

paid to the organization and they, in turn, pay the provider. In any case, the provider will invoice the organization that administers the program.

§ 792.228 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee receiving tuition assistance has enrolled his or her child in the child care center or family child care home?

Yes, you may wish to disburse one lump sum to the organization administering the tuition assistance program and they will be responsible for tracking the utilization and providing you with regular reports. An agency contract should specify that any unexpended funds shall be returned to the agency after contract completion.

§ 792.229 How will the disbursement covered by § 792.227 work where there is a Federally sponsored child care center in a multi-tenant building?

In a multi-tenant building, funds from the agencies could be pooled together for the benefit of the employees qualified for tuition assistance.

§ 792.230 For how long will the tuition assistance be in effect for a Federal employee?

The tuition assistance, in the form of a reduced tuition rate, will be in effect from the time the decision for a particular Federal employee is made and the child is enrolled in the program, until the child is no longer enrolled, but not later than September 30, 2000. These funds are not available to pay for services performed after September 30, 2000.

§ 792.231 Can these funds be used for children of Federal employees who are already enrolled in child care?

Yes, the funds can be used for children currently enrolled in child care as long as their families meet the tuition assistance eligibility requirements established by your agency.

§ 792.232 Can we place special restrictions or requirements on the use of these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?

(a) Yes, depending on your staffing needs and your employees' situations, including the local availability of child care, you may choose to place restrictions on the use of your funds in a number of ways including, but not limited to:

- (1) Fund Federal employees using family child care homes;
- (2) Fund Federal employees using your on-site child care center;
- (3) Fund Federal families using community, non-Federal child care centers; or

(4) Restrict the use of such funds to one or more locations.

(b) It is up to you to determine whether there will be any restrictions on the use of your appropriated funds for child care tuition costs.

§ 792.233 May we use the funds to improve the physical space of the family child care homes or child care centers?

No, the legislation specifically addresses making the child care more affordable for lower income Federal employees.

§ 792.234 For how long is the law effective?

The law is effective for one year, ending September 30, 2000.

§ 792.235 Who will oversee the disbursement and use of these funds?

You will be responsible for tracking the utilization of these funds. OPM's guidance which was issued on December 23, 1999, and which was reissued with updates on March 14, 2000, contains details about the oversight of this program and the mandatory reporting requirements. The guidance contains sample marketing materials, sample tuition assistance documents, the OPM reporting form, as well as suggestions for determining eligibility.

[FR Doc. 00-6192 Filed 3-9-00; 3:45 pm]

BILLING CODE 6325-01-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Chapter IX

[No. 2000-09]

RIN 3069-AA-96

Devolution of Corporate Governance Responsibilities

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting as final, with several changes, the Interim Final Rule amending its regulations to devolve certain corporate governance responsibilities from the Finance Board to the Federal Home Loan Banks (Banks), pursuant to the requirements of the Federal Home Loan Bank System Modernization Act of 1999.

EFFECTIVE DATE: This final rule shall be effective on March 14, 2000.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408-2821, or Scott L. Smith, Deputy Director, (202) 408-2991, Office of Policy, Research and Analysis; or

Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Bank System and Finance Board Roles and Responsibilities; Regulatory Background

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks. *See* 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (1994). Specifically, the Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that primary duty, the Finance Board also is responsible for ensuring that the Banks carry out their housing finance and community lending mission, and that they remain adequately capitalized and able to raise funds in the capital markets. *See id.* § 1422a(a)(3).

