

Form I-191. For filing applications for discretionary relief under section 212(c) of the Act—\$195.00.

Form I-192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—\$195.00.

Form I-193. For filing an application for waiver of passport and/or visa—\$195.00.

Form I-212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—\$195.00.

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Form I-360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—\$130.00, except there is no fee for a petition seeking classification as an Amerasian.

Form I-485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—\$255.00 for an applicant 14 years of age or older; \$160.00 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act. All applicants filing for Adjustment of Status under LIFE Act Legalization (Public Law 106-553) must pay \$330.00.

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Form I-506. For filing an application for change of nonimmigrant classification under Section 248 of the Act—\$85.00.

Form I-526. For filing a petition for an alien entrepreneur—\$400.00.

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Form I-539. For filing an application to extend or change nonimmigrant status—\$140.00.

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Form I-600. For filing a petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—\$460.00.

Form I-600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—\$460.00.

Form I-601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act.

(Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—\$195.00.

Form I-612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—\$195.00.

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Form I-751. For filing a petition to remove the conditions on residence, based on marriage—\$145.00.

Form I-765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—\$120.00.

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Form I-817. For filing an application for voluntary departure under the Family Unity Program—\$140.00.

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Form I-824. For filing for action on an approved application or petition—\$140.00.

Form I-829. For filing a petition by entrepreneur to remove conditions—\$395.00.

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Form N-300. For filing an application for declaration of intention—\$60.00.

Form N-336. For filing a request for hearing on a decision in naturalization proceedings under section 366 of the Act—\$195.00.

Form N-400. For filing an application for naturalization—\$260.00.

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Form N-470. For filing an application for section 316(b) or 317 of the Act benefits—\$95.00.

Form N-565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—\$155.00.

Form N-600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—\$185.00.

Form N-643. For filing an application for a certificate of citizenship on behalf of an adopted child—\$145.00.

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Dated: August 3, 2001.

Larry D. Thompson,  
Acting Attorney General.

[FR Doc. 01-19875 Filed 8-3-01; 2:37 pm]

BILLING CODE 4410-10-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 925, 930, 931, 932, and 933

[No. 2001-17]

RIN 3069-AB06

Capital Requirements for Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing a small number of modifications to the capital and related regulations that were adopted on December 20, 2000. Many of the changes were identified in response to an advance notice of proposed rulemaking (ANPR) relating to unforeseen issues that were not addressed by the final capital rule. In addition to proposing certain conforming amendments, the Finance Board is proposing to clarify that the Federal Home Loan Banks (Banks) may pay dividends on Class A stock from retained earnings, to provide Banks with discretion to prohibit members from transferring Bank stock, to define the phrase "charges against the capital of the Bank", to clarify the off-balance sheet conversion factors for commitments to make advances and commitments to acquire loans, to change the provision governing the membership termination date for members seeking to voluntarily withdraw from the Bank System, and to add a requirement that a Bank make certain disclosures to its members before its capital plan can be implemented. This proposal also addresses other issues arising under the capital rule that, based on the ANPR comments, appear to require additional explanation or clarification, even though no amendments to the regulations are being proposed.

DATES: The Finance Board will consider written comments on the proposed rulemaking that are received on or before September 7, 2001.

ADDRESSES: Send comments to: Elaine L. Baker, Secretary to the Board, by electronic mail at , or by regular mail to the Board, at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Managing Director, (202) 408-2821; Scott L. Smith, Acting Director, (202) 408-2991; Ellen

Hancock, Senior Financial Analyst, (202) 408-2906; or Christina Muradian, Senior Financial Analyst, (202) 408-2584, Office of Policy, Research and Analysis; or Deborah F. Silberman, General Counsel, (202) 408-2570; Neil R. Crowley, Deputy General Counsel, (202) 408-2990; Thomas F. Hearn, Senior Attorney-Advisor, (202) 408-2976; or Thomas E. Joseph, Senior Attorney-Advisor, (202) 408-2512, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

#### SUPPLEMENTARY INFORMATION

##### I. Background

The Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 133 Stat. 1338 (November 12, 1999) (GLB Act), amended the Federal Home Loan Bank Act (Bank Act) to change, among other things, the capital structure of the Banks from a "subscription" structure to one that includes both risk-based and minimum leverage requirements. The GLB Act also required the Finance Board to prescribe uniform capital standards for the Banks and required each Bank to adopt and implement a capital plan consistent with provisions of the GLB Act and Finance Board regulations.

In addition to approving the new capital regulations, the Finance Board adopted on December 20, 2000 a resolution directing its staff to develop an ANPR that would seek comment on any issues that could arise in the capital planning process, from actions of other regulatory bodies or from other events in the general economy that could affect the capital development of the Banks, and that could require further action by the Finance Board. Accordingly, on March 2, 2001, the Finance Board approved an ANPR to help identify issues or uncertainties that were not contemplated by, or fully addressed in, the final capital rule or that have arisen only after the Banks have begun to develop their capital plans. See 66 FR 14093 (March 9, 2001). In addition to soliciting information on unresolved issues, the ANPR also sought comment on two specific issues: (1) how best to pay dividends on Class A stock, given statutory language that could be read to create a property interest for Class B stock holders in retained earnings; and (2) whether additional consideration needed to be given to the question of capitalizing out-of-district assets.

The Finance Board received 16 comment letters on the ANPR. Eight letters were from Banks, five from trade associations, and three letters were from Bank members, although two of the member comment letters were from the same member. The Finance Board has

carefully considered all comments received on the ANPR. It is addressing below, however, only those issues that were not fully considered and resolved in the final capital rule, that have arisen since the Finance Board adopted the capital rule or that appear to require additional clarification or explanation. Some of the issues are addressed by proposing specific changes to the capital rule. In other cases, the Finance Board addresses the issues through a more complete explanation of current regulatory provisions.

##### II. Proposed Changes to the Regulations

*Voluntary withdrawal from membership.* One Bank requested guidance for applying § 925.26(b) and (c) of the Finance Board's rules in two specific situations. See 12 CFR 925.26(b) and (c). The Finance Board believes that the first issue raised by the commenter may best be addressed through a rule change, as is discussed below, while the second issue can be addressed by the Banks themselves in their capital plans.

The first issue assumes that a member is required to hold Class B shares to support outstanding borrowing from a Bank and is required to hold Class A shares as a condition of membership. Under those circumstances, the Bank asked whether a member withdrawing from the Bank could redeem its Class A stock at the end of the six-month redemption period or must the member wait until the end of the five-year Class B redemption period.

As adopted, § 925.26(b) sets the effective date of a member's termination as of the date on which the last of the applicable stock redemption period ends for the member's stock, whether the stock in question is held as a condition of membership, to fulfill an activity-based stock purchase requirement or as excess stock, unless the member cancels its withdrawal notice before that date. Thus, this provision would appear to prevent the Bank from redeeming Class A stock at the end of the six-month redemption period because that stock would be required to be held as a condition of membership until the membership terminates at the end of the five-year redemption period for the member's outstanding Class B stock. Because the rule appears effectively to extend the redemption notice period for Class A stock in the situation described by linking the membership termination to activity-based stock purchase requirements, and thereby, may burden members unnecessarily, the Finance Board is proposing to change the regulation. Under the proposed change, the membership of an institution that

has submitted a notice of withdrawal would terminate as of the date on which the last of the applicable stock redemption periods end for the stock that is held as a condition of membership, as that requirement is set out in the Bank's capital plan, unless the institution has cancelled its notice of withdrawal prior to that date. If adopted, the proposed change would, in situations like those described by the Bank, require the Bank to redeem the Class A shares that are held as a condition of membership at the end of six-months, unless a Bank's membership requirement also required a member to hold Class B stock. In most cases, however, the Finance Board believes that the proposed rule change would help assure that the redemption date for the Class A stock held as a condition of membership would correspond to the date on which the member's withdrawal became effective.

The Bank also requested a clarification of the application of § 925.26(c), to a member that continues to participate in an activity after filing a notice of withdrawal. Specifically, the Bank asked if the redemption period for any additional Class B stock bought to fulfill an activity stock purchase requirement would begin to run from the date that the original withdrawal notice was filed, from the date of purchase of the new Class B stock, or some other date.

Under § 925.26(c), as adopted, the receipt by the Bank of a member's notice to withdraw commences the applicable stock redemption period for all Bank stock held by the member that is not already subject to a redemption request. The regulation does not address when the redemption period would commence for Bank stock purchased after the notice to withdraw has been submitted (such as to support new advances taken by the member). The regulation currently sets a minimum standard for the commencement of the notice period, as required by the Bank Act. See 12 U.S.C. 1426(d)(1). To the extent that a Bank is concerned about the commencement of the redemption periods for stock purchased subsequent to the submission of the notice to withdraw, it can address this issue in its capital plan by specifying that the redemption period either automatically commences upon purchase of the stock or only after the member has filed a notice to redeem the stock. The Bank, however, could not deem the redemption period to begin earlier than the date of purchase of the stock (such as on the date the Bank received the notice to withdraw) because that would

effectively cut short the statutory redemption period for the stock.

