopy charges, printing, legal, and professional fees, postage, courier services, and office supplies; and

(2) Do not include any form of employee compensation, custodian fees, issuance costs, or any interest on (and any redemption premium with respect to) any Financing Corporation obligations.

(c) *Bank* or *Banks* means a Federal Home Loan Bank or the Federal Home Loan Banks.

(d) *BIF-assessable deposit* means a deposit that is subject to assessment for purposes of the Bank Insurance Fund under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), including a deposit that is treated as a deposit insured by the Bank Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act.

(e) *Custodian fees* means any fee incurred by the Financing Corporation in connection with the transfer of any security to, or maintenance of any security in, the segregated account established under section 21(g)(2) of the Act, and any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

(f) *Directorate* means the board established under section 21(b) of the Act to manage the Financing Corporation.

(g) *Exit fees* means the amounts paid under sections 5(d)(2)(E) and (F) of the Federal Deposit Insurance Act, and regulations promulgated thereunder (12 CFR part 312).

(h) *FDIC* means the agency established as the Federal Deposit Insurance Corporation.

(i) *Finance Board* means the agency established as the Federal Housing Finance Board.

(j) *Insured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(k) *Issuance costs* means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of Financing Corporation obligations, including legal and accounting expenses, trustee, fiscal, and paying agent charges, securities processing charges, joint collection agent charges, advertising expenses, and costs incurred in connection with preparing and printing offering materials to the extent the Financing Corporation incurs such costs in connection with issuing any obligations.

(l) *Non-administrative expenses* means custodian fees, issuance costs, and interest on Financing Corporation obligations.

(m) *Obligations* means debentures, bonds, and similar debt securities issued by the Financing Corporation under sections 21(c)(3) and (e) of the Act.

(n) *Office of Finance* means the joint office of the Banks established under part 941 of this chapter.

(o) *Receivership proceeds* means the liquidating dividends and payments made on claims received by the Federal Savings and Loan Insurance Corporation Resolution Fund established under section 11A of the Federal Deposit Insurance Act from receiverships, that are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal

Fund established under section 21B of the Act.

(p) *SAIF-assessable deposit* means a deposit that is subject to assessment for purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act, including a deposit that is treated as a deposit insured by the Savings Association Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act.

§ 950.2 General authority.

Subject to the limitations and interpretations in this part and such orders and directions as the Finance Board may prescribe, the Financing Corporation shall have authority to exercise all powers and authorities granted to it by the Act and by its charter and bylaws regardless of whether the powers and authorities are specifically implemented in regulation.

§ 950.3 Authority to establish investment policies and procedures.

The Directorate shall have authority to establish investment policies and procedures with respect to Financing Corporation funds provided that the investment policies and procedures are consistent with the requirements of section 21(g) of the Act. The Directorate shall promptly notify the Finance Board in writing of any changes to the investment policies and procedures.

§ 950.4 Book-entry procedure for Financing Corporation obligations.

(a) *Authority.* Any Federal Reserve Bank shall have authority to apply book-entry procedure to Financing Corporation obligations.

(b) *Procedure.* The book-entry procedure for Financing Corporation obligations shall be governed by the book-entry procedure established for Bank securities, codified at part 912 of this chapter. Wherever the terms ''Federal Home Loan Bank(s),'' ''Federal Home Loan Bank security(ies),'' or ''Book-entry Federal Home Loan Bank security(ies)'' appear in part 912, the terms shall be construed also to mean ''Financing Corporation,'' ''Financing Corporation obligation(s),'' or ''Book-entry Financing Corporation obligation(s),'' respectively, if appropriate to accomplish the purposes of this section.

§ 950.5 Bank and Office of Finance employees.

Without further approval of the Finance Board, the Financing Corporation shall have authority to utilize the officers, employees, or agents of any Bank or the Office of Finance in such manner as may be necessary to carry out its functions.

§ 950.6 Budget and expenses.

(a) *Directorate approval.* The Financing Corporation shall submit annually to the Directorate for approval, a budget of proposed expenditures for the next calendar year that includes administrative and non-administrative expenses.

(b) *Finance Board approval.* The Directorate shall submit annually to the Finance Board for approval, the budget of the Financing Corporation's proposed expenditures it approved pursuant to paragraph (a) of this section.

(c) *Spending limitation.* The Financing Corporation shall not exceed the amount provided for in the annual budget approved by the Finance Board pursuant to paragraph (b) of this section, or as it may be amended by the Directorate within limits set by the Finance Board.

(d) *Amended budgets.* Whenever the Financing Corporation projects or anticipates that it will incur expenditures, other than interest on Financing Corporation obligations, that exceed the amount provided for in the annual budget approved by the Finance Board or the Directorate pursuant to paragraph (b) or (c) of this section, the Financing Corporation shall submit an amended annual budget to the Directorate for approval, and the Directorate shall submit such amended budget to the Finance Board for approval.

§ 950.7 Administrative expenses.

(a) *Payment by Banks.* The Banks shall pay all administrative expenses of the Financing Corporation approved pursuant to § 950.6.

(b) *Amount.* The Financing Corporation shall determine the amount of administrative expenses each Bank shall

pay in the manner provided by section 21(b)(7)(B) of the Act. The Financing Corporation shall bill each Bank for such amount periodically.

(c) *Adjustments.* The Financing Corporation shall adjust the amount of administrative expenses the Banks are required to pay in any calendar year pursuant to paragraphs (a) and (b) of this section, by deducting any funds that remain from the amount paid by the Banks for administrative expenses in the prior calendar year.

§950.8 Non-administrative expenses; assessments.

(a) *Interest expenses.* The Financing Corporation shall determine anticipated interest expenses on its obligations at least semiannually.

(b) *Assessments on insured depository institutions*—(1) *Authority.* To provide sufficient funds to pay the non-administrative expenses of the Financing Corporation approved under §950.6, the Financing Corporation shall, with the approval of the Board of Directors of the FDIC, assess against each insured depository institution an assessment in the same manner as assessments are made by the FDIC under section 7 of the Federal Deposit Insurance Act.

(2) *Assessment rate*—(i) *Determination.* The Financing Corporation at least semiannually shall establish an assessment rate formula, which may include rounding methodology, to determine the rate or rates of the assessment it will assess against insured depository institutions pursuant to section 21(f)(2) of the Act and paragraph (b)(1) of this section.

(ii) *Limitation.* Until the earlier of December 31, 1999, or the date as of which the last savings association ceases to exist, the rate of the assessment imposed on an insured depository institution with respect to any BIF-assessable deposit shall be a rate equal to ⅕ of the rate of the assessment imposed on an insured depository institution with respect to any SAIF-assessable deposit.

(iii) *Notice.* The Financing Corporation shall notify the FDIC and the collection agent, if any, of the formula established under paragraph (b)(2)(i) of this section.

(3) *Collecting assessments*—(i) *Collection agent.* The Financing Corporation shall have authority to collect assessments made under section 21(f)(2) of the Act and paragraph (b)(1) of this section through a collection agent of its choosing.

(ii) *Accounts.* Each Bank shall permit any insured depository institution whose principal place of business is in its district to establish and maintain at least one demand deposit account to facilitate collection of the assessments made under section 21(f)(2) of the Act and paragraph (b)(1) of this section.

(c) *Receivership proceeds*—(1) *Authority.* To the extent the amounts collected under paragraph (b) of this section are insufficient to pay the non-administrative expenses of the Financing Corporation approved under §950.6, the Financing Corporation shall have authority to require the FDIC to transfer receivership proceeds to the Financing Corporation in accordance with section 21(f)(3) of the Act.

(2) *Procedure.* The Directorate shall request in writing that the FDIC transfer the receivership proceeds to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the non-administrative expenses of the Financing Corporation approved under §950.6.

(d) *Exit fees*—(1) *Authority.* To the extent the amounts provided under paragraphs (b) and (c) of this section are insufficient to pay the interest due on Financing Corporation obligations, the Financing Corporation shall have authority to request that the Secretary of the Treasury order the transfer of exit fees to the Financing Corporation in accordance with section 5(d)(2)(E) of the Federal Deposit Insurance Act or as otherwise may be provided for by statute.

(2) *Procedure.* The Directorate shall request in writing that the Secretary of the Treasury order that exit fees be transferred to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the interest due on Financing Corporation obligations.

§950.9 Reports to the Finance Board.

The Financing Corporation shall file such reports as the Finance Board shall direct.

§ 950.10 Review of books and records.

The Finance Board shall examine the Financing Corporation at least annually to determine whether the Financing Corporation is performing its functions in accordance with the requirements of section 21 of the Act and this part.

SUBCHAPTER D—RESOLUTION FUNDING CORPORATION

PART 955—AUTHORITY FOR BANK ASSISTANCE

Sec.
955.1 Bank employees.
955.2 Demand deposit accounts.

