

corporation or labor organization to the web site of a candidate, political committee or party committee for no charge or for a nominal charge is not a contribution or expenditure, provided that:

(1) The corporation or labor organization does not charge or charges only a nominal amount for providing hyperlinks to other organizations;

(2) The hyperlink is not coordinated general public political communications under § 100.23 of this chapter; and

(3) The following materials do not expressly advocate under § 100.22 of this chapter:

(i) The image or graphic material to which the hyperlink is anchored; and

(ii) The text surrounding the hyperlink on the corporation or labor organization's web site, other than the text of a Uniform Resource Locator to which the link is anchored.

(b) The exception in paragraph (a)(1) of this section applies even if the corporation or labor organization selectively provides hyperlinks to one or more candidate(s), political committee(s), or political parties without providing hyperlinks to any opposing candidate(s), political committee(s) or political parties.

#### § 117.3 Corporate and labor organization endorsement press releases.

For the purposes of § 114.4(c)(6) of this chapter, a corporation or labor organization may make a press release announcing a candidate endorsement available to the general public on its web site, provided that:

(a) The corporation or labor organization ordinarily makes press releases available to the general public on its web site;

(b) The press release is limited to an announcement of the corporation's or labor organization's endorsement or pending endorsement and a statement of the reasons therefore;

(c) The press release is made available in the same manner as other press releases made available on the web site; and

(d) The costs of making the press release available on the web site are *de minimis*.

Dated: September 27, 2001.

**Danny L. McDonald,**

*Chairman, Federal Election Commission.*

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Chapter IX

[No. 2001-21]

RIN 3069-AB09

#### Multiple Federal Home Loan Bank Memberships

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Solicitation of comments.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is soliciting comments on the implications for the Federal Home Loan Bank System (FHLBank System) raised by the structural changes that have been occurring in its membership base. This solicitation has been prompted by the submission of several petitions, each requesting that the Finance Board permit a single depository institution to become a member of two Federal Home Loan Banks (FHLBanks) concurrently. The petitions also raise a number of other broad issues affecting the FHLBank System. The Finance Board has decided to afford all interested parties an opportunity to provide comments.

**DATES:** Comments must be received in writing on or before January 2, 2002.

**ADDRESSES:** Interested persons should submit their data, views, opinions, and comments to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or to [BakerE@fhfb.gov](mailto:BakerE@fhfb.gov). Comments will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** James L. Bothwell, Managing Director, (202) 408-2821; Scott L. Smith, Acting Director, (202) 408-2991, Office of Policy, Research and Analysis; Arnold Intrater, Acting General Counsel, (202) 408-2536; Neil R. Crowley, Deputy General Counsel, (202) 408-2990; Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** To assist interested parties in responding to the questions posed in this notice and in understanding how these issues may affect the FHLBank System, Part I of this notice provides an overview of the establishment of the FHLBank System, how the FHLBank System has evolved over the years, and its current structure.

## I. Background

### A. Establishment of the FHLBank System

The FHLBank System was created in 1932 by the Federal Home Loan Bank Act (Bank Act), (12 U.S.C. 1421 *et seq.*). The Bank Act was a response to the financial crises of the Great Depression and, in particular, to an urgent need at that time for a central credit facility for thrift institutions that would help to ensure the availability of funds for home financing. Before the enactment of the Bank Act, thrift institutions did not have a national regulator, but were subject only to state-level regulation. Further, thrifts, which evolved from neighborhood cooperative home-financing societies into variously named associations (building and loan associations, savings and loan associations, cooperative banks, homestead banks, and mutual savings banks), lacked an efficient means to balance funding supply and demand, both at the level of the institution and across regions.

The Bank Act established the Federal Home Loan Bank Board (FHLBB), and authorized the FHLBB to create and oversee from eight to 12 FHLBanks to bolster the ailing thrift industry by lending money to thrifts and other mortgage lenders.<sup>1</sup> The Bank Act provided that FHLBank districts were to be "apportioned with due regard to the convenience and customary course of business of the institutions eligible to and likely" to join, and that "no [FHLBank] district shall contain a fractional part of any State." (See 12 U.S.C. 1423.) The FHLBB created 12 FHLBanks, determined their locations and drew their boundaries, all as authorized in the Bank Act. Each FHLBank served members located within its geographic district, which was made up of between two and eight states. (See 12 U.S.C. 1423.)

