

entity from landing at any United States port for one year.

**(c) Reciprocity exception.**

Nonimmigrant crewmen may perform longshore work in a United States port under this exception if:

(1) The particular activity to be performed is stated on the manifest;

(2) The vessel on which the crewmen serve is registered in a country that does not prohibit the particular activity by crewmen aboard United States vessels when such vessels land in that country, as determined by the Secretary of State; and

(3) The master or agent presents documentation that shows that a majority of the vessel's owners are nationals of a country or countries that do not prohibit such longshore activity by crewmen aboard United States vessels when they land in those countries.

**§ 258.3 Action upon arrival.**

(a) The master or agent of the vessel shall state on the manifest at the first port of entry:

(1) The ports of call in the United States at which the vessel will land before departing the United States;

(2) For each port of call, whether or not nonimmigrant crewmen will perform longshore work at that port;

(3) If any nonimmigrant crewmen will perform longshore work, who those crewmen are;

(4) If nonimmigrant crewmen will perform longshore work, under which exception in section 258 of the Act the work will be performed. The master or agent of the vessel shall also submit the supporting documents required by the exception claimed.

(5) The examining immigration officer shall give the master or agent a Receipt for Crew List, Form I-410, on which the officer shall note whether or not nonimmigrant crewmen will do longshore work at any port of call, and if so, under which exception. The officer shall also note which documentation supporting the exception claimed accompanied the manifest, and any lack of documentation that must be submitted by the master or agent subsequently.

(b) If an unanticipated emergency arises that precludes reporting the longshore work and submission of documents at the time of inspection, failure to report the change and submit any documentation required within 14 days of the longshore work being performed are subject to fine under section 251 of the Act.

(c) If some activity of longshore work is performed at a port in an emergency situation to prevent the imminent

destruction of property or possible injury or death to a person, a report of the incident shall be made to the Immigration and Naturalization Service (INS) seaport office that performed the inspection. No further documentation is required whether or not the activity was covered by an exception listed in section 258 of the Act.

(d) Changes to statements on the manifest regarding longshore work shall be reported to the INS office that performed the inspection.

(e) Using a nonimmigrant crewman to perform longshore work not included in the normal operation and on board the vessel and not covered by an exception will result in fine proceedings against the owner, agent, consignee, master, or commanding officer under section 251 of the Act.

(f) Failure to deliver complete, true and correct information on the manifest will result in fine proceedings against the owner, agent, consignee, master, or commanding officer under section 251 of the Act.

Dated: January 29, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-3975 Filed 2-20-92; 8:45 am]

BILLING CODE 4410-10-4

**FEDERAL HOUSING FINANCE BOARD**

**12 CFR Part 932**

**(No. 92-68)**

**Dividends Paid on Federal Home Loan Bank Stock**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board ("Finance Board") is amending part 932 of its regulations governing the payment of dividends to holders of Federal Home Loan Bank ("FHLBank") stock to compensate members that redeem such stock prior to the end of the dividend period for the FHLBanks' use of their funds during that dividend period. The revised rule ensures the continued equitable treatment of all owners of FHLBank stock by allowing shareholders that redeem stock during a quarter to receive a dividend for the portion of the quarter in which the shareholder had stock outstanding.

**EFFECTIVE DATE:** April 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Thomas D. Sheehan, (202) 408-2870, Assistant Director, District Banks Directorate, or Jon F. Boustany, (202)

408-2932, Attorney-Advisor, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

**A. Statutory and Regulatory Background**

In order to become a member of the FHLBank System, an institution is required to subscribe for stock in the FHLBank in the district in which the member is located. See 12 U.S.C. 1422, 1424, and 1426. Once a member has subscribed for stock in the FHLBank, it is entitled to receive dividends made available on such stock without preference. See 12 U.S.C. 1426(g). Pursuant to 12 U.S.C. 1426(g), a regulation was promulgated at 12 CFR 932.3 to govern the payment of such dividends.