AUTHORITY: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b).

§ 955.1 Bank employees.

Upon the request of the Directorate of the Resolution Funding Corporation, established pursuant to section 21B(b) of the Act, officers, employees, or agents of the Federal home loan banks are authorized to act for and on behalf of the Resolution Funding Corporation in such manner as may be necessary to carry out the functions of the Resolution Funding Corporation as provided in section 21B(c)(6)(B) of the Act.

[54 FR 39729, Sept. 28, 1989]

§ 955.2 Demand deposit accounts.

Each bank shall allow any Savings Association Insurance Fund member (''SAIF member'') whose principal place of business is in its district to establish and maintain at least one demand deposit account for the purpose of facilitating the Resolution Funding Corporation's assessments pursuant to section 21B(e)(7) of the Act.

[54 FR 39729, Sept. 28, 1989]

SUBCHAPTER E—AFFORDABLE HOUSING

PART 960—AFFORDABLE HOUSING PROGRAM

Sec.
960.1 Definitions.
960.2 Required annual AHP contributions.
960.3 Operation of Program and adoption of AHP implementation plan.
960.4 Advisory Councils.
960.5 Minimum eligibility standards for AHP projects.
960.6 Procedure for approval of applications for funding.
960.7 Modifications of applications prior to project completion.
960.8 Procedure for funding.
960.9 Modifications of applications after project completion.
960.10 Initial monitoring requirements.
960.11 Long-term monitoring requirements.
960.12 Remedial actions for noncompliance.
960.13 Agreements.
960.14 Temporary suspension of AHP contributions.
960.15 Affordable Housing Reserve Fund.
960.16 Application to existing AHP projects.

AUTHORITY: 12 U.S.C. 1430(j).

SOURCE: 62 FR 41828, Aug. 4, 1997, unless otherwise noted.

§ 960.1 Definitions.

As used in this part:

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

Advance means a loan to a member from a Bank that is:

(1) Provided pursuant to a written agreement; (2) Supported by a note or other written evidence of the member's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 935 of this chapter.

Affordable means that the rent charged for a unit which is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom).

AHP or *Program* means the Affordable Housing Program established pursuant to 12 U.S.C. 1430(j) and this part.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board of Directors means the Board of Directors of the Finance Board.

CIP means a Bank's Community Investment Program established under section 10(i) of the Act (12 U.S.C. 1430(i)).

Cost of funds means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

Direct subsidy means an AHP subsidy in the form of a direct cash payment, but does not include homeownership set-aside funds.

Family member means any individual related to a person by blood, marriage or adoption.

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

Habitable means suitable for occupancy, taking into account local health, safety, and building codes.

Homeless household means a household made up of one or more individuals, other than individuals imprisoned or otherwise detained pursuant to state or federal law, who:

(1) Lack a fixed, regular, and adequate nighttime residence; or

(2) Have a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Homeownership set-aside funds means funds provided to a member by a Bank

pursuant to a Bank's homeownership set-aside program.

HUD means the Department of Housing and Urban Development.

Low-or moderate-income household. (1) *Owner-occupied projects.* For purposes of an owner-occupied project, *low-or moderate-income household* means a household which, at the time it is qualified by the sponsor for participation in the project, has an income of 80 percent or less of the median income for the area.

(2) *Rental projects.* (i) *In general.* For purposes of a rental project, *low-or moderate-income household* means a household which, upon initial occupancy of a rental unit, has an income at or below 80 percent of the median income for the area.

(ii) *Housing with current occupants.* In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, *low- or moderate-income household* means an occupying household with an income at or below 80 percent of the median income for the area at the time an application for AHP subsidy is submitted to the Bank.

(3) *Family-size adjustment.* The income limit for *low-or moderate-income households* may be adjusted for family size in accordance with the methodology of the applicable median income standard.

Low-or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households have incomes at or below 80 percent of the median income for the area.

Median income for the area. (1) *Owner-occupied projects.* A Bank shall identify in its AHP implementation plan one or more of the following median income standards from which all owner-occupied projects may choose for purposes of the AHP:

(i) The median income for the area, as published annually by HUD;

(ii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iii) The median income for the area, as published by the United States Department of Agriculture; or

(iv) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

(2) *Rental projects.* A Bank shall identify in its AHP implementation plan one or more of the following median income standards from which all rental projects may choose for purposes of the AHP:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the AHP.

(3) *Procedure for approval.* Prior to requesting approval by the Board of Directors of a median income standard, a Bank shall amend its AHP implementation plan to permit the use of such standard, conditioned on Board of Directors approval. Requests for approval of median income standards shall receive prompt consideration by the Board of Directors.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 and 933.24 of this chapter.

Net earnings of a Bank means the net earnings of a Bank for a calendar year after deducting the Bank's pro rata share of the annual contribution to the Resolution Funding Corporation required under sections 21A or 21B of the Act (12 U.S.C. 1441a, 1441b), and before declaring any dividend under section 16 of the Act (12 U.S.C. 1436).

Owner-occupied project means a project involving the purchase, construction, or rehabilitation of owner-occupied housing, including condominiums and cooperative housing, by or for very low-or low-or moderate-income households.

Owner-occupied unit means a unit in an owner-occupied project. Housing with two to four dwelling units consisting of one owner-occupied unit and one or more rental units shall be considered a single owner-occupied unit.

Rental project means a project involving the purchase, construction, or rehabilitation of rental housing, including overnight shelters and transitional housing for homeless households and mutual housing, where at least 20 percent of the units in the project are occupied by and affordable for very low-income households.

Retention period means:

(1) 5 years from closing for an AHP-assisted owner-occupied unit; and

(2) 15 years from the date of project completion for a rental project.

Sponsor means a not-for-profit or for-profit organization or public entity that:

(1) Has an ownership interest (including any partnership interest) in a rental project; or

(2) Is integrally involved in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units.

State means a state of the United States, the District of Columbia, Guam, Puerto Rico, or the U.S. Virgin Islands.

Subsidized advance means an advance to a member at an interest rate reduced below the Bank's cost of funds, by use of a subsidy.

Subsidy means:

(1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy shall equal the net present value of the interest foregone from making the loan below the lender's market interest rate (calculated as of the date the AHP application is submitted to the Bank, and subject to adjustment under § 960.8(c)(3));

(2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds, determined as of the earlier of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise; or

(3) Homeownership set-aside funds.

Very low-income household. (1) *Owner-occupied projects.* For purposes of an owner-occupied project, *very low-income household* means a household which, at the time it is qualified by the sponsor for participation in the project, has an income at or below 50 percent of the median income for the area.

(2) *Rental projects.* (i) *In general.* For purposes of a rental project, very low-income household means a household which, upon initial occupancy of a rental unit, has an income at or below 50 percent of the median income for the area.

(ii) *Housing with current occupants.* In the case of projects involving the purchase or rehabilitation of rental housing with current occupants, *very low-income household* means an occupying household with an income at or below 50 percent of the median income for the area at the time an application for AHP subsidy is submitted to the Bank.

(3) *Family-size adjustment.* The income limit for *very low-income households* may be adjusted for family size in accordance with the methodology of the applicable median income standard.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27672, May 20, 1998]

§ 960.2 Required annual AHP contributions.

Each Bank shall contribute annually to its Program the greater of:

(a) 10 percent of the Bank's net earnings for the previous year; or

(b) That Bank's pro rata share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

§ 960.3 Operation of Program and adoption of AHP implementation plan.

(a) *Allocation of AHP contributions.* (1) *Homeownership set-aside programs.* Each Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $1.5 million or 15 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside programs, pursuant to the requirements of this part. In cases where the amount of

homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of $1.5 million or 15 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs. A Bank may establish one or more homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors. A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting such policies.

(2) *Competitive application program.* That portion of a Bank's required annual AHP contribution that is not set aside to fund homeownership set-aside programs shall be provided to members through a competitive application program, pursuant to the requirements of this part.

(b) *AHP implementation plan.* (1) *Adoption of plan.* Each Bank's board of directors shall adopt a written AHP implementation plan which shall set forth:

(i) The applicable median income standard or standards, adopted by the Bank consistent with the definition of *median income for the area* in § 960.1;

(ii) The requirements for any homeownership set-aside programs adopted by the Bank pursuant to paragraph (a)(1) of this section;

(iii) The Bank's project feasibility guidelines, adopted consistent with § 960.5(b)(2);

(iv) The Bank's schedule for AHP funding periods;

(v) Any additional District eligibility requirement, adopted by the Bank pursuant to § 960.5(b)(10);

(vi) The Bank's scoring guidelines, adopted by the Bank consistent with § 960.6(b)(4);

(vii) The Bank's time limits on use of AHP subsidies and procedures for verifying compliance upon disbursement of AHP subsidies pursuant to § 960.8; and

(viii) The Bank's procedures for carrying out its monitoring obligations under §§ 960.10(c) and 960.11.