As originally enacted in 1932, the Bank Act authorized any eligible institution to become either a "member" or a "nonmember borrower" of a FHLBank, and further provided:

<sup>1</sup> The twelve FHLBanks that were created are "government-sponsored enterprises" (GSEs), organized under the authority of the Bank Act, 12 U.S.C. 1423, 1432(a), *i.e.*, they are federally chartered but privately owned institutions created by Congress to support the financing of housing and community lending by their members. See 12 U.S.C. 1422a(a)(3)(B)(ii), 1430(i), (j) (1994). By virtue of their GSE status, the FHLBanks are able to borrow in the capital markets at favorable rates. The FHLBanks then pass along that funding advantage to their members—and ultimately to consumers—by providing advances (secured loans) and other financial services to their members (principally, depository institutions) at rates that the members generally could not obtain elsewhere.

An institution eligible to become a member or a nonmember borrower under this section may become a member only of, or secure advances from, the [FHLBank] of the district in which is located the institution's principal place of business, or of the [FHLBank] of a district adjoining such district, if demanded by convenience and then only with the approval of the [Finance] Board.

(See 12 U.S.C. 1424(a), (b)).<sup>2</sup> In response to questions raised during the Senate hearings on the Bank Act about how insurance companies with mortgage lending operations throughout the country would access the FHLBank System, the principal drafter of the Bank Act stated the "theory" of the bill as follows:

[I]t was not the desire, say, for members in South Carolina to borrow of a New York bank, because it would mean too great a concentration at the New York bank. If the New York bank happened to do better than a South Carolina bank, all members would go there. There is the opportunity in the bill for a member whose principal place of business is in one district to belong to a bank in the adjoining district, but outside of that there is no provision. It is impossible under the terms of the bill for a company doing business in New York to belong to a South Carolina bank.<sup>3</sup>

By requiring the FHLBank districts to include only whole states, the Bank Act created the possibility that some institutions would not be able to join the FHLBank that was the most convenient for them, even though the district had been established based on the "convenience and customary course of business" standard. The original bill considered by Congress in 1932 would have allowed an institution unilaterally to choose to join a FHLBank in an adjoining district, with no restriction placed on this right. That language raised concerns that an institution could become a member of an adjoining district irrespective of the distance between the applicant and the FHLBank of the adjoining district. During the House hearings, a change was proposed to section 4(b) of the Bank Act, and ultimately incorporated into the final legislation, to allow adjoining district membership only "if demanded by convenience and then only with the consent and approval of the [B]oard."

<sup>2</sup> Section 6(e) of the Bank Act provided a limited transition period during which "nonmember borrowers," institutions that otherwise were eligible for FHLBank membership but lacked the legal authority under state law to invest in equity securities (and thus could not invest in FHLBank stock), could obtain FHLBank advances without becoming members. See 12 U.S.C. 1426(e).

<sup>3</sup> See Hearings Before A Subcommittee of the Committee on Banking and Currency on S. 2959 (Creation of a System of Federal Home Loan Banks), U.S. Senate, 72nd Cong., 1st Sess. (1932), at 116-117, 359-360.

See Hearings Before A Subcommittee of the Committee on Banking and Currency on H.R. 7620 (Creation of a System of Federal Home Loan Banks), U.S. House of Representatives, 72nd Cong., 1st Sess. (1932), at 199.

A related statute, the Home Owners' Loan Act of 1933 (HOLA), was enacted one year after the Bank Act and, in providing for the chartering of federal savings and loan associations, stated that:

Each such [federal savings and loan] association, upon its incorporation, shall become automatically a member of the [FHLBank] of the district in which it is located, or if convenience shall require and the Board approve, shall become a member of a [FHLBank] of an adjoining district. Such associations shall qualify for such membership in the manner provided in the [Bank Act] with respect to other members.