Prior to these amendments, § 932.3 of the Finance Board's regulations provided that "the board of directors of each Bank may, with the approval of the (Finance) Board, declare a dividend from net earnings, the dividend stabilization reserve, and undivided profits to stockholders of record \* \* \* on the paid-in value of capital stock outstanding on the record date." See 12 CFR 932.3. Dividends on such stock were computed "only for the period such stock was outstanding during the interval between the record date and the immediately preceding record date." *Id.* Thus, under the previous rule, if stock was redeemed prior to the record date, the stockholder was not entitled to receive any dividends on such redeemed stock. The Finance Board commenced this rulemaking to develop a dividend payment rule to ensure equitable treatment of shareholders who hold stock for a portion of the dividend period but redeem their stock prior to the declaration date.

**B. Comments Received In Response To Issuance Of Proposed Rules**

On November 26, 1991, the Finance Board published a notice of proposed rulemaking to amend § 932.3 of its regulations on the payment of dividends. See 56 FR 59898. The Finance Board received ten comment letters in response to its proposed regulation. Comments were received from five FHLBanks, one trade association, three FHLBank members, and one Federal agency. All but two of the ten commenters expressed general support for the proposed rule.

One opposing commenter suggested an alternative method of compensating holders of stock redeemed prior to the declaration of a dividend. The other opposing commenter suggested that

compensating holders of stock that was redeemed prior to the declaration of a dividend worked to the detriment of the remaining stockholders. The comment letters pointed out some of the difficulties in administering the proposed rule and cautioned against some potential abuses. One commenter who favored the rule requested that the rule be administered retroactively.

These comments are discussed in more detail below in the Analysis of the Final Rule.

### C. Analysis of the Final Rule

#### 1. Method of Calculating Dividend

Historically, FHLBank System membership and the members' capital stockholdings had been relatively stable. Recently, however, changes in the membership base, particularly due to the thrift resolution process, have led to greater fluctuation in System capital stock outstanding. As a result, the Finance Board determined that § 932.3 might no longer provide equitable treatment in the distribution of dividends to all FHLBank stockholders, since an institution that, for whatever reason, redeems its stock in a FHLBank prior to the record date, is denied compensation for the FHLBank's use of funds prior to the redemption of such stock. The Finance Board is amending § 932.3 in order to eliminate such inequities in the distribution of dividends to FHLBank stockholders.

Specifically, the final rule eliminates the concept of a record date, and authorizes the payment of declared dividends without preference to stockholders on any stock held during the dividend period. Under the final rule, the dividends may be paid quarterly, semiannually, or annually for the period(s) ending on March 31, June 30, September 30, or December 31. A stockholder that holds stock at any time during the dividend period will receive a *pro rata* share of the dividend distribution without preference based on the period such stock was outstanding during the dividend period. Under this approach, a stockholder that redeems its stock during the dividend period will be compensated at the end of the dividend period for the FHLBank's use of its funds prior to the stock redemption.

One commenter suggested that the proposed rule, which provides for the payment of dividends on stock redeemed prior to the declaration date, may violate the provisions of the Bank Act on dividends and stock redemption. In support of its position the commenter

cites a legal opinion of the former Federal Home Loan Bank Board ("Bank Board"). The Finance Board disagrees with the commenter and believes that the Bank Act permits the payment of dividends on stock redeemed prior to the declaration date. Under the Bank Act, stockholders share in dividends distributed without preference, and are only entitled to their cash paid subscription upon redemption of their FHLBank stock. See 12 U.S.C. 1426. The opinion cited by the commenter does not conclude that the Bank Act prohibits the payment of a dividend on stock redeemed prior to the declaration of a dividend. Rather, the opinion relied on the language of old regulation 12 CFR 522.6 (redesignated as 12 CFR 932.3), which did not entitle stockholders to receive dividends on stock redeemed prior to the record date.

The final rule eliminates the use of a record date in determining entitlement to dividend distributions and provides for the payment of a dividend based on the time the stock was outstanding during the dividend period. This change does not constitute a preference, but actually provides more equitable treatment of all FHLBank stockholders. Furthermore, the final rule does not violate the Bank Act's requirements on stock redemption, since the stockholder continues to receive its cash paid subscription upon redemption of its stock.