Historically, the Bank Act has required the Finance Board to be involved in varying degrees in the corporate governance of the Banks, typically by requiring Finance Board approval for a host of Bank practices. However, the recently enacted Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act)¹ repealed most of those requirements, thereby removing most of the last vestiges of governance responsibilities from the Finance Board. *See* Pub. L. No. 106-102, §§ 604(a)(6); 606(d), (f), (g) (1999). Accordingly, the Finance Board adopted the Interim Final Rule, which amended its regulations to remove the corresponding Finance Board approval requirements for such corporate governance functions, consistent with the Modernization Act. *See* 64 FR 71275 (Dec. 21, 1999). The Interim Final Rule maintained or imposed standards or requirements on the Banks where deemed necessary for reasons of safety and soundness and sound corporate governance practice. *See id.*

The Interim Final Rule provided for a 30-day comment period, which closed on January 20, 2000. The Finance Board received a total of 8 comment letters on the Interim Final Rule. Commenters included six Banks, a trade association representing 10 of the 12 Banks, and a banking institutions trade association. The provisions of the Interim Final Rule on which significant comments were received are discussed below.

¹ The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338, enacted into law on November 12, 1999.

II. Analysis of the Final Rule

A. Amendment of Bank Directors' Meeting and Compensation and Expenses Provisions—§§ 918.3, 918.7

1. Annual Directors' Compensation Limits—§ 918.3(a)(2)

The Modernization Act amended section 7(i) of the Bank Act by imposing specific limits on annual compensation for the Chairperson, Vice Chairperson and other members of a Bank's board of directors. See Modernization Act, § 606(b). The statutory limits on directors' annual compensation were implemented in revised § 932.17(c)(1) of the Interim Final Rule,² to be effective in 2000. Commenters requested clarification on the applicability of the annual compensation limits to the payment by the Banks of deferred compensation to Bank directors.³ As § 918.3(a)(2) of the final rule now states, starting in 2000, the annual compensation limits would apply to the year in which the deferred compensation was accrued or earned, and not to the year in which it is paid. Thus, amounts accrued in 2000 but paid to the director in 2001 would be subject to the annual compensation limit applicable for 2000.

2. Maintenance of Effort Standard; Minimum Number of In-Person Bank Board Meetings Requirement—§ 918.7

Section 932.16(b)(1) of the Interim Final Rule (redesignated § 918.7(a)) required each Bank's board of directors to continue to maintain its level of oversight of the management of the Bank and, except as provided in paragraph (b)(2) (redesignated paragraph (b)), to hold no fewer in-person board meetings in any year than it has held on average over the immediately preceding three years. Redesignated paragraph (b) provided that a Bank may apply to the Finance Board for approval, upon a showing of good cause, to hold in any year fewer than the number of in-person board meetings required under paragraph (a).

Commenters generally opposed the minimum meetings requirement on the ground that such decisions are within the fiduciary corporate governance responsibilities of the Banks' boards and, therefore, should not be regulated

by the Finance Board. One commenter stated that the requirement was unnecessary in light of the Finance Board's recently proposed regulation setting forth the responsibilities of Bank boards as a means of ensuring that they fulfill their duties to operate the Banks in a safe and sound manner. See 65 FR 81 (January 3, 2000). Another commenter stated that the three-year averaging requirement unnecessarily reduces the flexibility of the Banks to make decisions on the number of board meetings, which normally are based on a number of subjective factors, and may not be appropriate to meet current needs of the Bank. One commenter also stated that the Finance Board can address any concerns in this area through the examination and supervision process.

As discussed in the preamble to the Interim Final Rule, the minimum meetings requirement was adopted for safety and soundness reasons. See 64 FR 71275. The reduction in compensation to be paid to directors as a result of the new annual compensation limits has raised concerns that the Banks' boards will hold fewer meetings, thus reducing their level of oversight of the management of the Banks.

The Finance Board acknowledges that decisions on the number of Bank board meetings generally should be within the purview of the corporate governance responsibilities of the Banks' boards, and general corporate governance standards are set forth in the Finance Board's proposed corporate governance rule as a means of ensuring that the Banks' boards fulfill their duties to operate the Banks in a safe and sound manner. However, the Finance Board believes that, notwithstanding the Bank boards' fiduciary duties regarding safety and soundness, the Finance Board's safety and soundness concerns with respect to the Bank boards' level of oversight of Bank management warrant a regulatory response in this area. Accordingly, the Finance Board is retaining a minimum meetings requirement in the final rule.