12 U.S.C. 1464(f). The House Report on the HOLA incorporated all of section 4 of the Bank Act into its Report and stated that the bill, apart from other minor changes, "does not otherwise disturb the functioning of the [FHLBank] System." H.R. Rep. No. 55, 72nd Cong., 1st Sess. at 1 (April 25, 1933).

The Bank Act further provided that an institution eligible for membership could become a member of a FHLBank if the institution satisfied certain criteria and purchased a specified amount of the FHLBank's capital stock. (See 12 U.S.C. 1424, 1426.) The FHLBank System was designed to be a cooperative, in that only members could borrow from the FHLBanks, and all FHLBank profits were to be distributed back to the members in the form of lower loan rates (advance prices) or through dividends on purchased shares. The Bank Act further authorized the FHLBanks to raise funds by selling bonds, which, in keeping with the cooperative nature of the FHLBank System, would be the joint and several obligations of all of the FHLBanks in the FHLBank System.

#### *B. Regulatory and Industry Developments*

When the FHLBank System was established, its membership base was largely confined to the thrift industry, which consisted of nearly 11,000 thrift institutions. Each such institution conducted business primarily, if not exclusively, in the community in which it was based. In 1932, thrift institutions tended to be small, with assets per thrift averaging just \$7.7 million (in 1999 dollars). By comparison, the newly established FHLBanks were much larger, commencing their operations with \$125 million (nearly \$1.4 billion in 1999 dollars) of capital provided by the

U.S. Treasury, which received in return 125,000 shares of FHLBank stock.<sup>4</sup>

Since 1932, the size and nature of the membership base of the FHLBank System has changed significantly, principally as a result of numerous statutory amendments, regulatory changes and industry innovations affecting the banking industry generally, and the thrift industry and the FHLBank System in particular. By 1989, the number of thrift institutions had declined to 3,087 (correspondingly, the FHLBank System had 3,177 members at that time) and increased in average asset size to nearly \$582 million (in 1999 dollars). At the same time, regulatory changes were allowing thrift institutions to engage in lines of business that historically had been restricted to commercial banks. The increasing similarity of the two types of depository institutions provided, in part, a rationale for the amendments to the Bank Act in 1989 that allowed commercial banks to become members of the FHLBank System. This change in membership eligibility has resulted in a substantial increase in FHLBank System membership, which currently exceeds 7,800 members. As of June 30, 2001, commercial banks accounted for 73 percent of FHLBank System membership, 45 percent of its capital, and 40 percent of total advances outstanding.

Though the thrift industry had been consolidating since the 1930s, the number of commercial banks had changed little until the regulatory changes that began in the early 1980s. These regulatory changes accelerated the ongoing consolidation of the banking industry as a whole. From the early 1930s to 1982, the number of depository institutions declined from over 25,000 to 17,869. The rate of decline, however, increased between 1982 and 1992 (after the Garn-St Germain Act) and again between 1992 and 2000 (after the Office of Thrift Supervision (OTS) eased its branching policy for federal savings associations) so that by December 31, 2000, the number of commercial banks and thrift institutions totaled just 9,905. The consolidation also has served to increase the average asset size of these depository institutions. As of December 2000, they held, on average, assets of

<sup>4</sup> The FHLBanks also raised capital by selling stock to their members. The Bank Act required the FHLBanks to begin repurchasing the stock from the U.S. Treasury loan once the amount of stock issued to their members equaled the initial \$125 million provided by the U.S. Treasury. The FHLBanks began to repurchase stock from the Treasury in 1948 and completed the repurchases in 1951. Since that time, all FHLBank stock has been held exclusively by the members of the FHLBanks.

over \$700 million, up from \$373 million in 1992 and from \$272 million in 1982 (valued in 1999 dollars).<sup>5</sup>

An essential part of the consolidation process has been the gradual dismantling of interstate banking restrictions. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 lifted the last of the national interstate branching prohibitions, completing the process of dismantling the interstate banking restrictions that had been occurring on a piecemeal basis, on both a national and a state level.<sup>6</sup> A depository institution now has the ability to operate across state lines, and may do so by establishing *de novo* branch offices in other states (subject to certain state law restrictions) or by assimilating the out-of-state offices of another depository institution into its own branch network.