Alternatively, the redemption period may not be effectively lengthened either. For example, consider a member that holds only Class B stock, provides the Bank with a notice of withdrawal, and on the same day takes down a seven-year advance and purchases the additional Class B stock to support the advance. Five years after the notice of withdrawal, membership would terminate and all excess stock would be redeemed. The member, however, still would have an advance outstanding and still would hold stock that supports the advance. At the time of withdrawal, the member would have the option to hold the advance until maturity—in this case, another two years. If the institution makes the decision to hold the advance until maturity, the Bank would have to redeem the stock supporting the advance once the advance has been repaid, because the five-year redemption notice period would have elapsed two years earlier.

The Finance Board does not believe that a change in § 925.26(c) is required and intends to maintain the current flexibility provided in the rule, as outlined above.

*Dividends on Class A stock.* In the ANPR, the Finance Board requested comments on whether, in light of the GLB Act provisions conferring an ownership interest in the retained earnings of a Bank in favor of the Class B stockholders, a Bank could pay dividends to its Class A stockholders from its retained earnings. The Finance Board expressed the view that Congress was unlikely to have intended that the retained earnings provisions would be applied in such a manner as to preclude the possibility of a Bank paying dividends on its Class A stock, and indicated that it was inclined to amend the capital regulations to permit the payment of dividends on Class A stock from the retained earnings of the Bank. See 66 FR at 14093–94.

The Finance Board received comments from several Banks, all of which generally favored amending the regulations as necessary to permit the payment of Class A dividends from retained earnings. One Bank commented that the GLB Act should be construed as permitting dividends to be paid to Class A shareholders from retained earnings. Another Bank recommended that the GLB Act provisions giving Class B shareholders an ownership interest in the retained earnings be construed to mean that Class B shareholders get the retained earnings upon liquidation or the declaration of a dividend, but at all other times the board of directors is free

to use the retained earnings in the ordinary course to pay an FHLBank's obligations, including the declared dividends on Class A Stock. A third Bank indicated that it plans to address any potential problem paying dividends on Class A stock from retained earnings by requiring all members to hold Class B stock; therefore no class of its members will be disadvantaged by a decision to pay dividends on Class A stock. That Bank further indicated that it would limit the amount of dividends paid on its Class A stock to the amount of its current earnings (presumably after they have been transferred to retained earnings), so that there would be no expropriation of retained earnings from a previous period by Class A shareholders. That Bank asked the Finance Board to clarify the conditions under which the Banks may be permitted to pay dividends on Class A stock.

A fourth Bank concurred that there is no indication that Congress intended to deprive Class A shareholders of dividends when it granted ownership of retained earnings to the Class B shareholders, and recommended that the Finance Board permit a Bank to pay Class A dividends from current earnings that have been closed to the Bank's retained earnings account.<sup>1</sup> Another Bank noted that under generally accepted accounting principles in the United States (GAAP) a Bank could pay Class A dividends from its current earnings before closing them to retained earnings, provided the Bank had given the Class A dividend a preferred status. If the Bank did not give the Class A stock such a dividend preference, however, it is not clear that paying such dividends from current net earnings would be permitted under GAAP.

The question about the use of retained earnings as a source of dividends for a Bank's Class A stock arises because of the interrelationship of three provisions of the Bank Act. One provision permits a Bank to pay dividends on its stock only from two sources: previously retained earnings and current net earnings. 12 U.S.C. 1436(a). A separate provision, added by the GLB Act, provides that the holders of the Class B stock shall own the retained earnings of the Bank. *Id.* Section 1426(h)(1). Yet another provision authorizes the Banks

<sup>1</sup> Following that recommendation, however, would require the Finance Board to declare that current earnings that have been transferred to the retained earnings account are not "retained earnings" for regulatory purposes, but continue to be current earnings despite the transfer. Such a change would require the Finance Board to create an accounting standard that varies from GAAP, which the Finance Board does not believe is necessary in order to achieve the same result.

to issue either, or both, Class A and Class B stock and to establish the "terms, rights, and preferences including \* \* \* dividends \* \* \* of each class of stock \* \* \* consistent with Finance Board regulations and market requirements." *Id.* Section 1426(c)(4)(B).

The use of current earnings as a source of dividends (whether for Class A or Class B stock) is problematic because under GAAP a Bank must close its current earnings to its retained earnings account at the close of each accounting period. Although the previously retained earnings of a Bank are, by statute, a source for the payment of dividends, the GLB Act provisions conferring on the Class B stockholders an ownership interest in the retained earnings have created some uncertainty about whether a Bank may use its retained earnings to pay dividends on its Class A stock or only on its Class B stock. See *id.* Section 1426(h)(1). Read narrowly, this provision of the GLB Act could be construed to preclude a Bank from using its retained earnings—the "property" of the Class B stockholders—to pay dividends to the Class A stockholders, at least without the consent of the Class B stockholders. If the Finance Board were to endorse that view, however, it very well could preclude a Bank from paying any dividends on its Class A stock (assuming the Class A stock does not pay a preferred dividend, as noted above), which could effectively frustrate the clear intent of Congress to allow each Bank to determine whether to issue one or two classes of stock. If neither the retained earnings (due to the interest of the Class B stockholders) nor the current earnings (due to the requirements of GAAP) were available to pay dividends on the Class A stock, a Bank would have no other source under the Bank Act from which to pay dividends on its Class A stock.

As noted above, there are other provisions of the GLB Act that suggest strongly that the Congress did not intend that the retained earnings provision should be read so narrowly as to preclude the payment of dividends on the Class A stock. For example, Congress provided that each Bank must include in its capital plan, among other things, provisions relating to the "terms, rights, and preferences, including \* \* \* dividends \* \* \* of each class of stock issued by the bank, consistent with Finance Board regulations and market requirements." *Id.* Section 1426(c)(4)(B). That language clearly contemplates an intent that each Bank should be permitted to establish the dividend rights for each class of its capital stock, and to do so based on its perception of

what the "market" for its stock required, *i.e.*, the terms, rights, and dividends that the members would require in return for purchasing each class of Bank stock.

Given the intent of Congress to allow an individual Bank, subject to Finance Board regulation, to determine the dividend rights for any class of stock that it issues, it appears unlikely that the Congress also intended to preclude a Bank from paying any dividends on the Class A stock. Even if the Congress were to have intended that result, it is more likely that the Congress would have done so expressly, rather than indirectly by enacting a new provision that is somewhat at odds with a long-standing provision of the Bank Act regarding the available sources of dividends for Bank stock. Moreover, construing these provisions of the Bank Act in a manner that would effectively preclude the payment of dividends on the Class A stock could make it difficult, if not impossible, for a Bank to sell Class A stock to its members. That would be an absurd result, in light of the clear intent of the Congress to create a new capital structure for the Banks. For those reasons, the Finance Board believes that it should construe these provisions to allow the payment of dividends on Class A stock from retained earnings, as those amounts may be calculated under GAAP. Accordingly, the Finance Board proposes to amend § 931.4 to state expressly that a Bank may pay dividends on both Class A and Class B stock from either of the sources specified in 12 U.S.C. 1436(a).

*Transfer of capital stock.* One commenter requested that the Finance Board eliminate a member's right to transfer excess capital stock to another member (or prospective member) of that Bank. See 12 CFR 931.6. In the alternative, the commenter requested that the rule be amended to make such member-to-member transfers of Bank stock expressly subject to a Bank's approval. After considering this comment, the Finance Board is proposing to amend § 931.6 to allow a Bank the option of generally prohibiting its members from transferring Bank stock and if a Bank chooses to allow transfers, making the transfers clearly subject to the Bank's approval.

The limited circumstances set forth in § 931.6 in which a member can transfer Bank stock to another member are broadly consistent with current practice for stock transfers that have long been allowed under the Bank Act. See 12 U.S.C. 1426(f)(1994). Further, as initially adopted, § 931.6 effectively provides the Bank with the ability to nullify individual stock transfers by requiring that a member's transfer of

Bank stock be recorded in the books and records of the Bank to be effective, although the provision does not expressly require a Bank to approve a specific transfer. This provision does not, however, allow a Bank generally to prohibit such transfers.

Upon consideration of this comment, the Finance Board believes that it would be consistent with the discretion afforded a Bank in the GLB Act "to establish standards, criteria, and requirements for the \* \* \* transfer \* \* \* of stock issued by that bank," *id.* Section 1426(c)(5)(B), to allow a Bank, as part of its capital plan, either to prohibit any transfers of its stock among its members or to permit these transfers subject to the conditions currently set forth in § 931.6. The Finance Board, therefore, is proposing to amend § 931.6 accordingly and to make a conforming change to § 933.2(e)(3). Under this proposed change, each Bank would be required to state in its capital plan whether a member may transfer capital stock of the Bank, and, if such transfers are allowed, to specify the procedures that a member must follow to effect the transfer, and to specify that any transfer may only be undertaken in the limited circumstances currently set forth in § 931.6. The proposed amendment also expressly provides that a Bank, in its capital plan, may require a member to obtain the Bank's approval to effect the transfer of stock.