(2) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting the AHP implementation plan, or any subsequent amendments thereto.

(3) *Advisory Council review.* Prior to adoption of the Bank's AHP implementation plan, and any subsequent amendments thereto, the Bank shall provide its Advisory Council an opportunity to review the plan and any subsequent amendments, and the Advisory Council shall provide its recommendations to the Bank's board of directors.

(4) *Submission of plan to the Finance Board.* A Bank shall submit its initial AHP implementation plan, and any amendments, to the Finance Board and the Bank's Advisory Council at least 60 days prior to distributing requests for applications for AHP subsidies for the funding period in which the plan, or amendments, will be effective.

(5) *Public Access.* A Bank's initial AHP implementation plan, and any subsequent amendments, shall be made available to members of the public, upon request.

(c) *Conflicts of interest*—(1) *Bank directors and employees.* Each Bank's board of directors shall adopt a written policy providing that if a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Bank director or employee shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring or any remedial process for such project.

(2) *Advisory Council members.* Each Bank's board of directors shall adopt a written policy providing that if an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in, a project that is the subject of a pending or approved AHP application, the Advisory Council member shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(3) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt conflicts of interest policies.

(d) *Reporting.* Each Bank shall provide such reports and documentation concerning its Program as the Finance Board may request from time to time.

§ 960.4 Advisory Councils.

(a) *In general.* Each Bank's board of directors shall appoint an Advisory Council of from 7 to 15 persons who reside in the Bank's District and are drawn from community and not-for-profit organizations actively involved in providing or promoting low- and moderate-income housing in the District.

(b) *Nominations and appointments.* Each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient time for responses. The Bank's board of directors shall appoint Advisory Council members giving consideration to the size of the Bank's District and the diversity of low- and moderate-income housing needs and activities within the District.

(c) *Diversity of membership.* In appointing the Advisory Council, a Bank's board of directors shall ensure that the membership includes persons drawn from a diverse range of organizations, provided that representatives of no one group shall constitute an undue proportion of the membership of the Advisory Council.

(d) *Terms of Advisory Council members.* Advisory Council members shall be appointed by the Bank's board of directors to serve for terms of three years, and such terms shall be staggered to provide continuity in experience and service to the Advisory Council. An Advisory Council member appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office. No Advisory Council member may be appointed to serve for more than three consecutive terms. Appointments for the unexpired term of a predecessor shall not count toward the three-term limit.

(e) *Election of officers.* Each Advisory Council may elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate.

(f) *Duties.*—(1) *Meetings with the Banks.* Representatives of the board of directors of the Bank shall meet with the Advisory Council at least quarterly to obtain the Advisory Council's advice on ways in which the Bank can better carry out its housing finance and community investment mission, including, but not limited to, advice on the low- and moderate-income housing and community investment programs and needs in the Bank's District, and on the use of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(2) *Summary of AHP applications.* The Bank shall comply with requests from the Advisory Council for summary information regarding AHP applications from prior funding periods.

(3) *Annual report to the Finance Board.* Each Advisory Council shall submit to the Finance Board annually by March 1 its analysis of the low- and moderate-income housing and community development activity of the Bank by which it is appointed.

(g) *Expenses.* The Bank shall pay Advisory Council members travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank and meetings requested by the Finance Board.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27672, May 20, 1998]

§ 960.5 Minimum eligibility standards for AHP projects.

(a) *Homeownership set-aside programs.* A Bank's homeownership set-aside programs must meet the following requirements:

(1) Homeownership set-aside funds must be provided to members pursuant to allocation criteria established by the Bank;

(2) Members must provide homeownership set-aside funds only to households that:

(i) Are low-or moderate-income households, as defined in § 960.1;

(ii) Complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling, respectively; and

(iii) Meet such other eligibility criteria that may be established by the Bank, such as a matching funds requirement or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster relief effort;

(3) Members must provide homeownership set-aside funds to households as a grant, in an amount up to a maximum of $10,000 per household, as established by the Bank, which limit shall apply to all households;

(4) Households must use homeownership set-aside funds to pay for downpayment, closing cost, counseling, or rehabilitation assistance in connection with the household's purchase or rehabilitation of an owner-occupied housing unit, including a condominium or cooperative housing unit, to be used as the household's primary residence;

(5) A housing unit purchased or rehabilitated using homeownership set-aside funds must be subject to a retention agreement described in § 960.13(d)(1);

(6) If a member is providing mortgage financing to a participating household, the member must provide financial or other incentives in connection with such mortgage financing, and the rate of interest, points, fees, and any other charges by the member must not exceed a reasonable market rate of interest, points, fees, and other charges for a loan of similar maturity, terms, and risk;

(7) Homeownership set-aside funds may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit;

(ii) The cost of the counseling has not been covered by another funding source, including the member; and

(iii) The homeownership set-aside funds are used to pay only for the amount of such reasonable and customary costs that exceeds the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years; and

(8) Homeownership set-aside funds must be drawn down and used by eligible households within the period of time specified by the Bank in its AHP implementation plan.

(b) *Competitive application program.* Projects receiving AHP subsidies pursuant to a Bank's competitive application program must meet the eligibility requirements of this paragraph (b).

(1) *Owner-occupied or rental housing.* A project must be either an owner-occupied project or a rental project, as defined, respectively, in § 960.1.

(2) *Project feasibility and need for subsidy*—(i) *Sources and uses of funds.* The project's estimated uses of funds must equal its estimated sources of funds, as reflected in the project's development budget. A project's sources of funds must include:

(A) Estimates of funds the project sponsor intends to obtain from other sources but which have not yet been committed to the project; and

(B) Estimates of the market value of in-kind donations and volunteer professional labor or services committed to the project, but not the value of sweat-equity.

(ii) *Project costs*—(A) *In general.* Project costs, as reflected in the project's development budget, must be reasonable and customary, in accordance with the Bank's project feasibility guidelines, in light of:

(*1*) Industry standards for the location of the project; and

(*2*) The long-term financial needs of the project.

(B) *Cost of property and services provided by a member.* The purchase price of property or services, as reflected in the project's development budget, sold to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price for the property or services was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to a project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the ''as-is'' or ''as-rehabilitated'' value of the property, whichever is appropriate, as reflected in an independent appraisal of the property performed

within six months prior to the date the purchase price for the property was agreed upon.

(iii) *Operational feasibility and need for subsidy.* The project must be operationally feasible, in accordance with the Bank's project feasibility guidelines, based on relevant factors including, but not limited to, applicable financial ratios, geographic location of the project, needs of tenants, and other non-financial project characteristics. The requested AHP subsidy must be necessary for the financial feasibility of the project, as currently structured, and the rate of interest, points, fees, and any other charges for all loans financing the project must not exceed a market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(3) *Timing of subsidy use.* The AHP subsidy must be likely to be drawn down by the project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for subsidy funding the project.

(4) *Prepayment, cancellation, and processing fees.* The project must not use AHP subsidies to pay for:

(i) Prepayment fees imposed by a Bank on a member for a subsidized advance that is prepaid, unless, subsequent to such prepayment, the project will continue to comply with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part for the duration of the original retention period, and any unused subsidy is returned to the Bank and made available for other AHP projects;

(ii) Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled; or

(iii) Processing fees charged by members for providing direct subsidies to a project.

(5) *Counseling costs.* AHP subsidies may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(6) *Refinancing.* If the project uses AHP subsidies to refinance an existing single-family or multifamily mortgage loan, the equity proceeds of the refinancing must be used only for the purchase, construction, or rehabilitation of housing units meeting the eligibility requirements of this paragraph (b).

(7) *Retention*—(i) *Owner-occupied projects.* The project's AHP-assisted units are or are committed to be subject to a retention agreement described in § 960.13 (c)(4) or (d)(1).

(ii) *Rental projects.* AHP-assisted rental projects are or are committed to be subject to a retention agreement described in § 960.13 (c)(5) or (d)(2).

(8) *Project sponsor qualifications.* A project's sponsor must be qualified and able to perform its responsibilities as committed to in the application for subsidy funding the project.

(9) *Fair housing.* The project, as proposed, must comply with applicable Federal and State laws on fair housing and housing accessibility, including, but not limited to, the Fair Housing Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Architectural Barriers Act of 1969, and must demonstrate how the project will be affirmatively marketed.