### C. Current Environment

Currently, each member of the FHLBank System is a member solely of the FHLBank in the district in which the member maintains its principal place of business. No single institution is a member of more than one FHLBank, although certain holding companies do own separate subsidiaries that are members of different FHLBanks. The

<sup>5</sup> For the source of information regarding the average asset sizes, see: FDIC, "Historical Statistics on Banking," at <http://www2.fdic.gov/hsob/>. Two other statistics offer evidence of consolidation: First, between 1980 and 1998, the share of commercial bank assets held by the top 100 commercial banks rose from 46.8 percent to 70.9 percent. Second, the substantial rise in average asset size since 1982 came in spite of the fact that the median asset size has remained relatively stable. A rising mean asset size relative to median asset size is evidence of increased concentration at the high end of the distribution.

<sup>6</sup> Historically, the FHLBB permitted federal savings and loan associations to branch only within the state in which they maintained their home office, although in 1981 the FHLBB amended its branching policy to permit limited interstate branching in connection with the resolution of failing savings and loan associations. 12 CFR 556.5(a)(3) (1982). The Garn-St Germain Depository Institutions Act of 1982 expanded the authority to allow interstate branching in connection with the acquisition of failed savings and loan associations, and also allowed failed commercial banks to be acquired by out-of-state bank holding companies. Pub. Law No. 97-320, § 116, § 123, 96 Stat. 1469 (Oct. 15, 1982). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) allowed out-of-state commercial banks to acquire healthy savings associations, Pub. Law No. 101-73, § 601, 103 Stat. 183, 408 (Aug. 9, 1989), and, in 1992, the OTS allowed interstate branching for all federal savings associations. See 12 CFR 556.5 (1993). The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 authorized commercial banks, as of June 1, 1997, to establish interstate branch offices, which allowed affiliated banks in different states to consolidate into one bank charter with interstate offices, and allowed banks greater authority to engage in interstate mergers and acquisitions. Pub. Law No. 103-328, § 102, 108 Stat. 2338, 2343 (Sept. 29, 1994).

consolidation in the banking industry, however, has affected the membership of the FHLBanks. For example, most FHLBanks now have one or two members that are disproportionately large. For example, as of March 31, 2001, 2000, six of the 12 FHLBanks had one or more members that accounted for at least 20 percent of the FHLBank's total advances outstanding, and nine of the FHLBanks had at least one member that was larger, in terms of asset size, than the FHLBank itself. Furthermore, a substantial portion of FHLBank activities is with members, particularly large members, that have a multi-district presence. The presence of both large members and members that conduct business in other FHLBank districts has the potential to affect the operations of the FHLBanks and the FHLBank System.

#### 1. Large Members

Large financial institutions that are FHLBank System members tend to be large users of FHLBank services, in part, to support their housing finance activities nationwide. In fact, of the top 50 mortgage originators nationwide during 1999, 14 were FHLBank members, and an additional 28 had affiliates that could provide them with indirect access to FHLBank services. Together, FHLBank members and their affiliates accounted for over 44 percent<sup>7</sup> of single-family mortgage originations in 1999. As continued consolidation will result in an increasing number of ever-larger members, the potential for such members to affect the pricing, operations, and stability of the FHLBank System will also increase.

One concern associated with large members is that they have the potential to cause rapid and substantial swings in the volume of advances and other services at their FHLBank. The large members (with principally short-term advances) can affect such volume changes because they have alternative funding sources, such as access to the capital markets, and they can make business decisions, such as merging, consolidating, or relocating, that affect the degree of business they conduct with their FHLBank. To the extent that a FHLBank seeks to avoid significant swings in business activity, the large member is positioned to achieve price or other concessions from that FHLBank.