*Charges against capital.* Seven Banks commented that the phrase "charges against the capital of the Bank" as used in § 931.8 was ambiguous. See 12 CFR 931.8. Commenters were unsure if the phrase referred to charges against any component of total or permanent capital, including retained earnings, or only to charges against the capital stock of a Bank. They contended that the latter meaning was more reasonable, especially from an operational standpoint, and should be applied.

Section 931.8 specifies that a Bank may not redeem or repurchase capital stock without the written permission of the Finance Board if the Finance Board or the board of directors of the Bank determines that the Bank has or is likely to incur losses that result in or are likely to result in charges against the capital of the Bank. The prohibition of § 931.8 applies even if the Bank would be in compliance with its regulatory capital requirements after the stock repurchase or redemption and for as long as the Bank continues to incur such charges or until the Finance Board determines that such charges are not expected to continue. This provision implements the requirements of § 6(f) of the Bank

Act, as amended by the GLB Act, which states that:

[i]f the Finance Board or the board of directors of a \* \* \* [B]ank determines that the [B]ank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the [B]ank, the [B]ank shall not redeem or repurchase any stock \* \* \* without the prior approval of the Finance Board \* \* \*

12 U.S.C. 1426(f).

After further consideration, the Finance Board agrees that the phrase "charges against the capital of the Bank" as used in § 931.8 should be clarified. The phrase is taken from 6(f) of the Bank Act, as amended by the GLB Act, but it is not defined in that provision or elsewhere in the statute. More generally, while the statute defines both "permanent capital" and "total capital", the term "capital" itself is not defined in the Bank Act. The Finance Board, however, believes that, given general principles of statutory construction, the purpose of the statutory provision and the regulatory scheme established by the Bank Act, the phrase "charges against the capital of the Bank" is more reasonably interpreted to mean a charge against the capital stock of a Bank.

General rules of statutory constructions dictate that every word or clause in a statute should be given effect. See 2A Norman J. Singer, *Statutes and Statutory Construction* § 46:06 (6th ed. 2000). If Congress intended the phrase "charges against the capital of the Bank" to mean a charge against any element of total and permanent capital, which would include retained earnings, a reference to a loss would be sufficient to trigger the applicable limitations in 6(f) of the Bank Act, and the addition of the phrase "charges against the capital of the Bank" would be redundant. To explain more fully, a Bank will experience a loss when its expenses exceed its income for a certain period so that the Bank records negative net income for that period. Negative net income, in turn, results in a decline in retained earnings, or put another way, any loss will result in a charge against retained earnings. If the phrase "charge against the capital of the Bank" were interpreted to mean a charge against any element of permanent or total capital, which would include retained earnings, a charge against the capital of the Bank would occur whenever a Bank experienced a loss. By requiring that a loss result in "charges against the capital of the Bank" before the applicable limitations in 6(f) of the Bank Act are triggered, the statutory language appears to contemplate that "charges against the capital of the Bank" must

mean a charge against something other than retained earnings.

More importantly, interpreting “charges against the capital of the Bank” to include a charge against retained earnings would seem inconsistent with other provisions in the statute. Specifically, the Bank Act authorizes the Banks to pay dividends from previously retained earnings, but contains no prohibition on paying such dividends if the Bank is or is about to incur a loss. *See* 12 U.S.C. 1436. It seems inconsistent, and without purpose, to interpret the statute to burden the Banks with obtaining Finance Board approval to redeem or repurchase stock if there is a loss but still allow the Bank to use retained earnings without restriction to pay dividends. By contrast, other limitations in the statute that are placed on retained earnings with the apparent purpose of preserving the Bank’s total or permanent capital apply both to redemption and repurchase of capital stock and the payment of dividends. *See* 12 U.S.C. 1426(f) (no redemption or repurchase of capital stock if such action results in the Bank’s failing to meet its capital requirements) and 12 U.S.C. 1426(h)(3) (no distribution of retained earnings if the distribution results in the Bank’s failing to meet its capital requirements). In addition, it seems unreasonable to burden the Banks with the requirements of 6(f) of the Bank Act whenever the Banks experienced or were expected to experience even a small loss.

Thus, the Finance Board believes that the phrase “charges against the capital of the Bank” should be interpreted to mean a charge against the capital stock of the Bank.<sup>2</sup> To codify this interpretation, the Finance Board is proposing to define “charges against the capital of the Bank” in § 930.1 to mean an other than temporary decline in the Bank’s total equity that causes the value of total equity to fall below the Bank’s aggregate capital stock amount. This definition is based on the criteria set forth in the Industry Audit Guide published by American Institute of Certified Public Accountants (AICPA) for evaluating impairment of Federal

<sup>2</sup> In practical terms, the Bank’s regulatory capital under the Bank Act and the current Finance Board rules consists of the paid-in value of Bank stock and retained earnings. If a Bank experienced a loss that resulted in a charge against its capital stock, the loss would have already been more than the Bank’s retained earnings so that the Bank would have no retained earnings from which to pay dividends. Thus, the statutory scheme imposes a *de facto* prohibition on the payment of dividends in this situation while § 6(f) of the Bank Act provides the Finance Board with discretion to impose similar prohibition on the redemption and repurchase of stock.

Home Loan Bank and Federal Reserve Bank stock. *See* Audits of Banks, Investment in Debt and Equity Securities, FHLB or Federal Reserve Bank Stock, §§ 5.97–5.101 (AICPA May 1, 2000). The Finance Board drew on the capital stock impairment criteria because 6(f) of the Bank Act, based on the title of the provision, appears intended to address capital impairment. Further, by drawing on the AICPA criteria, the Finance Board is relying on industry guidance that is applied in a manner consistent with GAAP. It has generally been the Finance Board’s goal to be consistent with GAAP to the extent possible in its capital regulations. *See* 65 FR 43408, 43420 (July 13, 2000) (proposed capital rule); and 66 FR at 8281–82. In evaluating whether a decline in value of a Bank’s equity is other than temporary, as that term is used in the proposed definition of “charges to capital”, the Finance Board would consider, and would expect the Banks to consider the AICPA’s criteria for evaluating impairment of Bank stock.

*Off-balance sheet credit conversion factors.* Section 932.4(f) requires the Banks to convert all off-balance sheet credit exposures into equivalent on-balance sheet credit exposures or credit equivalent amounts, determine the type of the item, and then apply the appropriate credit risk percentage requirement to estimate the instrument’s credit risk capital charge. *See* 12 CFR 932.4(f). Section 932.4(f)(1) allows the Banks to use Finance Board-approved internal models to convert some or all off-balance sheet credit exposures into on-balance sheet credit equivalents. For Banks that lack appropriate internal models, the regulation provides credit conversion factors for off-balance sheet items in Table 2 of part 932.

In adopting Table 2, the Finance Board divided a category that had been proposed as “commitments to make advances or other loans” into two categories one of which covered commitments to make advances and the other which covered commitments to acquire loans. This change recognized that under Acquired Members Asset (AMA) programs, the Banks may enter into certain commitments to acquire loans that may be recorded as off-balance sheet items. Like the former category, the new categories of commitments were given a 100 percent conversion factor.

The Finance Board received comments from seven Banks on the off-balance sheet credit conversion factor for commitments to acquire loans. Generally, the commenters expressed concern that “master commitments” to

acquire loans under AMA programs would appear to have a 100 percent conversion factor even though such commitments were not an accurate indicator of future acquisitions.

Commenters suggested that the Finance Board conform its requirements to those of other federal bank regulators, who would apply a 100 percent conversion factor only to commitments subject to “certain drawdown,” (*i.e.*, commitments that an institution is legally obligated to honor at a specified future date no matter what change may have occurred in the counterparty’s financial situation). Where there is uncertainty as to the amounts to be delivered under particular loan commitments, and in recognition that such commitments are often unfulfilled, the other federal bank regulators would apply a 50 percent conversion factor for commitments with a maturity of greater than one year, and zero percent for such commitments with maturities of one year or less.<sup>3</sup> An exception is provided for other commitments that are unconditionally cancelable or that effectively provide for automatic cancellation due to the deterioration in a borrower’s creditworthiness, at any time without prior notice. The credit conversion factor for such commitments is zero.

Because it was generally the intent of the Finance Board to conform to the extent possible its credit risk charges to the Basle Accord as currently incorporated by the federal bank regulatory agencies, the Finance Board is proposing to revise the credit conversion factors of Table 2 so that the 100 percent credit conversion factor applies only to commitments subject to certain drawdown. Further, the Finance Board is proposing to define certain drawdown to mean a legally binding agreement that commits the Bank to make an advance or to acquire a loan, at or by a specified future date.