(10) *District eligibility requirements.* (i) A project receiving AHP subsidies may be required by a Bank to meet one or more of the following additional eligibility requirements adopted by a Bank's board of directors, after consultation with its Advisory Council:

(A) A requirement that the amount of subsidy requested for the project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member each year; or per member, per project, or per project unit in a single funding period;

(B) A requirement that the project is located in the Bank's District; or

(C) A requirement that the member submitting the application has made use of a minimum amount of a credit product offered by the Bank, other than AHP or CIP credit products, within the previous 12 months, provided

that such a minimum threshold for credit product usage established by a Bank shall not exceed 1.5 percent of a member's total assets, and all members shall have access to some amount of AHP subsidy, as determined by the Bank, regardless of whether they meet the Bank's minimum threshold for credit product usage.

(ii) Any limit on the amount of AHP subsidy available per member must result in equal amounts of AHP subsidy available to all members.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27672, May 20, 1998]

§960.6 Procedure for approval of applications for funding.

(a) *Homeownership set-aside programs.* A Bank shall accept applications for homeownership set-aside funds from members and may, in its discretion, accept applications from institutions with pending applications for membership in the Bank. The Bank shall approve applications in accordance with the Bank's criteria governing the allocation of funds.

(b) *Competitive application program*—(1) *Funding periods; amounts available.* A Bank shall accept applications for funding under its competitive application program from members and may, in its discretion, accept applications from institutions with pending applications for membership in the Bank. A Bank may accept applications for funding during a specified number of funding periods each year, as determined by the Bank. The amount of subsidies offered in each funding period shall be comparable.

(2) *Submission of applications.* A Bank shall require applicants for AHP subsidies to submit information sufficient for the Bank to:

(i) Determine that the proposed AHP project meets the eligibility requirements of §960.5(b); and

(ii) Evaluate the application pursuant to the scoring criteria in paragraph (b)(4) of this section.

(3) *Review of applications for project eligibility.* A Bank shall review applications to determine that the proposed AHP project meets the eligibility requirements of §960.5(b).

(4) *Scoring of applications*—(i) *In general.* A Bank shall score only those applications meeting the eligibility requirements of §960.5(b). A Bank shall not adopt additional scoring criteria or point allocations, except as specifically authorized under this paragraph (b)(4). A Bank shall adopt written guidelines implementing the scoring requirements of this paragraph (b)(4).

(ii) *Point allocations.* A Bank shall allocate 100 points among the nine scoring criteria identified in paragraph (b)(4)(iv) of this section. The scoring criterion for targeting identified in paragraph (b)(4)(iv)(C) of this section shall be allocated at least 20 points. The remaining scoring criteria shall be allocated at least five points each.

(iii) *Satisfaction of scoring criteria.* A Bank shall designate each scoring criterion as either a fixed-point or a variable-point criterion. Variable-point criteria are those where there are varying degrees to which an application can satisfy the criteria. The number of points that may be awarded to an application for meeting a variable-point criterion will vary, depending on the extent to which the application satisfies the criterion, compared to the other applications being scored. A Bank shall designate the targeting and subsidy-per-unit scoring criteria identified in paragraphs (b)(4)(iv) (C) and (H), respectively, of this section as variable-point criteria. The application(s) best achieving each variable-point criterion shall receive the maximum point score available for that criterion, with the remaining applications scored on a declining scale. Fixed-point criteria are those which cannot be satisfied in varying degrees and are either satisfied, or not. An application meeting a fixed-point criterion shall be awarded the total number of points allocated to that criterion.

(iv) *Scoring criteria.* An application for a proposed project may receive points based on satisfaction of the nine scoring criteria set forth in this paragraph (b)(4)(iv).

(A) *Use of donated government-owned or other properties.* The creation of housing using a significant proportion of units or land donated or conveyed for a nominal price by the Federal government or any agency or instrumentality thereof, or by any other party.

For purposes of this paragraph, a nominal price is a small, negligible amount, most often one dollar, and may be accompanied by modest expenses related to the conveyance of the property for use by the project.

(B) *Sponsorship by a not-for-profit organization or government entity.* Project sponsorship by a not-for-profit organization, a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native Village, or the government entity for Native Hawaiian Home Lands.

(C) *Targeting.* The extent to which a project creates housing for very low- and low- or moderate-income households.

(*1*) *Rental projects.* An application for a rental project shall be awarded the maximum number of points available under this scoring criterion if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the median income for the area. Applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points on a declining scale based on the percentage of units in a project that are reserved for households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area. In order to facilitate reliance on monitoring by a federal, state, or local government entity providing funds or allocating federal Low-Income Housing Tax Credits to a proposed project, a Bank, in its discretion, may score each project according to the targeting commitments made by the project to such entity, and the Bank shall include such scoring practice in its AHP implementation plan.

(*2*) *Owner-occupied projects.* Applications for owner-occupied projects shall be awarded points based on a declining scale, with projects having the highest percentage of units targeted to households with the lowest percentage of median income for the area awarded the highest number of points.

(*3*) *Separate scoring.* For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(D) *Housing for homeless households.* The creation of rental housing reserving at least 20 percent of the units for homeless households, or the creation of transitional housing for homeless households permitting a minimum of six months occupancy.

(E) *Promotion of empowerment.* The provision of housing in combination with a program offering: employment; education; training; homebuyer, homeownership or tenant counseling; daycare services; resident involvement in decisionmaking affecting the creation or operation of the project; or other services that assist residents to move toward better economic opportunities, such as welfare to work initiatives.

(F) *First District priority.* The satisfaction of one of the following criteria, or one of a number of the following criteria, as recommended by the Bank's Advisory Council and adopted by the Bank's board of directors and set forth in the Bank's AHP implementation plan, as long as the total points available for meeting the criterion or criteria adopted under this category do not exceed the total points allocated to this category:

(*1*) *Special needs.* The creation of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS;

(*2*) *Community development.* The creation of housing meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of a state or local government;

(*3*) *First-time homebuyers.* The financing of housing for first-time homebuyers;

(*4*) *Member financial participation.* Member financial participation (excluding the pass-through of AHP subsidy) in the project, such as providing market rate or concessionary financing, fee waivers, or donations;

(*5*) *Disaster areas*. The financing of housing located in federally declared disaster areas;

(*6*) *Rural*. The financing of housing located in rural areas;

(*7*) *Urban*. The financing of urban infill or urban rehabilitation housing;

(*8*) *Economic diversity*. The creation of housing that is part of a strategy to end isolation of very low-income households by providing economic diversity through mixed-income housing in low- or moderate-income neighborhoods, or providing very low-or low- or moderate-income households with housing opportunities in neighborhoods or cities where the median income exceeds the median income for the larger surrounding area—such as the city, county, or Primary Metropolitan Statistical Area—in which the neighborhood or city is located;

(*9*) *Fair housing remedy*. The financing of housing as part of a remedy undertaken by a jurisdiction adjudicated by a federal, state, or local court to be in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), the Fair Housing Act (42 U.S.C. 3601 *et seq.*), or any other federal, state, or local fair housing law, or as part of a settlement of such claims;

(*10*) *Community involvement*. Demonstrated support for the project by local government, other than as a project sponsor, in the form of property tax deferment or abatement, zoning changes or variances, infrastructure improvements, fee waivers, or other similar forms of non-cash assistance, or demonstrated support for the project by community organizations or individuals, other than as project sponsors, through the commitment by such entities or individuals of donated goods and services, or volunteer labor;

(*11*) *Lender consortia*. The involvement of financing by a consortium of at least two financial institutions; or

(*12*) *In-District projects*. The creation of housing located in the Bank's District.

(G) *Second District priority—defined housing need in the District*. The satisfaction of a housing need in the Bank's District, as defined and recommended by the Bank's Advisory Council and adopted by the Bank's board of directors and set forth in the Bank's AHP implementation plan. The Bank may, but is not required to, use one of the criteria listed in paragraph (b)(4)(iv)(F) of this section, provided it is different from the criterion or criteria adopted by the Bank under paragraph (b)(4)(iv)(F) of this section.

(H) *AHP subsidy per unit*. The extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. In the case of an application for a project financed by a subsidized advance, the total amount of AHP subsidy used by the project shall be estimated based on the Bank's cost of funds as of the date on which all applications are due for the funding period in which the application is submitted. For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(I) *Community stability*. The promotion of community stability, such as by rehabilitating vacant or abandoned properties, being an integral part of a neighborhood stabilization plan approved by a unit of state or local government, and not displacing low- or moderate-income households, or if such displacement will occur, assuring that such households will be assisted to minimize the impact of such displacement.

(5) *Approval of applications*—(i) *Approval by Bank's board*. The board of directors of each Bank shall approve applications in descending order starting with the highest scoring application until the total funding amount for the particular funding period, except for any amount insufficient to fund the next highest scoring application, has been allocated. The board of directors also shall approve at least the next four highest scoring applications as alternates and, within one year of approval, may fund such alternates if any previously committed AHP subsidies become available.