Even though a large member has the potential to cause large fluctuations in

<sup>7</sup> Based on Home Mortgage Disclosure Act data. Represents percent of loans originated (conventional single-family purchases and refinancings).

a FHLBank's earnings and asset base, there are other factors that may lessen the likelihood of a large member actually having such an effect on the policies of an individual FHLBank. First, the flexible capital structure and low fixed costs of the FHLBanks allow them to expand or contract their balance sheets with relatively little effect on their ability to service remaining members in a manner consistent with the public purpose of the FHLBank System.<sup>8</sup> As evidence of this flexibility, nine of the 12 FHLBanks could lose their largest member in terms of advances and still have assets in excess of that of the smallest FHLBank. Second, the cooperative structure of the FHLBank System, where all members own shares in their FHLBank, reduces the incentive for members to bargain for concessions from their own FHLBank, because such concessions, to the extent they depress the profitability of the FHLBank, will be reflected in lower dividends, higher future advance rates, or reduced services from the FHLBank to all members. Third, the Bank Act limits the ability of a member to obtain concessions from its FHLBank. Specifically, section 7(j) of the Bank Act requires the directors of the FHLBanks to administer the affairs of their FHLBank fairly and without discrimination in favor of or against any member borrower. (See 12 U.S.C. 1427(j)). The FHLBanks, therefore, may not offer a price concession to a large member (except for volume and risk-related discounts) without also making it available to all other members. (See 12 CFR 950.5(b)(2).) In addition, existing law limits the number of votes any one member can cast for a FHLBank director from its state to the average number of shares of FHLBank stock required to be held by all members in that state, effectively limiting the ability of large members to control the election of FHLBank directors.

Another concern raised by the advent of large members in the FHLBank System is that such members may present a concentration of credit risk, as a small number of members may account for a large percentage of the FHLBank's advances or other activities. Such concentration of credit risk could subject the FHLBank to losses of a significant magnitude if these members were to experience substantial financial

<sup>8</sup> The mission of the FHLBanks is to provide to their members and housing associates financial products and services, including, but not limited to advances, that assist and enhance such members' and housing associates' financing of: (a) Housing, including single-family and multi-family housing serving consumers at all income levels; and (b) community lending. (See 12 CFR 940.2).

difficulties. To some extent, the existence of large member institutions means that such concentrations of credit risk are inevitable. The risks to any one FHLBank, however, are limited by several features of the FHLBank System. First and foremost, advances and most other activities are secured by the member's collateral, which lessens the likelihood of a FHLBank incurring a loss. In fact, the FHLBank System has never experienced a credit loss from such activity with its members. Second, the FHLBanks have proven to be quite flexible in responding to fluctuations in membership. In particular, different FHLBanks have endured, with little or no consequences, instances where large members have withdrawn from membership or significantly reduced their activity with the FHLBank. Finally, because the consolidated obligations for which one FHLBank is the primary obligor also are the joint-and-several liabilities of all the FHLBanks, the risks to any one FHLBank are effectively backed by the full capital base of the FHLBank System.

Another concern associated with large member institutions and their potential to alter significantly the volume of their activities within any one FHLBank is that such actions may have consequences for the Affordable Housing Program (AHP). Through the AHP, the FHLBanks provide subsidies to members for the funding of affordable owner-occupied and rental housing projects.<sup>9</sup> Because the amount of AHP funds available in any given year depends on the net income of each FHLBank, some parties have expressed concern that the withdrawal of a large member would cause the FHLBank's earnings, and therefore AHP funding, to be reduced. Even if a large member's withdrawal from membership were to have that effect on a given FHLBank, if that member were to become a member of another FHLBank, the total AHP funding for the FHLBank System may be unaffected. Specifically, reduced funding associated with the decreased earnings of the one FHLBank are likely

<sup>9</sup> See 12 U.S.C. 1430(j)(1). Section 10(j)(5) of the Bank Act provides generally that each FHLBank shall contribute annually to its AHP 10 percent of the FHLBank's net earnings for the previous year. If the aggregate amount of such payments is not at least \$100 million, each FHLBank must contribute to its AHP its pro rata share of \$100 million. See 12 U.S.C. 1430(j)(5). The Finance Board's implementing AHP regulation requires each FHLBank to establish a competitive scoring process, subject to overall eligibility requirements and scoring parameters set forth in the AHP regulation, for awarding of the FHLBank's AHP funds to its members. See 12 CFR 951.5(b), 951.6(b). Members apply to the FHLBank of which they are a member for AHP funds on behalf of sponsors of specific housing projects.

to be matched by the increased funding associated with the higher earnings of the other FHLBank. Nonetheless, the geographic distribution of funding among FHLBanks could be significantly altered.