Because, as noted by one Bank, AMA master commitments to acquire loans, in general, appear to be effectively cancelable by either party, it appears that most, if not all AMA master commitments, would not be commitments subject to certain

<sup>3</sup> The Basel Committee on Banking Supervision (Basel Committee) is proposing to change the credit conversion factor for commitments with maturities of one year or less to 20 percent. *See* Basel Committee “The Standardized Approach to Credit Risk, Supporting Document in the New Basel Capital Accord 10” (Jan. 2001). In its capital rule, the Finance Board adopted the approach that was eventually put forth in the proposed Basel Accord of a 20 percent credit conversion factor for commitments with maturities of one year or less, subject to an exception for commitments that are unconditionally cancelable or that effectively provide for automatic cancellation due to the deterioration in a borrower’s creditworthiness.

drawdown. Moreover, they appear to be eligible for the exception provided in § 932.4(f)(2), which applies to commitments that are unconditionally cancelable or that effectively provide for automatic cancellation due to the deterioration in the borrower's creditworthiness, and, therefore, to have a credit conversion factor of zero percent. Likewise, advance commitments that are unconditionally cancelable or that effectively provide for automatic cancellation due to the deterioration of the borrower's credit worthiness, at any time by the Bank without prior notice, also would not be subject to certain drawdown and would be eligible for a credit conversion factor of zero percent under the exception in § 932.4(f)(2).

*Disclosure to members.* As part of its efforts to provide assistance to the Banks in the preparation of their capital plans, the Finance Board transmitted to the Bank Presidents at the end of May, 2001, a package of staff guidance materials (Guidance) consisting of: (1) A series of checklists for consistency with the capital regulations; (2) a description of materials that could be submitted to support a determination of capital plan feasibility and approval of Risk Assessment Procedures and Controls; and (3) Bank System level review procedures. One aspect of item (2) describes materials that would best demonstrate feasibility of the implementation of the Bank's capital plan, as required by § 933.2(g) of the Finance Board's rules. 12 CFR 933.2(g). The Guidance notes that the Finance Board will evaluate the extent to which the Bank's members have been provided with sufficient information about the costs of membership and the desirability of Bank services under the capital plan, and that such information will be used to establish, to the extent possible, the degree of confidence that may be placed in the capital plan's assumptions regarding the size and make-up of the Bank's post-conversion membership base, pro-forma financial statements and the ability of the Bank to adequately capitalize its activities to verify that the capital plan can be safely implemented.

The Guidance indicates that the Finance Board will review materials and communications made available by the Banks to their members for the quality of information provided regarding a number of issues, including: (1) Adequate description of the member's minimum investment requirements; (2) sufficient information to describe whether the capital requirements favor some members over others, or whether certain activities are priced to encourage or discourage member participation; (3)

sufficient description of the Bank's dividend policy, including discussion, as appropriate, of any risk factors that could adversely affect dividends, and of the potential impact of different member leverage and risk-based capital requirements on return on equity; (4) description of the Bank's current operating and financial condition, including material issues that bear on the future operations of the Bank; and (5) description of any changes in products, activities and strategies contemplated in the Bank's capital plan or strategic plan.

As the Guidance was being developed, and even after the Guidance was transmitted to the Banks, a number of the Banks have requested clarification with respect to the type and amount of communications they should or will be required to provide to members in connection with their capital plans. The Finance Board was not inclined initially to impose specific disclosure requirements on the capital plan process, choosing instead to leave the entire member outreach process to the discretion of the Banks. Given that the use of disclosure documents can be a valuable tool in any member outreach program, given that the Banks have continued to ask for assistance in this area, and given that the quality of disclosure on a number of important issues will play a critical role in the Finance Board's review of the capital plans, the Finance Board has now come to believe that there is merit in prescribing a baseline of required disclosure that would help the Banks meet the criteria established in the Guidance. The Finance Board believes also that it is appropriate to look to the disclosure standards established by the Securities and Exchange Commission (SEC) as the model for any disclosure requirements that it includes in its rules, and it has done so in drafting proposed § 933.5.

The proposed rule first would require that no capital plan become effective until disclosure meeting the requirements of Item 11(a) through (d) and Item 12(a) through (e) of Schedule 14A of the SEC's proxy rules (17 CFR 240.14a-101, Items 11 and 12) (Proxy Statement Disclosure) and of § 933.5(b) of the proposed rule has been provided to members. Finance Board rules establish the effective date of a Bank's capital plan as the date on which the Bank first issues any Class A or Class B stock. See 12 CFR 931.9(a).

Items 11 and 12 of Schedule 14A are usually thought of as mutually exclusive provisions—Item 11 requires disclosure regarding transactions in which action is to be taken with respect to the

authorization or issuance of securities otherwise than for exchange of outstanding securities of the issuer; Item 12 requires disclosure regarding transactions in which action is to be taken with respect to the modification of any class of securities of the issuer, or the issuance or authorization for issuance of securities of the issuer in exchange for outstanding securities of the issuer. Because of the unique nature of the Banks and of this capitalization, the transactions that will occur upon implementation of the Banks' capital plans are something of a hybrid. Rather than try to characterize the transactions as one or the other, § 933.5(a) of the proposed rule contemplates that the appropriate disclosure from both items would be provided, such as: the title and amount of securities "authorized" under the capital plan (Item 11(a)); the information required by Item 202 of Regulation S-K of the SEC's regulations (17 CFR 229.202) (a description of dividend rights, and other rights, terms and preferences of the stock) (Item 11(b)); a description of any material differences between the outstanding securities and the "new" securities in respect of any Item 202 of Regulation S-K matters (Item 12(b)); the reasons for the transaction and the general effect upon the rights of existing security holders (Items 11(d) and 12(c)); and a brief outline of any other material features of the capital plan (Item 12(e)).

Section 933.5(b)(1)(i) of the proposed rule would require disclosure of financial information that is in scope, form and content consistent with the requirements of the SEC's regulations S-X and S-K (17 CFR parts 210 and 229). The proposed rule also would require disclosure of pro forma financial information related to the implementation of the capital plan, consistent with that referenced in the Guidance. Proposed § 933.5(b)(1)(ii) would require disclosure of quarterly pro forma balance sheets and income statements covering two years from the "as of" date (next-to-latest quarter or latest quarter-end prior to submission of the capital plan) or, at a minimum, six quarters from the expected date of conversion to the new capital stock, whichever time period is greater, in detail sufficient to illustrate changes in the Bank's capital structure, dividends, product volumes, investment volumes, new business lines, and risk profile. Section 933.5(b)(1)(iii) of the proposed rule would require disclosure of the pro forma risk-based capital requirement for the "as of" date and for the quarterly periods reflected pursuant to proposed § 933.5(b)(1)(ii), if not already included

in the pro forma balance sheet. Disclosure of the assumptions underlying the pro forma financial information, and the bases for these assumptions, would be required by § 933.5(b)(1)(iv) of the proposed rule.

Any of the financial information required by proposed § 933.5(b)(1) may be incorporated by reference into the disclosure document chosen by the Bank, provided the information being incorporated is contained in an annual or quarterly Bank or Bank System report, or in information filed with the Finance Board as a part of the capital plan approval process, and the disclosure document identifies the information being incorporated by reference. See § 933.5(b)(1)(E) of the proposed rule. If the Bank is incorporating financial or business information by reference from the Bank's or the System's annual or quarterly financial reports or from information filed with the Finance Board along with the capital plan, the Bank also must provide a name, address and telephone number to which members must make requests to obtain the incorporated information without charge to them upon written or oral request. Similarly, the Bank is required by proposed § 933.5(b)(3) to state the name, address and telephone number where members may direct written or oral requests for a copy of the capital plan and any other instrument or document that defines the rights of the member/stockholders. Section 933.5(b)(2) of the proposed rule requires a Bank to fully describe any amendments anticipated to be made to its by-laws, policies or other governance documents as a result of the implementation of the capital plan, and § 933.5(b)(4) of the proposed rule requires a Bank to include a brief statement as to the anticipated accounting treatment and the federal income tax consequences of the transaction. This information is all required to be provided to the members without charge to them.

The Finance Board is not prescribing a form to be used by the Banks in providing the required disclosure to members. The full range of possible formats is available—proxy statements (if the Bank is choosing to seek a member vote), information statements, letters, brochures—and the Bank is free to make use of whatever format it believes is appropriate.

The Finance Board is also proposing that members be provided all disclosures that would be required under § 933.5 of the proposed rule at least 20 days prior to the intended effective date of a Bank's capital plan.

In thinking about models for a suitable timeframe, the Finance Board once again looked to the securities laws for help, and specifically to the proxy statement analog. Many state corporate codes impose a meeting notice or proxy statement delivery requirement minimum of ten days on state-chartered business corporations. For example, the Delaware General Corporate Code states that written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each security holder entitled to vote at the meeting. See 8 Del. C. Section 222 (1999). This notice typically is transmitted with the proxy statement. Furthermore, under Regulation 14C of the SEC's proxy rules, in connection with a meeting or action for which proxies are not being solicited, delivery of an information statement is required at least 20 calendar days prior to the meeting or prior to the earliest date on which the action may be taken. See 17 CFR 240.14c-2(a) and (b).