One commenter expressed concern that the amendments to § 932.3 are not consistent with general corporate law on the rights of shareholders to earnings of a corporation. In support of its position, the commenter cited *Fahey v. O'Melveny & Myers*, 200 F.2d 420 (9th Cir. 1952), the leading case interpreting the rights of stockholders in the FHLBank System. The Finance Board agrees that the final rule takes a different approach than the usual method for distributing dividends prescribed by general corporate law principles. However, FHLBank stock is fundamentally different from the stock of private corporations. Under general corporate law, dividends are paid to holders of stock on the record date fixed by the corporation's board of directors. This concept of record date evolved out of necessity. Since corporate stock is constantly traded in public markets, it is necessary to establish that stockholders of record as of a certain date are entitled to receive dividends. The price at which the stock trades reflects the right to receive declared dividends. If stock in a private corporation is sold prior to the record date set for the payment of a dividend, the stockholder is not entitled to receive any dividend on such stock.

In contrast, FHLBank stock is not traded in the public markets since only member institutions are permitted by law to own FHLBank stock. See 12 U.S.C. 1426. FHLBank stock is purchased at par value and redeemed at par value. It does not have a market value different from its book value. Therefore, the reasons for identifying a dividend record date for most corporate stocks do not apply to FHLBank stock. In fact, the court in *Fahey* stressed this same point:

Whatever the basis of this tenuous argument it lacks substance in law since it necessarily rests on the untenable concept and assumption that [FHLBanks] are in truth and in substance private corporations and that stock in these banks held by association members falls into the same "value" and "market" category as that of a purely private corporation whose stock is the subject of free barter and trade.

*Fahey, supra* at 469. Since the *Fahey* case recognizes the uniquely restricted market for FHLBank stocks, the Finance Board's decision to eliminate the use of a record date when declaring dividends on FHLBank stock does not contravene this case.

One commenter suggested that compensating holders of stock that was redeemed prior to the declaration of a dividend worked to the detriment of the remaining stockholders. The commenter listed three classes of shareholders that would potentially benefit from the final rule: (1) Those exiting the FHLBank System voluntarily; (2) those exiting the FHLBank System involuntarily (such as Resolution Trust Corporation resolutions); and (3) those continuing FHLBank shareholders redeeming excess stock prior to a dividend date. While it is true that those three classes of shareholders would benefit from this change by receiving dividends to which they are not now entitled, the Finance Board believes that this rule provides more equitable treatment of owners of FHLBank stock. Under the prior rule, a shareholder that, for whatever reason, redeems its stock in a FHLBank prior to the record date, is denied compensation for the FHLBank's use of its funds prior to the redemption of such stock. The final rule eliminates this inequity by allowing shareholders that redeem stock during a quarter to receive a dividend for the portion of the quarter in which the shareholder had stock outstanding. Therefore, all shareholders are compensated equally according to the amount of time the FHLBank used the shareholder's funds.

One commenter favoring the proposed rule requested that the final rule be applied retroactively so that members that redeemed their FHLBank stock prior to the declaration of a dividend in

previous periods would receive a *pro rata* share of dividends declared in those dividend periods. The Finance Board believes a retroactive rule would run contrary to the general purpose of this proceeding which targets equitable treatment for all stockholders, because it would require a redistribution of all dividends in prior periods and would arbitrarily impose a forfeiture on certain stockholders. Additionally, if the final rule were applied retroactively, the Finance Board would have to either arbitrarily set a date from which the rule would be effective or fix the effective date at the inception of the FHLBank System in 1932. In either case, the filing of claims for unpaid dividends by any institution that redeemed FHLBank stock since the effective date would certainly place an economic burden on the FHLBank System. This burden would likely be carried in part, if not totally, by the current members of the FHLBank System, creating new and unexpected obligations accompanying membership.

Furthermore, the Finance Board lacks the authority to make this rule retroactive. In general, an administrative agency may not issue retroactive rules without an express authority from Congress. See *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 207; 109 S.Ct. 468, 471 (1988). In *Bowen*, the United States Supreme Court held that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *Id.* The Finance Board is conducting this rulemaking based on its general rulemaking authority, rather than because of a specific Congressional directive to adjust the FHLBank dividend distribution procedure. Accordingly, we are aware of no express authority that would permit this rule to be implemented retroactively.