However, based on the comments received, the Finance Board believes that the required minimum number of meetings per year should be reduced. Historically, the Banks held monthly board meetings. In recent years, the trend has been to operate with fewer board meetings at many of the Banks. For 2000, statistics indicate that the three-year averaging requirement in the Interim Final Rule would result in at least: (i) 12 in-person meetings for one Bank; (ii) 11 in-person meetings for one Bank, which has applied for Finance Board approval to hold 9 in-person meetings; (iii) 9 in-person meetings for

4 Banks; (iv) 8 in-person meetings for 1 Bank, which has applied for Finance Board approval to hold 6 in-person meetings; (v) 7 in-person meetings for 4 Banks; and (vi) 6 in-person meetings for 1 Bank. The Finance Board recognizes that a pure averaging requirement incorporates the vagaries of timing into the calculation of the minimum meetings requirement for a particular Bank. For example, in 2000, 2 Banks would be required to hold more than 9 in-person board meetings per year, while the other 10 Banks would be allowed to hold 9 or fewer such meetings. While the Finance Board still believes it is important to maintain a minimum meeting standard for all of the reasons discussed in the preamble to the Interim Final Rule, it is persuaded that it would be fair and reasonable to reduce the minimum meetings requirement to reflect the operational reality at the Banks. Accordingly, the final rule amends the Interim Final Rule to provide that a Bank's board of directors shall hold a minimum number of meetings per year equal to the lesser of: (i) The three-year averaging requirement for the Bank; or (ii) 9. See § 918.7(a).

In response to a request from one commenter, the final rule also revises the Interim Final Rule to clarify that if the three-year averaging number is a fraction, the Bank may, in its discretion, round down the number to the nearest whole number. See § 918.7(a)(2).

Several commenters urged that teleconference and videoconference meetings be allowed to count towards the minimum meetings requirement. The Finance Board believes that calling in-person board meetings is necessary to enable the directors to fulfill their responsibilities to operate the Banks in a safe and sound manner, and this requirement is maintained in the final rule. The final rule does not prohibit an individual director from participating in a meeting called as an in-person meeting by teleconferencing or videoconferencing.

The final rule also revises the Interim Final Rule to clarify that a Bank may apply to the Finance Board for a waiver of the minimum meetings requirement in paragraph (a) pursuant to the waiver procedures set forth in part 907 of the Finance Board's regulations. See 12 CFR part 907.

3. Prohibition on Payment of Retainer Fees—§ 918.3(b)

The Interim Final Rule revised § 932.17(c)(2) (redesignated § 918.3(b)) to provide that, starting in 2000, the total compensation received by each director in a year shall reflect the

² The Finance Board recently reorganized and redesignated all of its regulations. See 65 FR 8253 (Feb. 18, 2000). Section 932.17(c)(1) of the Interim Final Rule was redesignated as § 918.3(a). See 65 FR 8253, 8260 (*to be codified at* 12 CFR 918.3(a)).

³ The Finance Board has no regulation or policy prohibiting the Banks from adopting deferred compensation plans for Bank directors, and neither the Interim Final Rule nor this final rule prohibits the Banks from adopting such plans.

amount of time spent on official Bank business, such that greater or lesser attendance at board and committee meetings during a given year will be reflected in the compensation received by the director for that year. This section also provided that a Bank shall not pay fees to a director, such as retainer fees, that do not reflect the director's performance of official Bank business.

As discussed in the preamble to the Interim Final Rule, these provisions were intended to ensure that, consistent with Congressional intent, directors be compensated only for the performance of official Bank business and not simply for holding office. *See* 64 FR 71275. The preamble stated that a director who regularly fails to attend board or committee meetings may not be paid at all, and the Finance Board would consider such failure a dereliction of the director's fiduciary duties that would constitute cause for removal of the director, pursuant to section 2B(a)(2) of the Bank Act. *See id.*; 12 U.S.C. 1422b(a)(2) (1994).