The reason for a minimum information delivery requirement is to allow shareholders adequate time to consider the issues involved in the actions being taken. Generally speaking, the more complex or essential to the life of the corporation the action is, the longer the prior delivery period would be to be deemed reasonable. So, while ten days would be adequate time for shareholders to consider a slate of directors for an uncontested election, shareholders are required to be given a minimum of 20 days to study the implications of a corporate acquisition under the SEC's proxy rules, even if no vote is required. *Id.* § 240.14c-2(b).

The Finance Board believes that the implementation of the new capital structures for the Banks would generally be considered an issue of importance to Bank members. The Finance Board also believes that delivery of the required disclosure at least 20 days prior to the effective date of a capital plan, would provide a member with reasonable opportunity to opt out of the "conversion" under the capital plan if the member so desired while not unreasonably delaying the Bank's implementation of the capital plan once the capital plan had been approved by the Finance Board. It should be noted that the proposed rule provides that all required disclosure "shall be transmitted, sent, or given to members" at least 20 days prior to the effective date of a Bank's capital plan; therefore, the disclosure material does not have to be in members hands 20 days prior to the capital plan's effective date. However, it is the Finance Board's intent that the Banks choose a

reasonably expeditious form of transmission for the disclosure material so as not to render the 20-day period a nullity. Regular, first class mail is presumed, but other reasonably prompt methods of distribution may be used instead of mailing. The Finance Board requests comment on whether a longer or shorter time period may be more reasonable than the 20 days now proposed in § 933.5(a).

Finally, the Finance Board wishes to stress that these provisions are being proposed primarily to add consistency, clarity and precision to the regulations. It is not the Finance Board's intention to impose liability under the federal securities laws on the Banks, nor to create any private right of action. Therefore, the Finance Board has included proposed § 933.5(c) to make clear that nothing in § 933.5 would create or be deemed to create any rights in any third party.

*Conforming changes.* The Finance Board is also proposing several conforming changes. It is proposing to amend the heading in 12 CFR 932.4(d) to conform to other paragraph headings in that section and is proposing to correct in 12 CFR 932.4(e)(2)(ii)(E) a reference to another section of its rules. The Finance Board is also proposing to revise 12 CFR 925.27(c), to make clear that an involuntarily terminated member may continue to receive dividends on its stock until the stock is either redeemed or repurchased. The term "repurchased" was inadvertently omitted from this provision as adopted.

### III. Discussion of Other Issues

*Out-of-district assets.* In the ANPR, the Finance Board specifically requested comment on how the Banks could capitalize investments in the assets of another Bank (e.g., the purchase of a participation interest) or in assets acquired from the member of another Bank (e.g., Acquired Member Assets (AMA)). The Finance Board noted that such "out-of-district" assets may present special problems for capitalization, especially with regard to the risk-based capital requirements, because the GLB Act and the Finance Board rules required a Bank to sell its stock only to its members. See 66 FR at 14094.

Three Banks and one member institution commented on this matter.<sup>4</sup>

<sup>4</sup> One national and several state trade associations submitted comments urging the Finance Board to amend 12 CFR 933.2(b) to require all Banks to adopt activity-based stock purchase requirements that would apply to AMA acquired from the Bank's members. These comments did not specifically concern the question of capitalizing out-of-district assets but involved the question of the Finance

Two of the Banks believed that no action needed to be taken to address capitalizing out-of-district assets. One of these two Banks noted that a Bank could capitalize out-of-district assets in the same manner as it capitalized other investments that did not have a nexus with a member, and the other Bank stated that it had no problem capitalizing the out-of-district assets on its books. The third Bank suggested that a change to the Finance Board's rule be made to allow a Bank that purchased assets from a member of another Bank to sell Class B stock to that member even though the membership resided in another district. The commenter believed that the stock should be non-voting and that its sale should be allowed only upon the approval of the Bank in which the membership of the seller-institution resided.

The member institution generally opposed allowing a Bank to acquire out-of-district assets arguing that such investments shifted risks from the out-of-district seller to the Bank members. The member also opposed capitalizing out-of-district assets through voluntary stock purchases because these purchases could create distinctions between owners and users of the Bank System, and ultimately raise safety and soundness concerns because non-user owners would be more likely to leave the system in times of financial stress.

Based on these comments, the question of capitalizing out-of-district assets does not appear to raise issues that are immediately pressing. As the two commenters noted, out-of-district assets are similar to, and can be capitalized in the same manner as, any other Bank investment that does not have a direct nexus with a Bank member. Further, it does not appear that the Banks' current investments in out-of-district assets are raising safety and soundness concerns or changing the nature of the Bank System along the lines described by the member institution in its comments. The Finance Board also believes that it is at best unclear whether the suggestion that it allow the conditioned sale of Class B stock to members of another district would be consistent with the statutory

dictates that a Bank's stock only be held by members of that Bank. See, 12 U.S.C. 1426(a)(4)(D) and 1426(c)(5)A. Because there appears to be no immediate concern with regard to capitalizing out-of-district assets, however, the Finance Board has determined that no action on this matter need be taken at this time.

*Computation of voting rights.* Four Banks sought clarification about how the computation of the maximum number of votes that a member may cast in an election of directors is conducted, particularly if a Bank has issued both Class A and Class B stock. Under section 7(b) of the Bank Act, in an election of directors for a particular state, each member in that state is permitted to cast one vote for each share of Bank stock that it owned as of the record date, subject to a statutory cap. *Id.* Section 1427(b). The cap is calculated as being equivalent to the average number of shares of stock that each member in that state was required to own as of the record date. If a Bank has issued both Class A and Class B stock, the current regulations require that the Bank calculate the statutory cap separately for each class of outstanding Bank stock. 12 CFR 915.5(b).

Because it is possible that some members of a Bank that has issued both Class A and Class B stock might not own both classes of stock as of the record date, the commenters questioned whether the Bank should calculate the average number of shares outstanding by using as the denominator all of the members that are located within a particular state or just the total number of members within that state that own the particular class of stock as of the record date. The Finance Board believes that the statutory language, which refers to the amount of stock "required \* \* \* to be held" by the "members of such bank located in such State," requires that the calculation of the state averages be done based on the total number of members located in the particular state, regardless of whether certain of those members own both classes of stock. Because the Bank Act gives each Bank considerable latitude in establishing the minimum stock purchase requirements to be imposed on each of its members, it is possible that a capital plan could impose a stock purchase requirement of "zero shares" on certain of its members for one class of stock. For example, if a capital plan were to require a member to purchase Class A stock for membership purposes and to purchase Class B stock for activity purposes, any member that had no outstanding advances or other business activities as of the record date would have a stock purchase requirement for the Class B

stock of "zero shares". Under section 7(b) of the Bank Act, the Banks must use the amount of stock "required to be held" by each member in calculating the average stock holdings for each state. Even though the new capital provisions adopted by the GLB Act allow for the possibility that the amount of a particular class of stock that is "required to be held" by a particular member may be zero in certain circumstances, that possibility alone does not justify disregarding the "required to be held" language in the Bank Act. Accordingly, the Finance Board is not proposing to amend its regulations to exclude from the calculation members who happen to own no shares of a particular class of stock as of the record date. In order to avoid any uncertainty on this issue, however, the Finance Board is taking this opportunity to make clear that the state-by-state calculation of the average stock ownership is to be conducted using in the denominator the number of members that were located in the particular state as of the record date.

The following example illustrates how the voting rights should be computed in an election of directors for a Bank that has issued both Class A and Class B stock but where some members do not own both classes of stock. Assume that a Bank were to have 100 members located in a particular state, each of which each owned various amounts of Class A stock, but only 60 of which also owned shares of Class B stock. Assume further, that the amount of Class B stock required to be held by those 60 members varies from member to member, but in the aggregate totals 800 shares. When computing the average number of Class B shares required to be held by the members in that state, the denominator would be 100 (representing the 100 members located in that state) and the numerator would be the aggregate amount of Class B stock required to be held as of the record date, which would be 800 shares. Thus, the maximum number of votes that any one of the 60 members from that state could cast based on its Class B stock ownership would be 8 votes (800 shares ÷ 100 members = 8 shares). Any member required to hold 8 or fewer shares of Class B stock as of the record date would be unaffected by the cap, but any other members required to hold more than 8 shares of Class B stock could cast no more than 8 votes in the election of directors, based on their Class B stock ownership. To the extent that those 60 members also were required to hold shares of Class A stock as of the record date, they could cast a number of votes based on their Class A

Board mandating specific activity stock purchase requirements. In the **SUPPLEMENTARY INFORMATION** section of the adopting release for the final capital rule, the Finance Board stated that while a Bank had to require its members to purchase stock as a condition of conducting business with it, the determination of how to structure the minimum investment requirement was to be left to the Banks. See 66 FR at 8275-76. Thus, in considering the final capital rule, the Finance Board decided not to require mandatory activity-based stock purchase for AMA and sees no reason to reconsider the issue at this time.

stock, up to the average amount of Class A stock required to be held by all of the members in that state. Each of the other 40 members in that state that own no Class B stock could participate in the election based on the amount of Class A stock that each was required to hold, subject to the statutory cap for the average amount of Class A stock required to be held, which would be calculated as of the record date in the manner described above.