One commenter on the proposed rule cautioned that the changes made by the rule may result in excess FHLBank stock becoming an alternative to other short-term investments, since the FHLBanks may currently redeem excess stock only at the request of the member. The commenter warned that some members may "take a large overnight loan, buy additional stock, pay off the loan the following day and hold the excess stock to reap the dividend." The commenter suggested that the final rule address this issue by providing the FHLBanks with the option of redeeming excess stock. Although the Finance Board acknowledges that the commenter raises a valid concern, the problem is not

closely enough linked to the purpose of this rule to be included in the final rule. The Finance Board takes under advisement the possibility of addressing the issue of unilateral redemption of excess stockholdings in a separate rulemaking proceeding.

One commenter on the proposed rule expressed concern that it may adversely affect the ability of FHLBank members to accrue dividends declared by the FHLBank at the end of each calendar quarter. The Finance Board does not believe dividend accrual will pose a problem since dividend accrual is not a function of the record date. The final rule does not change the current method of declaring dividends or the certainty of dividend payments. Thus, the final rule will not have an adverse impact on a FHLBank member's ability to accrue dividend income.

One commenter on the proposed rule suggested as an alternative to the proposal "that a fairer way to resolve payment for use of the member's funds up to the date of withdrawal would be to pay a daily time rate on those funds." However, this recommendation may violate sections 6(b) and 6(e) of the Bank Act, since it would in substance constitute including an interest payment in the stock redemption price. Upon redemption of FHLBank stock, a stockholder is entitled only to its cash paid subscription. See 12 U.S.C. 1426(b) and 1426(e). Furthermore, since dividends must be declared without preference, it is difficult to consider this method of payment a dividend. It would require a declaration of a dividend every time a member redeems stock in the middle of the quarter. See 12 U.S.C. 1426(g).

One commenter expressed concern that the changes to § 932.3 may be administratively burdensome, since it might require program changes and changes in the FHLBanks' computer software that keeps track of ownership of FHLBank capital stock. However, under the current rule, the FHLBanks already make *pro rata* dividend distributions to stockholders on the record date who purchased that stock after the beginning of the dividend period. Therefore, program changes should be minimal. In addition, the proposed rule was published on November 26, 1991. The final rule will not be effective until April 1, 1992. The FHLBanks will, therefore, have ample time to make any necessary adjustments.

## 2. Terminology Change

Prior to these amendments, § 932.3 provided for the payment of dividends from net earnings, the dividend

stabilization reserve, and undivided profits. The final rule amends § 932.3 by substituting in the place of the terms "dividend stabilization reserve" and "undivided profits," the term "previously retained earnings." The Finance Board is making this terminology change based on changes made to the Bank Act by the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73, 103 Stat. 412 (August 9, 1989) ("FIRREA").

Until December 31, 1991, the FHLBanks' retained earnings were comprised of the legal reserve, the dividend and stabilization reserve, and undivided profits. Since the FHLBanks were prohibited from paying dividends from the legal reserve in section 16 of the Bank Act, § 932.3 could not generally provide for the payment of dividends from retained earnings. See 12 U.S.C. 1436. Rather, it specifically listed the two components of retained earnings from which dividends could be paid, namely the dividend stabilization reserve and undivided profits.

Effective January 1, 1992, section 724 of FIRREA amended the Bank Act by eliminating the legal reserve requirement in section 16 of the Bank Act. See FIRREA, *supra* at 103 Stat. 415. Since January 1, 1992, retained earnings have included only the dividend stabilization reserve and undivided profits. In recognition of the change made by FIRREA, the final rule amends § 932.3 by substituting the term "previously retained earnings" in the place of the terms "dividend stabilization reserve" and "undivided profits." The terminology change will have no effect on the payment of dividends, since retained earnings will be comprised exclusively of the dividend stabilization reserve and undivided profits.

## Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 605(b) *et seq.*), it is certified that the final rule will not have a significant economic impact on a substantial number of small entities.

## List of Subjects in 12 CFR Part 932

Conflicts of interest, Federal home loan banks.