(ii) *No delegation*. A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to approve or disapprove AHP applications.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27673, May 20, 1998]

§ 960.7 Modifications of applications prior to project completion.

(a) *Modification procedure.* If, prior to final disbursement of funds to a project from all funding sources, there is or will be a change in the project that would change the score that the project application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time, a Bank, in its discretion, may approve in writing a modification to the terms of the approved application, provided that:

(1) The project, incorporating any such changes, would meet the eligibility requirements of § 960.5(b);

(2) The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank; and

(3) There is good cause for the modification.

(b) *Modifications involving a subsidy increase.* Modifications involving an increase in AHP subsidy shall be approved or disapproved by a Bank's board of directors. The authority to approve or disapprove such requests shall not be delegated to Bank officers or other Bank employees.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27673, May 20, 1998]

§ 960.8 Procedure for funding.

(a) *Disbursement of subsidies to members.* (1) A Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of subsidy.

(2) If an institution with an approved application for AHP subsidy fails to obtain or loses its membership in a Bank, the Bank may disburse subsidies to a member of such Bank to which the institution has transferred its obligations under the approved application, or the Bank may disburse subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved application.

(b) *Homeownership set-aside programs*—(1) *Time limit on use of subsidies.* If homeownership set-aside funds are not drawn down and used by eligible households within the period of time specified by the Bank in its AHP implementation plan, the Bank shall cancel the application for funds and make the funds available for other applicants for homeownership set-aside funds or for other AHP-eligible projects.

(2) *Member certification upon disbursement.* Prior to disbursement of homeownership set-aside funds by a Bank to a member, the Bank shall require the member to certify that:

(i) The funds received from the Bank will be provided to a household meeting the eligibility requirements of § 960.5(a)(2);

(ii) If the member is providing mortgage financing to the household, the member will provide financial or other incentives in connection with such mortgage financing, and the rate of interest, points, fees, and any other charges by the member will not exceed a reasonable market rate of interest, points, fees, and other charges for a loan of similar maturity, terms, and risk; and

(iii) Funds received from the Bank for homebuyer counseling costs will be provided according to the requirements of § 960.5(a)(7).

(c) *Competitive application program*—(1) *Time limit on use of subsidies.* If AHP subsidies approved for a project under a Bank's competitive application program are not drawn down and used by the project within the period of time specified by the Bank in its AHP implementation plan, the Bank shall cancel its approval of the application for the subsidies and make the subsidies available for other AHP-eligible projects.

(2) *Compliance upon disbursement of subsidies.* A Bank shall verify prior to its initial disbursement of subsidies for an approved project, and prior to each disbursement thereafter, that the project meets the eligibility requirements of § 960.5(b) and all obligations committed to in the approved application.

(3) *Changes in approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan.*—(i) *Change in subsidy amount.* If a member is approved to receive a direct subsidy

to write down prior to closing the principal amount or the interest rate on a loan to a project and the amount of subsidy required to maintain the debt service cost for the loan decreases from the amount of subsidy initially approved by the Bank due to a decrease in market interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall reduce the subsidy amount accordingly. If market interest rates rise between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank may, in its discretion, increase the subsidy amount accordingly.

(ii) *Reconciliation of AHP fund.* If a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund. If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies and then from the Bank's required AHP contribution for the next year.

§960.9 Modifications of applications after project completion.

Modification procedure. If, after final disbursement of funds to a project from all funding sources, there is or will be a change in the project that would change the score that the project application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time, a Bank, in its discretion, may approve in writing a modification to the terms of the approved application, provided that:

(a) The project is in financial distress, or is at substantial risk of falling into such distress;

(b) The project sponsor or owner has made best efforts to avoid noncompliance with the terms of the application for subsidy and the requirements of this part;

(c) The project, incorporating any material changes, would meet the eligibility requirements of §960.5(b); and

(d) The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27673, May 20, 1998]

§960.10 Initial monitoring requirements.

(a) *Requirements for project sponsors and owners*—(1) *Owner-occupied projects.* (i) During the period of construction or rehabilitation of an owner-occupied project, the project sponsor must report to the member semiannually on whether reasonable progress is being made towards completion of the project.

(ii) Where AHP subsidies are used to finance the purchase of owner-occupied units, the project sponsor must certify annually to the member and the Bank, until all approved AHP subsidies are provided to eligible households in the project, that those households receiving AHP subsidies during the year were eligible households, and such certifications shall be supported by household income verification documentation maintained by the project sponsor and available for review by the member or the Bank.

(2) *Rental projects.* (i) During the period of construction or rehabilitation of a rental project, the project owner must report to the member semiannually on whether reasonable progress is being made towards completion of the project.

(ii) Within the first year after project completion, the project owner must:

(A) Certify to the member and the Bank that the services and activities committed to in the AHP application have been provided in connection with the project;

(B) Provide a list of actual tenant rents and incomes to the member and the Bank and certify that:

(*1*) The tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the AHP application; and

(*2*) The project is habitable; and

(C) Maintain documentation regarding tenant rents and incomes and project habitability available for review by the member or the Bank, to support such certifications.

(b) *Requirements for members*—(1) *Owner-occupied projects.* (i) During the period of construction or rehabilitation of an owner-occupied project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion of the project and must report to the Bank semiannually on the status of the project.

(ii) Within one year after disbursement to a project of all approved AHP subsidies, the member must review the project documentation and certify to the Bank that:

(A) The AHP subsidies have been used according to the commitments made in the AHP application; and

(B) The AHP-assisted units are subject to deed restrictions or other legally enforceable retention agreements or mechanisms meeting the requirements of § 960.13(c)(4) or (d)(1);

(2) *Rental projects.* (i) During the period of construction or rehabilitation of a rental project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion of the project and must report to the Bank semiannually on the status of the project.

(ii) Within the first year after project completion, the member must review the project documentation and certify to the Bank that:

(A) The project is habitable;

(B) The project meets its income targeting commitments; and

(C) The rents charged for income-targeted units do not exceed the maximum levels committed to in the AHP application.

(c) *Requirements for Banks*—(1) Owner-occupied projects. Each Bank must take the steps necessary to determine, based on a review of the documentation for a sample of projects and units within one year of receiving the certifications described in paragraph (b)(1)(ii) of this section that:

(i) The incomes of the households that own the AHP-assisted units did not exceed the levels committed to in the AHP application at the time the households were qualified by the sponsor to participate in the project;

(ii) The AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project, as currently structured; and

(iii) The AHP-assisted units are subject to deed restrictions or other legally enforceable retention agreements or mechanisms meeting the requirements of § 960.13(c)(4) or (d)(1).

(2) *Rental projects.* Each Bank must take the steps necessary to determine that:

(i) Within the first year after completion of a rental project, the services and activities committed to in the AHP application have been provided in connection with the project; and

(ii) The AHP subsidies were used for eligible purposes, the project's actual costs were reasonable and customary in accordance with the Bank's project feasibility guidelines, and the subsidies were necessary for the financial feasibility of the project, as currently structured.

(d) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged remains affordable, as defined in § 960.1, for the household occupying the unit.

§ 960.11 Long-term monitoring requirements.

(a) *Rental projects.* For purposes of monitoring a rental project, Banks, members, and project owners shall carry out their long-term monitoring obligations pursuant to one of the three methods set forth in this paragraph (a).

(1) *Reliance on monitoring by a federal, state or local government entity.* For those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity, a Bank may rely on the monitoring by such entity if:

(i) The income targeting requirements, the rent requirements, and the retention period monitored by such entity for purposes of its own program are the same as, or more restrictive than, those committed to in the AHP application;

(ii) The entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the requirements being monitored by the entity or where the project is not habitable; and

(iii) The entity has demonstrated and continues to demonstrate to the Bank its ability to carry out monitoring under its own program, and the Bank does not have information that such monitoring is not occurring or is inadequate.

(2) *Reliance on monitoring of AHP application commitments by a contractor.* For those projects that receive funds from, or are allocated federal Low-Income Housing Tax Credits by, a federal, state, or local government entity that monitors for income targeting requirements, rent requirements, or retention periods under its own program that are less restrictive than those committed to in the project's AHP application, a Bank, in its discretion, may rely on the monitoring by such entity if:

(i) The entity agrees to monitor the income targeting requirements, the rent requirements, and the retention period committed to in the AHP application;

(ii) The entity agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the requirements committed to in the AHP application or where the project is not habitable; and

(iii) The entity has demonstrated and continues to demonstrate to the Bank its ability to carry out such monitoring, and the Bank does not have information that such monitoring is not occurring or is inadequate.