Commenters objected to these provisions in the Interim Final Rule, apparently interpreting them as prohibiting the Banks from paying directors for official Bank business conducted by the directors outside of board or committee meetings, such as the time and effort expended in preparing for board and committee meetings, monitoring ongoing activities of the Bank, and staying informed on financial and other business developments relevant to the Bank. The revisions in the Interim Final Rule were not intended by the Finance Board to prohibit the Banks from paying directors for the performance of such official Bank business in between board or committee meetings, as long as the director also continues to regularly attend board or committee meetings and the fees are paid to the director after he or she has conducted the official Bank business. Accordingly, the final rule revises the language in the Interim Final Rule to clarify the Finance Board's intent in this regard. *See* § 918.3(b).

B. Clarification of Date of Applicability of Removal of Requirements Regarding Compensation of Bank Officers and Employees—§ 918.9

The Modernization Act amended section 12(a) of the Bank Act by removing the requirement for Finance Board approval in connection with the compensation of Bank officers and employees. *See* Modernization Act, § 606(d)(1)(B). In order to implement this provision, the Interim Final Rule removed § 932.19 of the Finance Board's

regulations. Section 932.19 of the Finance Board's regulations had set forth requirements for the payment of compensation to Bank officers and employees. *See* 12 CFR 932.19 (1999). A number of Banks have raised questions regarding the effect of the Interim Final Rule on their ability to pay compensation to officers or employees for 1999 in excess of that which would have been allowed under § 932.19 of the Finance Board's regulations and the Banks' policies adopted thereunder. These questions actually translate into a question regarding the date of applicability of the removal of the compensation regulation. For the reasons discussed below, notwithstanding the December 21, 1999 overall effective date of the Interim Final Rule, the Finance Board believes that the removal of the requirements relating to compensation of Bank officers and employees in 12 CFR 932.19 (1999) should be applicable only to compensation years starting after December 21, 1999. Accordingly, a new § 918.9 is being added in the final rule to clarify this result.

The compensation regulation in effect in 1999 provided that the maximum incentive payment to a Bank president could not exceed the difference between that president's annual base salary approved by the Bank's board and 125 percent of a base salary cap established by the Finance Board. *Id.* § 932.19(c)(2)(i) (1999). The regulation further provided that, by January 31 of each year, the board of each Bank that intended to make any incentive payment to its president for such year was required to adopt a resolution establishing the performance measures and targets on which such incentive payment would be based. The Banks have operated, and the Bank presidents have performed, pursuant to the provisions of their incentive compensation plans and the Finance Board's compensation regulation for the entire 1999 year.

The Modernization Act, while deleting the requirement in section 12(a) of the Bank Act for Finance Board approval of Bank officer and employee compensation, did not affect in any way the ability of the Finance Board to continue to regulate Bank officer and employee compensation, nor did the enactment of the Modernization Act have the effect of suspending the Finance Board's existing compensation regulation.

Therefore, the controlling statutory, regulatory and corporate governance framework for Bank officer and employee compensation in 1999 should be that which was in place when, on

January 31, each Bank established the base salary for its president, when each Bank adopted its incentive compensation plan for that year, and when, by January 31, each Bank's board established the performance measures and targets on which incentive payments to that Bank's president would be based. This view is consistent with that taken in § 932.17 of the Interim Final Rule (redesignated part 918), and finalized in this final rule, that the annual director compensation limits established in the Modernization Act apply only to compensation to be paid for services performed in 2000 and in subsequent years.

Thus, all compensation, both base salary and incentive compensation, to be paid to a president or other officer of a Bank for services performed during 1999 (or prior compensation years) must comply with the provisions of the 1999 compensation (or the compensation regulation in effect for that compensation year). *See* 12 CFR 932.19 (1999).