*Discretionary redemption of a member's excess stock.* Five Banks requested clarification of the requirements for redemption of excess stock. See 12 CFR 931.7(a). These commenters stated that § 931.7(a) could be read to prevent a Bank from repurchasing a member's excess stock prior to the end of the applicable notice period (*i.e.*, six months for Class A stock and five years for Class B stock) if a member has filed a notice to redeem the excess stock. They believed such an interpretation was contrary to the provisions of the Bank Act. One commenter also stated that § 931.7(a) should be revised to permit a Bank to redeem stock held as a membership requirement prior to the expiration of the required notice period upon the member's filing of a notice to withdraw from membership.

The commenters also stated that § 931.7(a) appeared to require a Bank to redeem a member's excess stock at the end of the required notice period. They believed that such an interpretation was contrary to section 6(e)(1) of the Bank Act, 12 U.S.C. 1426(e)(1), which they interpreted as providing a Bank with discretion to decline to redeem excess stock. Several of the commenters expressed concern that a mandatory redemption requirement would undermine the reasoning of the Internal Revenue Service's ruling allowing tax deferred treatment of dividends paid out as Bank stock, and would result in the loss of tax deferred treatment for these stock dividends. See I.R.S. Rev. Rul. 90-98 (Nov. 26, 1990).

After considering these comments, the Finance Board believes that it should provide additional explanation concerning the redemption and repurchase provisions of the Bank Act and the Finance Board rules.<sup>5</sup> The

<sup>5</sup> While § 6 of the Bank Act, 12 U.S.C. 1426, does not specifically define the terms redemption and repurchase, § 930.1 of the Finance Board rules defines redemption to mean a Bank acquisition of its outstanding Class A or Class B stock at par value following the expiration of the six-month or five-year statutory redemption period, respectively for the stock, and defines repurchase to mean the acquisition by a Bank of excess stock prior to the expiration of the six-month or five-year redemption period for the stock. 12 CFR 930.1.

Finance Board also has concluded, however, that no changes to § 931.7(a) are needed.

First, the redemption and repurchase rules do not prohibit a Bank from repurchasing excess stock for which a member has already filed a redemption notice as some commenters seem to fear. Section 6(e)(1) of the Bank Act states that "a Bank, in its sole discretion, may redeem or repurchase, any shares of Class A or Class B stock issued by [it] and held by a member that are in excess of the minimum stock investment required of that member." In the Finance Board's view, this provision provides a Bank with the discretion either to repurchase a member's excess stock or to wait for the end of the applicable notice period to redeem such excess stock. This discretion is fully captured in § 931.7(b) of the Finance Board's rules, which states that a "Bank, in its discretion and without regard to the applicable redemption periods, may repurchase from a member any outstanding Class A or Class B capital stock that is in excess [of the member's minimum investment requirement]." 12 CFR 931.7(b). Section 931.7(b) does not limit the Bank's right to repurchase stock only to those shares of excess stock for which a member has not filed a notice of redemption. Thus, a Bank already has the discretion to repurchase any excess shares of stock without regard to the notice period, whether or not a member has filed a notice to redeem such stock, and no further changes need to be made to § 931.7(a) to provide this right. The right to repurchase excess stock, however, would be subject to other applicable limitations in the Bank Act, the capital regulations and a Bank's capital plan, including those in §§ 931.7(c) and 931.8 of the Finance Board rules, 12 CFR 931.7(c) and 931.8.

Second, the Finance Board wishes to reiterate that § 931.7(a) requires that a Bank redeem stock at the end of the statutory redemption, except if the limitations set forth in §§ 931.7(c) and 931.8 of the Finance Board rules apply. Before adopting the final capital rule, the Finance Board considered the question of whether the Bank Act provided a Bank with the discretion to deny a redemption request. The Finance Board concluded that:

[i]t is not apparent from the GLB Act that a Bank would have the authority to deny a redemption request if the capital of the Bank would not become impaired by the redemption or if the Bank would remain in compliance with its regulatory capital requirements.

66 FR at 8279. Moreover, as discussed above, section 6(e)(1) of the Bank Act

appears to provide the Bank with the discretion to choose between either repurchasing a member's excess stock or waiting to redeem the excess stock at the end of the statutory notice period, which begins to run only if a member files a notice to redeem the excess stock. In addition, the Finance Board notes that under the pre-GLB Act regulations and procedures, the term "redemption" as used in the I.R.S. Rev. Rul. 90-98 and relevant court cases dealing with the tax status of Bank stock dividends, *see e.g.*, *Colonial Sav. Ass'n v. IRS*, 854 F.2d 1001 (7th Cir. Aug. 1988) and *Western Sav. Fed. Sav. and Loan Ass'n v. IRS*, 880 F.2d 1005 (8th Cir. July 27, 1989), could refer to either the immediate acquisition by the Bank of excess stock at the request of the member or the acquisition of the required stock that was held by members at the end of the statutory waiting period after a member withdrew from the Bank System. As already discussed, under the GLB Act amendment and the rules adopted to implement those amendments, these acquisitions are now each separately identified, with the former transaction similar to what is now called a repurchase, and the latter transaction falling into the category of a redemption, of Bank stock. *See*, note 5, *supra*. Repurchase of excess stock remains solely at the discretion of the Bank, and, unlike under the pre-GLB Act procedures, redemption of purely excess stock at the request of the member is now subject to a mandatory waiting period of six-months for Class A stock or five-years for Class B stock. It is unclear whether the imposition of a mandatory waiting period would mean that the member's right to redeem its stock as set forth in 931.7(a) provides the member with a meaningful election to receive stock dividends in either cash or stock form, as appears to be necessary for Bank stock dividends to be taxable. Given these considerations, the Finance Board declines to make changes to § 931.7(a) to allow redemption of excess Bank stock to be at the discretion of a Bank.

The Finance Board also declines to adopt the commenter's suggestion to revise § 931.7(a) to allow a Bank to repurchase stock held pursuant to a membership requirement upon the filing of a notice to withdraw from membership and prior to the expiration of the required notice period, because this change appears to be contrary to the statute. The GLB Act allows only excess stock to be repurchased prior to the end of the statutorily imposed notice periods. Under the statutory scheme as implemented by the Finance Board

rules, only stock held above levels required by a capital plan's minimum membership and activity based stock purchase requirements would be excess. See 12 CFR 930.1 (defining excess stock). More importantly, the statute clearly states that a member's submission of a notice of intent to withdraw from membership or its termination of membership in any other manner shall not, in and of itself cause any Bank stock to be deemed excess. See 12 U.S.C. 1426(e)(2). To adopt the suggested rule change, the Finance Board would in effect have to deem stock held as a requirement of membership as excess upon the member's filing of a notice to withdraw, an assertion that is contrary to the clear requirements of the Bank Act as amended by the GLB Act.

The Finance Board also has received inquiries about whether stock held by a member of one Bank may be considered to be excess stock (and thus eligible for repurchase) whenever that institution merges into a member of another Bank. As noted above, the Bank Act expressly provides that the submission of a notice of withdrawal from membership or the termination of membership in any other manner (such as through a merger into a member of another Bank) do not cause the stock of the member to become excess stock. Accordingly, such a merger, in and of itself, cannot cause the disappearing member's Bank stock to become excess stock. As a practical matter, however, some or all of the Bank stock owned by a member that has merged into a nonmember of that Bank could become excess stock as a result of the Bank's next calculation of each member's minimum stock purchase requirement. In the normal course, each Bank likely will adjust periodically the amount of Bank stock that each member is required to own as a condition of membership; under the current capital structure, such calculations are done at least annually. If a member were to merge out of existence during the course of the year, its membership will have terminated. As of the next annual calculation of that institution's minimum stock purchase requirement, the amount of stock required as a condition of membership may well be zero (depending on the terms of that Bank's capital structure plan) and the amount of the activity-based stock purchase requirement will depend on what portion of the prior member's business activities were assumed by the surviving institution. If the annual recalculation were to reduce the membership component of the stock purchase requirement to zero, all Bank

stock formerly held as a condition of membership would at that time become excess stock, and thus would be eligible for repurchase at the discretion of the Bank. Because a Bank can only calculate membership requirements under the conditions set forth in its capital plan, a Bank wishing to provide itself with the flexibility to recalculate membership requirements more frequently than annually, such as upon the completion of a merger, would have to include in its capital plan a provision allowing for more frequent calculation of the membership stock purchase requirements.