(3) *Long-term monitoring by the Banks, members, and project owners.* In cases where a Bank does not rely on monitoring by a federal, state, or local government entity pursuant to paragraphs (a)(1) or (a)(2) of this section, the Bank, members, and project owners shall monitor rental projects according to the requirements in this paragraph (a)(3).

(i) *Requirements for project owners.* In the second year after completion of a rental project and annually thereafter until the end of the project's retention period, the project owner must:

(A) Certify to the Bank that:

(*1*) The tenant rents and incomes are in compliance with the rent and income targeting commitments made in the AHP application; and

(*2*) The project is habitable; and

(B) Maintain documentation regarding tenant rents and incomes and project habitability available for review by the Bank, to support such certifications.

(ii) *Requirements for members.* For rental projects receiving $500,000 or less in AHP subsidy from a member, during the period from the second year after project completion to the end of the project's retention period, the member must certify to the Bank at least once every three years, based on an exterior visual inspection, that the project appears to be suitable for occupancy.

(iii) *Requirements for Banks*—(A) *Certifications received by the Bank.* Each Bank shall review certifications provided by project owners and members regarding tenant rents and incomes and project habitability.

(B) *Review of project documentation.* Each Bank shall review documentation maintained by the project owner regarding tenant rents and incomes and project habitability to verify compliance with the rent and income targeting commitments in the AHP application and project habitability, according to the following schedule:

(*1*) *$50,001 to $250,000.* For projects receiving $50,001 to $250,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every six years;

(*2*) *$250,001 to $500,000.* For projects receiving $250,001 to $500,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every four years; and

(*3*) *Over $500,000.* For projects receiving over $500,000 of AHP subsidies, the Bank must perform an on-site review

of project documentation for a sample of the project's units at least once every two years.

(C) *Sampling plan.* A Bank may use a reasonable sampling plan to select the projects monitored each year and to review the project documentation supporting the certifications made by members and project owners.

(iv) *Monitoring by a contractor.* A Bank, in its discretion, may contract with a third party to carry out the Bank's monitoring obligations set forth in paragraph (a)(3)(iii) of this section.

(b) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged remains affordable, as defined in § 960.1, for the household occupying the unit.

§ 960.12 Remedial actions for noncompliance.

(a) *Repayment of subsidies by members*—(1) *Noncompliance by member.* A member shall repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(i) The member cures the noncompliance within a reasonable period of time; or

(ii) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§ 960.7 or 960.9.

(2) *Noncompliance by project sponsors or owners*—(i) *Duty to recover subsidies.* A member shall recover from the sponsor of an owner-occupied project or the owner of a rental project and repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(A) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(B) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§ 960.7 or 960.9.

(ii) *Limitation on duty to recover subsidies.* The member shall not be liable to the Bank for the return of amounts that cannot be recovered from the project sponsor or owner through reasonable collection efforts by the member.

(b) *Repayment of subsidies by project sponsors or owners.* A sponsor of an owner-occupied project and the owner of a rental project shall repay to the member the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(1) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(2) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§ 960.7 or 960.9.

(c) *Requirements for Banks*—(1) *Duty to recover subsidies.* A Bank shall recover from a member:

(i) The amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; and

(ii) The amount of any subsidies recovered by a member from the sponsor of an owner-occupied project or the owner of a rental project pursuant to the requirements of paragraph (a)(2) of this section.

(2) *Settlements.* A Bank may enter into an agreement or other arrangement with a member for the purpose of settling claims against the member for

repayment of subsidies. If a Bank enters into a settlement that results in the return of a sum that is less than the full amount of any AHP subsidy that is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, the Bank may be required by the Finance Board to reimburse its AHP fund in the amount of any shortfall under paragraph (c)(3) of this section, unless:

(i) The Bank has sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts); or

(ii) The Bank obtains a determination from the Board of Directors that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts).

(3) *Reimbursement of AHP fund.* The Finance Board may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(i) As a result of the Bank's actions or omissions, AHP subsidy is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; or

(ii) The Bank has failed to recover AHP subsidy from a member pursuant to the requirements of paragraph (c)(1) of this section, and has not shown such failure is reasonably justified, considering factors such as the extent of the Bank's recovery efforts.

(d) *Parties to enforcement proceedings.* A Bank, in its AHP implementation plan, may provide for a member, project sponsor, or project owner to enter into a written agreement with a Bank under which such member, sponsor, or owner consents to be a party to any enforcement proceeding initiated by the Finance Board regarding the repayment of AHP subsidies received by such member, sponsor, or owner, or the suspension or debarment of such parties, provided that the member, sponsor, or owner has agreed to be bound by the Finance Board's final determination in the enforcement proceeding.

(e) *Use of repaid subsidies.* Amounts repaid to a Bank pursuant to this section, including any interest, shall be made available for other AHP-eligible projects.

(f) *Suspension and debarment*—(1) *At a Bank's initiative.* A Bank may suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an application for AHP subsidy or the requirements of this part.

(2) *At the Finance Board's initiative.* The Finance Board may order a Bank to suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an application for AHP subsidy or the requirements of this part.

(g) *Transfer of Program administration.* Without limitation on other remedies, the Finance Board, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members, under such terms and conditions as the Finance Board may prescribe.

(h) *Finance Board actions under this section.* Except as provided in paragraph (c)(2)(ii) of this section, actions taken by the Finance Board pursuant to this section shall be subject to the Finance Board's Procedures for Review of Disputed Supervisory Determinations.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27673, May 20, 1998]

§ 960.13 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place with each member receiving a subsidized advance or direct subsidy an agreement or agreements containing the provisions set forth in this section.

(b) *General provisions*—(1) *Subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project, or household in the case of homeownership set-aside funds, for which the subsidy was approved.

(2) *Use of subsidy*—(i) *Use of subsidy by the member.* The member shall use the AHP subsidy in accordance with the terms of the member's application for the subsidy, as approved by the Bank, and the requirements of this part.

(ii) *Use of subsidy by the project sponsor or owner.* The member shall have in place an agreement with the sponsor of an owner-occupied project and each owner of a rental project in which the sponsor or owner agrees to use the AHP subsidy in accordance with the terms of the member's application for the subsidy, as approved by the Bank, and the requirements of this part.

(3) *Repayment of subsidies in case of noncompliance*—(i) *Noncompliance by the member.* The member shall repay subsidies to the Bank in accordance with the requirements of § 960.12(a)(1).

(ii) *Noncompliance by a project sponsor or owner*—(A) *Agreement.* The member shall have in place an agreement with the sponsor of an owner-occupied project and each owner of a rental project in which the sponsor or owner agrees to repay AHP subsidies in accordance with the requirements of § 960.12(b).

(B) *Recovery of subsidies.* The member shall recover from the project sponsor or owner and repay to the Bank any subsidy in accordance with the requirements of § 960.12(a)(2).

(4) *Project monitoring*—(i) *Monitoring by the member.* The member shall comply with the monitoring requirements of §§ 960.10(b) and 960.11(a)(3)(ii).

(ii) *Monitoring by the project sponsor.* The member shall have in place an agreement with the sponsor of an owner-occupied project in which the sponsor agrees to comply with the monitoring requirements of § 960.10(a)(1).

(iii) *Monitoring by the project owner.* The member shall have in place an agreement with the owner of a rental project in which the owner agrees to comply with the monitoring requirements of §§ 960.10(a)(2) and 960.11(a)(3)(i).

(5) *Transfer of AHP obligations to another member.* The member will make best efforts to transfer its obligations under the approved application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank's final disbursement of AHP subsidies.

(c) *Special provisions where members obtain subsidized advances*—(1) *Repayment schedule.* The term of the subsidized advance shall be no longer than the term of the member's loan to the project funded by the advance, and at least once in every 12-month period, the member shall be scheduled to make a principal repayment to the Bank equal to the amount scheduled to be repaid to the member on its loan to the project in that period.

(2) *Prepayment fees.* Upon a prepayment of the subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

(3) *Treatment of loan prepayment by project.* If all or a portion of the loan or loans financed by a subsidized advance are prepaid by the project to the member, the member may, at its option, either:

(i) Repay to the Bank that portion of the advance used to make the loan or loans to the project, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any economic loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance; or

(ii) Continue to maintain the advance outstanding, subject to the Bank resetting the interest rate on that portion of the advance used to make the loan or loans to the project to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance.