Accordingly, the Federal Housing Finance Board hereby proposes to amend title 12, chapter IX, subchapter B, part 932 of the Code of Federal Regulations as follows:

**SUBCHAPTER B—FEDERAL HOME LOAN  
BANK SYSTEM**

**PART 932—ORGANIZATION OF THE  
BANKS**

1. The authority citation for part 932 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); secs. 6-7, 47 Stat. 727, 730, as amended by secs. 707, 710(b)(4), 103 Stat. 417, 418 (12 U.S.C. 1426-1427); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207).

2. Section 932.3 is revised to read as follows:

**§ 932.3 Dividends.**

The board of directors of each Bank may, with the approval of the Board, declare and pay a dividend from net earnings, including previously retained earnings, on the paid-in value of capital stock held during the dividend period. The dividend period may be quarterly, semiannually, or annually ending on March 31, June 30, September 30, or December 31. Dividends on such stock shall be computed without preference and only for the period such stock was outstanding during the dividend period. Dividends may be paid in cash or in the form of stock.

Dated: February 13, 1992.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92-4073 Filed 2-20-92; 8:45 am]

BILLING CODE 6725-01-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 91-NM-150-AD; Amendment 39-8140; AD 92-02-04]

**Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, Model DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes, which currently requires repetitive inspections of the rudder actuator for internal hydraulic

fluid leakage, and replacement if necessary, to ensure that degraded actuators are removed from service. This amendment requires a one-time inspection of certain rudder actuators at a reduced interval and modification of the rudder actuators. This amendment is prompted by reports of rudder actuators with degraded performance. This condition, if not corrected, could result in reduced rudder authority and uncontrollable airplane sideslip, should an engine failure occur at takeoff.

**DATES:** Effective March 27, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 27, 1992.

**ADDRESSES:** The service information referenced in the AD may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801; Attn: Business Unit Manager, Technical Publications & Technical Administrative Support, C1-L5B (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Walter S. Bierman, Aerospace Engineer, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5336.

**SUPPLEMENTARY INFORMATION:**

A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-06-06, Amendment 39-6150 (54 FR 11170, March 17, 1989), with a new AD that is applicable to certain McDonnell Douglas Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes was published in the Federal Register on September 9, 1991 (56 FR 45904). That action proposed to require a one-time inspection of certain rudder actuators at a reduced interval, and a modification of the rudder actuator, which would constitute terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the rule as proposed.

Several commenters requested that the compliance time be increased from 6,000 flight hours, as proposed, to 10,000 flight hours, in order to eliminate difficulties in rotating all the actuators through overhaul shops. The FAA concurs with this recommendation, since the repetitive inspections will remain in effect to assure an acceptable level of safety in the interim. The final rule has been changed accordingly.

A commenter requested that the modification specified in McDonnell Douglas Service Bulletin 27-301, dated June 1, 1989, also be considered terminating action for the repetitive inspections. The FAA concurs. Although the proposal only referred to the latest revision of this bulletin (Revision 1, dated May 24, 1991), the modification described in both versions is the same; therefore, both can be identified as acceptable. The final rule has been changed accordingly.

One commenter requested that airplanes equipped with actuators manufactured by Parker Bertea be omitted from having to perform the proposed modification, and that the requirement apply only to airplanes with actuators manufactured by National Water Lift. The FAA does not concur. AD 89-06-06 requires special repetitive inspections for all actuators; and the FAA has determined that the actuator modifications specified in Service Bulletin 27-301 must be applied to all of the actuators in order to eliminate these special repetitive inspections.

The airplane manufacturer commented that the AD implied that all inspection requirements were terminated upon incorporation of the modifications required by proposed paragraph (e). The modification described in Service Bulletin 27-301 only eliminates the shortened repetitive inspection intervals as required by paragraphs (a), (b), and (c). The actuators should then return to the routine inspection leakage check intervals. The FAA concurs. The FAA never intended to imply that the routine inspection requirements (as specified in an operator's maintenance program) were changed with regard to incorporation of the modification. A note has been added to the final rule for clarification of this point.

The airplane manufacturer also pointed out that the applicability of the inspections referred to in Service Bulletin A27-318 (actuators which may have missing or incorrectly installed seals) is specified by actuator serial number rather than by airplane serial number. The manufacturer suggested that the proposed rule be clarified with