*Rolling redemption.* One Bank expressed concern that § 931.7(a) could permit a member to file a redemption notice against all of its stock, even while such stock is needed to support membership or activity requirements, allowing what the commenter described as a rolling redemption. See 12 CFR 931.7(a). In addressing this concern, the Bank proposed amending § 931.7 in one of three ways: (1) To deem a request to redeem all required membership stock as equivalent to a notice of withdrawal from membership; (2) to permit a Bank to require that the member cancel any redemption notice with respect to the amount of stock that would be needed to support a new advance, if the member had requested to redeem all of its activity-based stock but then seeks to obtain new advances or other activities that would mature beyond the final redemption date; or (3) to permit a Bank to require that all advances or other obligations always be supported by activity-based stock that will not become "fully redeemable" until after the maturity date of the advance. The Finance Board, however, believes the language in § 931.7(a) is appropriate and does not require any of the changes suggested by the Bank.

The Finance Board does not believe that a Bank should be able to deem a notice of redemption to be a notice of withdrawal, even if the member is requesting redemption of all of its required membership stock. Section 6(d) of the Bank Act sets forth the conditions for a member's withdrawal from a Bank or for the involuntary termination of its membership. 12 U.S.C. 1426(d). It would appear inconsistent with the statutory provision requiring a member to file a notice to withdraw before it may voluntarily terminate its membership in a Bank to allow the Bank to deem a redemption notice to be the equivalent of a withdrawal notice in the absence of some affirmative member action to signify its intent to withdraw.

Further, because the Bank cannot actually redeem any required

membership or activity-based stock until the member's withdrawal is effective or the activity in question is no longer on the Bank's balance sheet, the Finance Board does not think that members have as great an incentive to engage in rolling redemptions as the commenter may fear, especially if the Bank intends to actively manage its excess stock position. Additionally, § 931.7(a) permits a Bank to impose a fee, to be specified in its capital plan, on a member that cancels a pending notice of redemption, which could be used to further reduce the incentive to engage in rolling redemptions. Thus, the Finance Board is not proposing any changes to its rules in response to the comments on this issue.

*Accounting issue with regard to the calculation of total capital.* One Bank urged the Finance Board to consider following guidance issued by the Federal Financial Institutions Examinations Council (FFIEC) in early 1999 requiring financial institutions to exclude from the calculation of regulatory capital any changes in the fair value of derivatives used for certain risk management purposes that are recorded in Other Comprehensive Income and Loss (OCI) on the balance sheet. See OCC Bulletin 99-1, FAS 133 Accounting for Derivatives (Jan. 4, 1999). The commenter believed that to ensure consistency within the Bank System as well as with other financial institutions in regulatory capital calculations, the Finance Board should adopt a similar rule for the Banks. OCI, however, is not included in the calculation of permanent and total capital, as those terms are defined in the Bank Act and the Finance Board regulations, so that changes in the value of OCI have no effect on the value of the Banks' regulatory capital. See 12 U.S.C. 1426(a)(5) and 12 CFR 930.1. Thus, no change is needed to the capital rule to address this comment. The Finance Board, however, does wish to clarify the meaning of the definitions of total and permanent capital, to avoid the possibility of confusion about these terms.

Permanent capital, as defined in the statute and the Finance Board regulations, equals retained earnings determined in accordance with GAAP plus the amounts paid in for Class B stock. Total capital, as defined in the statute and the Finance Board regulations, equals permanent capital plus amounts paid in for Class A stock plus, consistent with GAAP, any general allowance for losses plus the amount of any other appropriate instruments that the Finance Board has determined to be available to absorb losses. Thus by

definition, OCI is not an element of total and permanent capital as defined by statute and regulation, and therefore should not be included in the calculation of total or permanent capital.

The Finance Board emphasizes, however, that the regulatory definition for total and permanent capital differs in its meaning and calculation from the item "total capital" (which is also known as GAAP capital or GAAP total capital), which appears on the Statements of Condition for the Bank System and the individual Banks as published in their Annual and Quarterly Reports. The commenter appears to have interpreted total capital, as defined in the statute and the Finance Board's regulations, to be the same as the balance sheet GAAP total capital, which is not the case.

**Operations risk.** One Bank urged the Finance Board to reconsider the operations risk capital charge in light of the approach proposed by the Basel Committee on Banking Supervision (Basel Committee) in the recently released consultative document on the New Basel Capital Accord. See 12 CFR 932.6. The commenter contended that the Basel Committee had set its operations charge at 20 percent of an institution's credit and market risk, and therefore, that the Finance Board should consider reducing its basic operations risk charge. Contrary to the Bank's understanding, however, in developing its proposed framework for an operations risk capital charge, the Basel Committee assumed that operations risk accounts for 20 percent of current minimum total regulatory capital and calibrated the calculations of proposed operations risk capital charges accordingly.<sup>6</sup> See Basel Committee,

<sup>6</sup> The framework proposed by the Basel Committee contemplates "three methods for calculating operational risk capital charges in a continuum of increasing sophistication and risk sensitivity." Basel Committee, *Operational Risk, Supporting Document to the New Basel Capital Accord*, 4 (January 2001). The simplest approach, the Basic Indicator Approach, would establish an operation risk capital charge based on a set percentage of a proxy variable for an entity's operations risk exposure. Under the more sophisticated Standardized Approach, operations risk charges would be calculated for each business line operated by a bank based on a proxy variable particular to that business line and a loss factor. A bank's primary regulator would establish the standardized business lines, proxy variables and loss factors to be used. The more complex Internal Measurement Approach would allow a bank the flexibility to calculate the expected loss from operations risk for each of its business lines. Regulators would provide a standardized factor for each business line that would transform the expected loss into a capital charge. Initially, banks moving to the Internal Measurement Approach would be subject to a minimum operations risk capital charge. To apply the more sophisticated

*Operational Risk, Supporting Document to the New Basel Capital Accord*, 5 (Jan. 2001). By comparison, under § 932.6, the basic operations risk capital charge—equal to 30 percent of a Bank's credit and market risk capital charges—would account for about 23 percent of the total minimum risk-based capital requirement. Moreover, because of potential differences in the operations of the Banks and the institutions reviewed by the Basel Committee<sup>7</sup> and the fact that the Banks' regulatory capital is not now, nor will it be under the Finance Board's capital regulations, calculated under the current Basel Accord, the Basel Committee's conclusions are not directly applicable to the Banks.

More importantly, the Basel Committee recently reported that "the target proportion of regulatory capital related to operational risk (i.e., 20%) will be reduced in line with the view that this reflects too large an allocation \* \* \* to this risk as the Basel Committee has defined it." Basel Committee Press Release, "Update on New Basel Capital Accord" (June 25, 2001) (available at [www.bis.org/press](http://www.bis.org/press)). It also stated that it was considering other comments and suggestions related to operations risk. *Id.* It is not yet clear what proportion of regulatory capital that the Basel Committee will allocate to operations risk or what other changes it may make to its operations risk proposal.

Thus, given the difficulties in directly applying the Basel approach to the Banks and current uncertainties surrounding the Basel Committee's operations risk proposal, the Finance Board continues to believe that the statutory charge imposed on the other housing GSEs, the Federal National Mortgage Association (FannieMae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), remains the best basis for assessing an operations risk capital charge for the Banks. See 12 U.S.C. 4611(c)(2). Further, the Finance Board's operations risk provision provides the Banks with the flexibility to demonstrate that a lower charge should be applied to them, subject to a minimum operations risk charge equal to ten percent of the sum of the credit and market risk charges. See 12 CFR 932.6(b) and 66 FR at 8299–8300 (discussing operations risk charge). This

methods of calculating the operations risk charge, a bank would have to demonstrate increased sophistication in the measurement and control of operations risk.

<sup>7</sup> The Basel Committee's assumption concerning operations risk is based on a small sampling of financial institutions which have regulatory capital calculated under the current Basel Capital Accord. *Id.*

flexibility allows the Banks to use recent theoretical and regulatory advances concerning operations risk to develop their own rigorous and comprehensive analysis to support a request for a lower operations risk charge. *Id.*

**Use of excess stock to meet capital requirements.** Four Banks submitted comments expressing concern about the meaning of the language in section 933.2(a)(4) of the Finance Board's rules that the minimum investment requirement established by the capital plans "shall be set at a level that, \* \* \* provides sufficient capital for the Bank to comply with its minimum capital requirements \* \* \*." 12 CFR 933.2(a)(4). They questioned whether this language prevented excess stock from being counted toward meeting a Bank's total and risk-based capital requirements.

This language generally requires a Bank to set its minimum investment requirement at levels that provide enough capital for it to meet its regulatory capital requirements and that provide a sound and stable capitalization base after considering conditions at the Bank. The provision does not mean that excess stock may not be counted toward meeting the regulatory capital requirements. The statute provides no basis for making distinction between excess and required capital stock in calculating levels of permanent and total capital. Thus, the paid-in value of all capital stock, regardless of whether the capital stock is considered in excess of a member's minimum stock purchase requirement, counts as total capital, while the paid-in value of all Class B stock outstanding is counted as permanent capital.