(4) *Retention agreements for owner-occupied units*—(i) *Units with AHP-assisted permanent financing.* The member shall ensure that an owner-occupied unit with permanent financing obtained from the proceeds of a subsidized advance is subject to a deed restriction or other legally enforceable retention

agreement or mechanism requiring that:

(A) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(B) In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner occupied the unit prior to refinancing, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (c)(4)(i); and

(C) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(ii) *Units constructed or rehabilitated with AHP-assisted financing.* The member shall ensure that an owner-occupied unit constructed or rehabilitated with a loan from the proceeds of a subsidized advance but which does not have permanent financing from the proceeds of a subsidized advance, is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(A) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(B) In the case of a sale prior to the end of the retention period, an amount equal to the pro rata portion of the interest rate subsidy imputed to the subsidized advance that financed the construction or rehabilitation loan for the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low- or moderate-income household;

(C) In the case of a refinancing prior to the end of the retention period, an amount equal to the pro rata portion of the interest rate subsidy imputed to the subsidized advance that financed the construction or rehabilitation loan for the unit, reduced for every year the owner occupied the unit, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (c)(4)(ii); and

(D) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(5) *Retention agreements for rental projects.* The member shall ensure that a rental project financed by a loan from the proceeds of a subsidized advance is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period;

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner owned the project prior to the sale or refinancing, shall be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP application for the duration of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project terminate after any foreclosure.

(6) *Transfer of AHP obligations to a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application

for AHP subsidy upon prepayment or orderly liquidation by the nonmember of the subsidized advance.

(d) *Special provisions where members obtain direct subsidies*—(1) *Retention agreements for owner-occupied units.* The member shall ensure that an owner-occupied unit that is purchased, constructed, or rehabilitated with the proceeds of a direct subsidy is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(ii) In the case of a sale prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low- or moderate-income household;

(iii) In the case of a refinancing prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the occupying household has owned the unit, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (d)(1); and

(iv) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(2) *Retention agreements for rental projects.* The member shall ensure that a rental project financed by the proceeds of a direct subsidy is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period;

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period;

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, an amount equal to the full amount of the direct subsidy shall be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP application for the duration of the retention period; and

(iv) The income-eligibility and affordability restrictions applicable to the project terminate after any foreclosure.

(3) *Lending of direct subsidies.* If a member or a project sponsor lends a direct subsidy to a project, any repayments of principal and payments of interest received by the member or the project sponsor must be paid forthwith to the Bank.

(4) *Transfer of AHP obligations to a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy.

[62 FR 41828, Aug. 4, 1997, as amended at 63 FR 27673, May 20, 1998]

§ 960.14 Temporary suspension of AHP contributions.

(a) *Application for temporary suspension*—(1) *Notification to Finance Board.* If a Bank finds that the contributions required pursuant to § 960.2 are contributing to the financial instability of the Bank, the Bank shall notify the Finance Board promptly, and may apply in writing to the Finance Board for a temporary suspension of such contributions.

(2) *Contents.* A Bank's application for a temporary suspension of contributions shall include:

(i) The period of time for which the Bank seeks a suspension;

(ii) The grounds for a suspension;

(iii) A plan for returning the Bank to a financially stable position; and

(iv) The Bank's annual financial report for the preceding year, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Finance Board to consider.

(b) *Board of Directors review of application for temporary suspension*—(1) *Determination of financial instability.* In determining the financial instability of a Bank, the Board of Directors shall consider such factors as:

(i) Whether the Bank's earnings are severely depressed;

(ii) Whether there has been a substantial decline in the Bank's membership capital; and

(iii) Whether there has been a substantial reduction in the Bank's advances outstanding.

(2) *Limitations on grounds for suspension.* The Board of Directors shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of:

(i) A change in the terms of advances to members which is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

(c) *Board of Directors decision.* The Board of Directors' decision shall be in writing and shall be accompanied by specific findings and reasons for its action. If the Board of Directors approves a Bank's application for a temporary suspension, the Board of Directors' written decision shall specify the period of time such suspension shall remain in effect.

(d) *Monitoring.* During the term of a temporary suspension approved by the Board of Directors, the affected Bank shall provide to the Board of Directors such financial reports as the Board of Directors shall require to monitor the financial condition of the Bank.

(e) *Termination of suspension.* If, prior to the conclusion of the temporary suspension period, the Board of Directors determines that the Bank has returned to a position of financial stability, the Board of Directors may, upon written notice to the Bank, terminate the temporary suspension.

(f) *Application for extension of temporary suspension period.* If a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension.

§ 960.15 Affordable Housing Reserve Fund.

(a) *Reserve Fund*—(1) *Deposits.* If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to § 960.2, 90 percent of the unused or uncommitted amount shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund.

(2) *Use or commitment of funds.* Approval of applications for AHP subsidies sufficient to exhaust the amount a Bank is required to contribute pursuant to § 960.2 shall constitute use or commitment of funds. Amounts remaining unused or uncommitted at year-end are deemed to be used or committed if, in combination with AHP subsidies that have been returned to the Bank or de-committed from canceled projects, they are insufficient to fund:

(i) The next highest scoring AHP application in the Bank's final funding period of the year for its competitive application program; or

(ii) Pending applications for funds under the Bank's homeownership set-aside programs.

Such insufficient amounts shall be carried over for use or commitment during the following year.

(b) *Annual statement.* By January 15 of each year, each Bank shall provide to the Finance Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

(c) *Annual notification*. By January 31 of each year, the Finance Board shall notify the Banks of the total amount of funds, if any, available in the Affordable Housing Reserve Fund.

§ 960.16 Application to existing AHP projects.

The requirements of section 10(j) of the Act and the provisions of this part, as amended, are incorporated into all agreements between Banks, members, sponsors, or owners receiving AHP subsidies. To the extent the requirements of this part are amended from time to time, such agreements are deemed to incorporate the amendments to conform to any new requirements of this part. No amendment to this part shall affect the legality of actions taken prior to the effective date of such amendment.

SUBCHAPTER F—COMMUNITY INVESTMENT

PART 970—Community Investment Cash Advance Programs

Sec.
970.1 Scope.
970.2 Purpose.
970.3 Definitions.
970.4 Community Lending Plan.
970.5 Community Investment Cash Advance Programs.
970.6 Reporting.
970.7 Documentation.

AUTHORITY: 12 U.S.C. 1422b(a)(1) and 1430.

SOURCE: 63 FR 65546, Nov. 27, 1998, unless otherwise noted.

§970.1 Scope.

Section 10(j)(10) of the Act authorizes the Banks to offer Community Investment Cash Advance (CICA) programs. (See 12 U.S.C. 1430(j)(10)). This part establishes requirements for all CICA programs offered by a Bank, except for a Bank's Affordable Housing Program (AHP), which is governed specifically by part 960 of this chapter.

§970.2 Purpose.

The purpose of this part is to identify community lending projects that the Banks may support through the establishment of CICA programs under section 10(j)(10) of the Act. (12 U.S.C. 1430(j)(10)). Pursuant to this part, a Bank may offer Rural Development Advance (RDA) or Urban Development Advance (UDA) programs, or both, for community lending using the targeted beneficiaries or targeted income levels specified in §970.3 of this part, without prior Finance Board approval. A Bank also may offer other CICA programs for community lending using targeted beneficiaries and targeted income levels other than those specified in §970.3 of this part, established by the Bank with the prior approval of the Finance Board. In addition, a Bank shall offer CICA programs under section 10(i) of the Act (Community Investment Program (CIP), 12 U.S.C. 1430(i)), and section 10(j) of the Act (Affordable Housing Program (AHP), 12 U.S.C. 1430(j)).

§970.3 Definitions.

As used in this part:

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

Advance has the same meaning as in §935.1 of this chapter.

AHP means the Affordable Housing Program, the CICA program required to be offered pursuant to section 10(j) of the Act (12 U.S.C. 1430(j)) and part 960 of this chapter.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board of Directors means the Board of Directors of the Finance Board.

Champion Community means a community which developed a strategic plan and applied for designation by either the Secretary of HUD or the Secretary of the USDA as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.

CICA or *Community Investment Cash Advance* has the same meaning as in §935.1 of this chapter.

CICA program or *Community Investment Cash Advance program* means:

(1) A Bank's AHP;

(2) A Bank's CIP;

(3) REA Bank's RDA program or UDA program using any combination of the targeted beneficiaries and targeted income levels specified in §970.3 of this part; and

(4) Any other program offered by a Bank using targeted beneficiaries and targeted income levels other than those specified in §970.3 of this part, established by the Bank with the prior approval of the Finance Board.

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

Community lending means providing financing for economic development projects for targeted beneficiaries.

Economic development projects means:

(1) Commercial, industrial, manufacturing, social service, and public facility projects and activities; and

(2) Public or private infrastructure projects, such as roads, utilities, and sewers.

Family means one or more persons living in the same dwelling unit.