The Finance Board is aware that a number of Banks had a practice of adopting incentive compensation plans that permitted the Banks' presidents to earn incentive compensation in excess of the limits established in the compensation regulation, although to the Finance Board's knowledge, no Bank's plan provided for the payment of those excess amounts. Because the removal of the compensation requirements in 12 CFR 932.19 (1999) is applicable only to compensation years starting after December 21, 1999, Banks that had adopted such plans in 1999 and before may not pay incentive compensation earned under such plans in excess of the limits established by the Finance Board in the 1999 compensation regulation (or prior compensation regulations). *See id.* § 932.19(c)(2) (1999).

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply. Moreover, the final rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act. *See id.* § 601(6).

IV. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects 12 CFR Parts 917, 918 and 950

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Interim Final Rule amending 12 CFR chapter IX, which was published at 64 FR 71275 (Dec. 21, 1999), and amended at 65 FR 8253 (Feb. 18, 2000), is adopted as final with the following changes:

PART 918—BANK COMPENSATION, EXPENSES AND MEETINGS

1. The authority citation for part 918 continues to read as follows:

Authority: 12 U.S.C. 1422b(a), and 1427.

2. Revise the heading of § 918.2 to read as follows:

§ 918.2 Annual directors' compensation policy.

* * * * *

3. Amend § 918.3 by:
 a. Revising the heading;
 b. Redesignating paragraph (a) as paragraph (a)(1);
 c. Adding paragraph (a)(2); and
 d. Revising paragraph (b), to read as follows:

§ 918.3 Directors' compensation policy requirements.

* * * * *

(a) * * *
 (1) * * *

(2) Starting in 2000, the annual compensation limits set forth in paragraph (a)(1) of this section shall apply to the year in which any deferred compensation was accrued or earned by a director, and not to the year in which it is paid to the director.

(b) *Compensation permitted only for performance of official Bank business.* The total compensation received by each director in a year shall reflect the amount of time spent on official Bank business, and greater or lesser attendance at board and committee meetings during a given year shall be reflected in the compensation received by the director for that year. A Bank shall not pay a director who regularly fails to attend board or committee meetings. A Bank shall not pay fees to a director, such as retainer fees, that do not reflect the director's performance of official Bank business conducted prior to the payment of such fees.

4. Revise the heading of § 918.4 to read as follows:

§ 918.4 Directors' expenses.

* * * * *

5. Revise § 918.7 to read as follows:

§ 918.7 Maintenance of effort.

(a) *General.* Notwithstanding the limits on annual directors' compensation established by section 7(i) of the Act, as amended, the board of directors of each Bank shall continue to maintain its level of oversight of the management of the Bank, and, except as provided in paragraph (b) of this section, the board of directors shall hold a minimum number of in-person meetings in any year equal to the lesser of:

(1) 9; or

(2) The number of in-person board of directors meetings held by the Bank on average over the immediately preceding three years (which number, if a fraction, may be rounded down to the nearest whole number, in the Bank's discretion).

(b) *Waiver of minimum meetings requirement.* A Bank may apply to the Finance Board for a waiver of paragraph (a) of this section pursuant to the procedures set forth in part 907 of this chapter.

6. Add § 918.9 to read as follows:

§ 918.9 Date of applicability of removal of requirements regarding compensation of bank officers and employees.

The removal of the requirements relating to compensation of Bank officers and employees in 12 CFR 932.19 (in the Code of Federal Regulations revised as of January 1, 1999), is applicable for all Bank officer and employee compensation years starting after December 21, 1999.

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

Dated: February 23, 2000.

Bruce A. Morrison,
Chairman.

[FR Doc. 00-6201 Filed 3-13-00; 8:45 am]

BILLING CODE 6725-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 25**

[Docket No. NM169; Special Conditions No. 25-157-SC]

Special Conditions: Boeing Model 727-200 and 727-200F Series Airplanes; as Modified by Rockwell Collins; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 727-200 and

727-200F series airplanes modified by Rockwell Collins. These modified airplanes will have a novel or unusual design feature associated with the Rockwell Collins Multi-Mode Receiver (MMR) System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 6, 2000.

Comments must be received on or before April 13, 2000.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-114), Docket No. NM169, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM169. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Mark Quam, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2145; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those