The Finance Board believes that the language in section 933.2(a)(4) is accurate and does not require any change. The Finance Board, however, would like to reiterate that while excess capital is included in calculations for purposes of meeting regulatory capital requirements, placing undue reliance on excess stock to fulfill these capital requirements in a proposed capital plan may be viewed as inconsistent with the concept of "excess stock", and the capital structure proposed in that capital plan may be viewed as deficient by the Finance Board, requiring additional action by the Bank to address the capital structure's shortcomings.

#### IV. Regulatory Flexibility Act

The final rule would apply only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the

RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic effect on a substantial number of small entities.

**V. Paperwork Reduction Act**

The proposed 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 Part 925

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

12 CFR Parts 930, 931, 932, and 933

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

Accordingly, the Federal Housing Finance Board proposes to amend title 12, chapter IX of the Code of Federal Regulations as follows:

**PART 925—MEMBERS OF THE BANKS**

1. The authority citation for part 925 continues to read as follows:

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

2. Amend § 925.26 by revising paragraph (b) to read as follows:

**§ 925.26 Voluntary withdrawal from membership.**

\* \* \* \* \*

(b) *Effective date of withdrawal.* The membership of an institution that has submitted a notice of withdrawal shall terminate as of the date on which the last of the applicable stock redemption periods ends for the stock that the member is required to hold under the terms of a Bank's capital plan as a condition of membership, unless the institution has cancelled its notice of withdrawal prior to that date.

\* \* \* \* \*

3. Amend § 925.27 by revising paragraph (c) to read as follows:

**§ 925.27 Involuntary termination of membership.**

\* \* \* \* \*

(c) *Membership rights.* An institution whose membership is terminated involuntarily under this section shall cease being a member as of the date on which the board of directors of the Bank acts to terminate the membership, and the institution shall have no right to obtain any of the benefits of membership after that date, but shall be

entitled to receive any dividends declared on its stock until the stock is redeemed or repurchased by the Bank.

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

4. The authority citation for part 930 continues to read as follows:

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

5. In § 930.1 add, in correct alphabetical order the definitions for *Certain drawdown and Charges against the capital of the Bank*, to read as follows:

**§ 930.1 Definitions.**

\* \* \* \* \*

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

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

\* \* \* \* \*

**PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK**

6. The authority citation for part 931 continues to read:

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

7. Amend § 931.4 by revising the first sentence of § 931.4(a) to read as follows:

**§ 931.4 Dividends.**

(a) A Bank may pay dividends on Class A or Class B stock, including any subclasses of such stock, only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. \* \* \*

\* \* \* \* \*

8. Amend § 931.6 by revising the first sentence of the section and adding a new sentence at the end of the section to read as follows:

**§ 931.6 Transfer of capital stock.**

A Bank in its capital plan may allow a member to transfer any excess capital stock of the Bank to another member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership. \* \* \* The Bank may, in its capital plan, require a member to receive the

approval of the Bank before a transfer of the Bank's stock, as allowed under this section, is completed.

**PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS**

9. The authority citation for part 932 continues to read as follows:

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

10. Amend § 932.4 by revising paragraph (d) heading, revising the first sentence in paragraph (e)(2)(ii)(E) and revising Table 2 which follows paragraph (f)(1), to read as follows:

**§ 932.4 Credit risk capital requirement.**

\* \* \* \* \*

(d) *Credit risk capital charge for derivative contracts.*

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(E) The credit risk percentage requirement for mortgage assets that are acquired member assets described in § 955.2(a) of this chapter shall be assigned from Table 1.2 of this part based on the rating of those assets after taking into account any credit enhancement required by § 955.3 of this chapter. \* \* \*

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

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

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

\* \* \* \* \*

**PART 933—BANK CAPITAL STRUCTURE PLANS**

11. The authority citation for part 933 continues to read:

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

12. Amend § 933.2 by redesignating paragraphs (e)(4), (e)(5) and (e)(6) as paragraphs (e)(5), (e)(6) and (e)(7), respectively and by revising paragraph (e)(3) and adding new paragraph (e)(4) to read as follows:

**§ 933.2 Contents of plan.**

\* \* \* \* \*

(e) \* \* \*

(3) Shall specify whether the stock of the Bank may be transferred among members, and, if such transfer is allowed, shall specify the procedures that a member should follow to effect such transfer, and that the transfer shall be undertaken only in accordance with § 931.6 of this chapter;

(4) Shall specify that the stock of the Bank may be traded only between the Bank and its members;

\* \* \* \* \*

13. Add new § 933.5 to read as follows:

**§ 933.5 Disclosure to members concerning capital plan and capital stock conversion.**

(a) No capital plan shall become effective until disclosure meeting the requirements of Item 11(a) through (d) and Item 12(a) through (e) of Schedule 14A of the Securities and Exchange Commission's (SEC's) rules (17 CFR 240.14a-101, Items 11 and 12) (Proxy Statement Disclosure) and of paragraph (b) of this section has been provided to members. All disclosure required under this section shall be transmitted, sent or given to members at least twenty days prior to the effective date of a Bank's capital plan.

(b) In addition to Proxy Statement Disclosure, the following information shall be provided to members:

(1) The Bank shall disclose financial information as follows:

(i) Audited balance sheets as of the end of the two most recent fiscal years, statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being presented, and interim balance sheets and statements of income and cash flows as of and for appropriate interim dates that are in scope, form and content consistent with the requirements of the SEC's Regulations S-X and S-K (17 CFR parts 210 and 229);

(ii) Quarterly pro forma balance sheets and income statements covering two years from the "as of" date (next-to-latest quarter or latest quarter-end prior to submission of the capital plan) or, at a minimum, six quarters from the expected date of conversion to the new capital stock, whichever time period is greater, in detail sufficient to illustrate changes in the Bank's capital structure,

dividends, product volumes, investment volumes, and new business lines, and risk profile;

(iii) Pro forma risk-based capital requirement for the "as of" date and for the quarterly periods reflected pursuant to § 933.5(b)(1)(ii), if not already included in the pro forma balance sheet;

(iv) Disclosure of the assumptions underlying the pro forma financial information required by paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, and the basis for these assumptions; and

(v) Any of the financial information required by § 933.5(b)(1) may be incorporated by reference, provided the information being incorporated is contained in an annual or quarterly Bank or Bank System report, or in information filed with the Finance Board along with the Bank's capital plan, and the disclosure identifies the information being incorporated by reference.

(2) Any amendments anticipated to be made to the Bank's by-laws, policies or other governance documents as a result of the implementation of the capital plan should be fully described.

(3) The Bank should state the name, address and telephone number where members may direct written or oral requests for a copy of the capital plan and any other instrument or document that defines the rights of the member/stockholders. This information shall be provided to the members without charge to them.

(4) The Bank shall provide a brief statement as to the anticipated accounting treatment and the federal income tax consequences of the transaction.

(c) Nothing in this section shall create or be deemed to create any rights in any third party.

Dated: August 1, 2001.

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

**J. Timothy O'Neill,**

*Chairman.*

[FR Doc. 01-19852 Filed 8-7-01; 8:45 am]

**BILLING CODE 6725-01-P**

**FEDERAL HOUSING FINANCE BOARD**

**12 CFR Parts 930 and 932**

**[No. 2001-16]**

**RIN 3069-AB11**

**Unsecured Credit Limits for Federal Home Loan Banks**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is proposing to amend the unsecured credit provision of its rules, which was adopted as part of its capital rule on December 20, 2000 and governs the amount of unsecured credit that a Federal Home Loan Bank (FHLBank) can extend to a particular counterparty. The limits adopted in December were generally stricter than the limits under which the FHLBanks operated with the Finance Board's Financial Management Policy (FMP). The proposed amendments would set the amount of unsecured credit that an FHLBank can extend to a government-sponsored enterprise (GSE) at the level allowed under the FMP, adjust the limits for sales of overnight federal funds and the limits for unsecured credit that can be extended to groups of affiliated counterparties. They also would clarify how an FHLBank should calculate its credit exposures from on- and off-balance sheet items and derivative contracts and make other technical or clarifying changes to the unsecured credit provision. On March 7, 2001, the Finance Board published for comment in the **Federal Register** some of these proposed changes. Based in part on the comments received on that proposal, the Finance Board believes that broader changes to the rule than initially envisioned may be appropriate and is thereby proposing new amendments to the rule.

**DATES:** The Finance Board will consider written comments on the proposed rulemaking that are received on or before September 7, 2001.

**ADDRESSES:** Send comments to: Elaine L. Baker, Secretary to the Board, by electronic mail at [bakere@fhfb.gov](mailto:bakere@fhfb.gov), or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** James L. Bothwell, Managing Director, (202) 408-2821; Scott L. Smith, Acting Director, (202) 408-2991; or Julie Paller, Senior Financial Analyst, (202) 408-2842, Office of Policy, Research and Analysis; or Thomas E. Joseph, Senior Attorney-Advisor, (202) 408-2512, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

On December 20, 2000, in accordance with the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 133 Stat. 1338 (November 12, 1999) (GLB Act), the