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

Housing projects means projects or activities that involve the purchase, construction or rehabilitation of, or predevelopment financing for:

(1) Individual owner-occupied housing units, each of which is purchased or owned by a family with an income at or below the targeted income level;

(2) Projects involving multiple units of owner-occupied housing in which at least 51% of the units are owned or are intended to be purchased by families with incomes at or below the targeted income level;

(3) Rental housing where at least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(4) Manufactured housing parks where:

(i) At least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(ii) The project is located in a neighborhood with a median income at or below the targeted income level.

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

Median income for the area. (1) *Owner-occupied housing projects and economic development projects.* For purposes of owner-occupied housing projects and economic development projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD;

(ii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iii) The median income for the area, as published by the USDA; or

(iv) The median income for any definable geographic area, as published by a Federal, State, or local government entity for purposes of that entity's housing and economic development programs, and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(2) *Rental housing projects.* For purposes of rental housing projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for any definable geographic area, as published by a Federal, State, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§933.20 and 933.25 of this chapter.

MSA means a Metropolitan Statistical Area as designated by the Office of Management and Budget.

Neighborhood means:

(1) A census tract or block numbering area;

(2) A unit of local government with a population of 25,000 or less;

(3) A rural county; or

(4) A geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographic designation that is within the boundary of but does not encompass the entire area of a unit of general local government.

Nonmember borrower means an entity that has been approved as a nonmember mortgagee pursuant to Subpart B of part 935 of this chapter.

Provide financing means:

(1) Originating loans;

(2) Purchasing a participation interest, or providing financing to participate, in a loan consortium for CICA-eligible housing or economic development projects;

(3) Making loans to entities that, in turn, make loans for CICA-eligible housing or economic development projects;

(4) Purchasing mortgage revenue bonds or mortgage-backed securities, where all of the loans financed by such bonds and all of the loans backing such securities, respectively, meet the eligibility requirements of the CICA program under which the member or nonmember borrower receives an advance;

(5) Creating or maintaining a secondary market for loans, where all such loans are mortgage loans meeting the eligibility requirements of the CICA program under which the member or nonmember borrower receives an advance;

(6) Originating CICA-eligible loans within 3 months prior to receiving the CICA advance; and

(7) Purchasing low-income housing tax credits.

RDA or *Rural Development Advance* means an advance made pursuant to an RDA program.

RDA program or *Rural Development Advance program* means a program offered by a Bank for community lending in rural areas.

Rural area means:

(1) A unit of general local government with a population of 25,000 or less;

(2) An unincorporated area outside an MSA; or

(3) An unincorporated area within an MSA that qualifies for housing or economic development assistance from the USDA.

Small business means a ''small business concern,'' as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration under 13 CFR part 121, or any successor provisions.

Targeted beneficiaries means beneficiaries determined by the geographical area in which a project is located (Geographically Defined Beneficiaries), by the individuals who benefit from a project as employees or service recipients (Individual Beneficiaries), or by the nature of the project itself (Activity Beneficiaries), as follows:

(1) Geographically Defined Beneficiaries:

(i) The project is located in a neighborhood with a median income at or below the targeted income level;

(ii) The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of the USDA;

(iii) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of HUD;

(iv) The project is located in an Indian area, as defined by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), Alaskan Native Village, or Native Hawaiian Home Land;

(v) The project is located in an area and involves a property eligible for a Brownfield Tax Credit;

(vi) The project is located in an area affected by a military base closing and is a ''community in the vicinity of the installation'' as defined by the Department of Defense at 32 CFR part 176;

(vii) The project is located in a designated community under the Community Adjustment and Investment Program as defined under 22 U.S.C. 290m-2;

(viii) The project is located in a Federally declared disaster area; or

(ix) The project is located in a state declared disaster area, or qualifies for assistance under another Federal or State targeted economic development program, approved by the Finance Board.

(2) Individual Beneficiaries:

(i) The annual salaries for at least 51% of the permanent full- and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level; or

(ii) At least 51% of the families who otherwise benefit from (other than through employment), or are provided services by, the project have incomes at or below the targeted income level.

(3) Activity Beneficiaries: Projects that qualify as small businesses.

(4) Other Targeted Beneficiaries. A Bank may designate, with the prior approval of the Finance Board, other targeted beneficiaries for its community lending.

(5) Only targeted beneficiaries identified in paragraphs (1)(i) through (1)(iv),

and (2)(i) and (2)(ii) of this definition are eligible for CIP advances.

Targeted income level means:

(1) For rural areas, incomes at or below 115 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;

(2) For urban areas, incomes at or below 100 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;

(3) For CICA advances provided under CIP:

(i) For economic development projects, incomes at or below 80 percent of the median income for the area; or

(ii) For housing projects, incomes at or below 115 percent of the median income for the area, both as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four; or

(4) For CICA advances provided under any other CICA program offered by a Bank, a targeted income level established by the Bank with the prior approval of the Finance Board.

UDA or *Urban Development Advance* means an advance made pursuant to a UDA program.

UDA program or *Urban Development Advance program* means a program offered by a Bank for community lending in urban areas.

Urban area means:

(1) A unit of general local government with a population of more than 25,000; or

(2) An unincorporated area within an MSA that does not qualify for housing or economic development assistance from the USDA.

USDA means the United States Department of Agriculture.

§ 970.4 Community Lending Plan

Each Bank shall develop and adopt an annual Community Lending Plan pursuant to § 936.6 of this chapter.

§ 970.5 Community Investment Cash Advance Programs.

(a) *In general.* (1) Each Bank shall offer an AHP in accordance with part 960 of this chapter.

(2) Each Bank shall offer a CIP to provide financing for housing projects and for eligible community lending at the appropriate targeted income levels.

(3) Each Bank may offer RDA programs or UDA programs, or both, for community lending using the targeted beneficiaries or targeted income levels specified in § 970.3 of this part, without prior Finance Board approval.

(4) Each Bank may offer CICA programs for community lending using targeted beneficiaries and targeted income levels other than those specified in § 970.3 of this part, established by the Bank with the prior approval of the Finance Board.

(b) *Mixed-use projects.* (1) For projects funded under CICA programs other than CIP, involving a combination of housing projects and economic development projects, only the economic development components of the project must meet the appropriate targeted income level for the respective CICA program.

(2) For projects funded under CIP, both the housing and economic development components of the project must meet the appropriate targeted income levels.

(c) *Refinancing.* CICA advances other than AHP may be used to refinance economic development projects and housing projects, provided that any equity proceeds of the refinancing of rental housing and manufactured housing parks are used to rehabilitate the projects or to preserve affordability for current residents.

(d) *Pricing and Availability of CICA advances*—(1) *Advances to members.* For CICA programs other than AHP and CIP, a Bank shall price advances to members as provided in § 935.6 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Act. (12 U.S.C. 1430(a)).

(2) *Pricing of CIP advances.* The price of CICA advances made under CIP shall not exceed the Bank's cost of issuing consolidated obligations of comparable

maturity, taking into account reasonable administrative costs.

(3) *Pricing of AHP advances.* A Bank shall price CICA advances made under AHP in accordance with parts 935 and 960 of this chapter.

(4) *Advances to nonmember borrowers.* (i) A Bank may offer advances under CICA programs to nonmember borrowers at the Bank's option, except for AHP and CIP, which are available only to members.

(ii) A Bank shall price advances to nonmember borrowers as provided in §935.24 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10b of the Act. (12 U.S.C. 1430b).

(5) *Pricing pass-through.* A Bank may require that borrowers receiving CICA advances pass through the benefit of any price reduction from regular advance pricing to their borrowers.

(6) *Discount Fund.* (i) A Bank may establish a fund which the Bank may use to reduce the price of CIP or other CICA advances below the advance prices provided for by this part.

(ii) Price reductions made through the Discount Fund shall be made in accordance with a fair distribution scheme.

§970.6 Reporting.

(a) By July 1, 1999, each Bank shall provide to the Finance Board an initial assessment of the credit needs and market opportunities in a Bank's district for community lending.

(b) Effective in 2000, each Bank annually shall provide to the Finance Board, on or before January 31, a Community Lending Plan.

(c) Each Bank shall provide such other reports concerning its CICA programs as the Finance Board may request from time to time.

§970.7 Documentation.

(a) A Bank shall require the borrower to certify to the Bank that each project funded by a CICA advance (other than AHP) meets the respective targeting requirements of the CICA program. Such certification shall include a description of how the project meets the requirements, and where appropriate, a statistical summary or list of incomes of the borrowers, rents for the project, or salaries of jobs created or retained.

(b) For those CICA-funded projects that also receive funds from another targeted Federal economic development program that has income targeting requirements that are the same as, or more restrictive than, the targeting requirements of the applicable CICA program, the Bank shall permit the borrower to certify that compliance with the criteria of such Federal economic development program will meet the requirements of the respective CICA program.

(c) Such certifications shall satisfy the Bank's obligations to document compliance with the CICA lending provisions of this part.