## 2. Members With a Multi-District Presence

In varying degrees, some members now have the ability to operate in more than one FHLBank district, and engage in business with more than one FHLBank. As with large members, the presence of members with multi-district activities has the potential to affect the pricing, operations, and stability of the FHLBanks and the FHLBank System. Such effects could arise because some multi-district activities create the potential for competition among the FHLBanks for member business that was not contemplated when Congress created the FHLBank System. Depending on the nature of such competition, it might either contribute to the efficient achievement of the FHLBank System's housing finance mission, or undermine the cooperative nature of the FHLBank System. Allowing concurrent membership in more than one district for a single institution would amount to redefining the rules governing multi-district activity for such members, and perhaps increase the opportunity for other members to engage in multi-district activity, thus potentially increasing the competitive pressures facing the FHLBanks.

Certain members already conduct a significant amount of business activity across district lines. This activity occurs through a number of channels. The only way for a member to achieve something comparable, in terms of member access and benefits, to concurrent memberships in multiple FHLBanks, under current rules, is through the holding company structure, where two or more subsidiaries of a holding company are each a member of a different FHLBank. Holding companies can cause their subsidiaries to shift or pledge assets among themselves, regardless of their location or membership status. This flexibility affords these holding companies the ability to "FHLBank shop" to obtain more favorable prices for FHLBank services. Such FHLBank shopping puts the FHLBanks in competition with each other, which was not contemplated when Congress created the FHLBank System. The potential for such competition is significant given the number of holding companies in the FHLBank System. Currently, 72 percent of members are subsidiaries of holding

companies.<sup>10</sup> Moreover, 104 depository institution holding companies have subsidiaries that are members of different FHLBanks. The subsidiaries of those holding companies account for 36 percent of total FHLBank System advances outstanding. Furthermore, going forward under the new capital structure required by Gramm-Leach-Bliley Act, Public Law 106-102, 133 Stat. 1338 (Nov. 12, 1999) (GLB Act), FHLBank shopping may not be limited to prices for services. Specifically, because the GLB Act does not require all FHLBanks to have the same stock purchase requirements, a FHLBank could attempt to compete for certain members' business by setting stock purchase requirements that are more favorable to those members. Although Finance Board approval will be necessary before implementing any capital plan, FHLBanks have expressed a desire for the flexibility to adjust their stock purchase requirements within reasonable ranges. If approved, each FHLBank would have an ability to set those requirements in such a way as to attract the business of members with multi-district access or concurrent memberships.

Currently, a holding company structure allows the company to secure the benefits of membership in two or more FHLBanks through its member affiliates. In recent years, the consolidation of the banking industry and the passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 have induced many banking companies to adopt an interstate branch structure, rather than operate with numerous banking subsidiaries. An institution with an interstate branch network is currently not permitted membership in more than one FHLBank. Consequently, this situation has prompted several members that have acquired members of other FHLBanks through a merger to seek permission to become a member of the FHLBank of the merged member, or to continue the membership of the merged member, so that it may obtain the benefits of membership in more than one FHLBank without having to maintain separate banking subsidiaries. More requests for concurrent membership by single institutions could arise, given the prevalence of members with geographically dispersed branch networks. As of June 30, 2000, 188 of the FHLBank System's 7,205 bank and thrift members had branch offices in more than one FHLBank district. These members accounted for 37 percent of

<sup>10</sup> Many of these are the only subsidiary of unitary bank or unitary thrift holding companies.

total deposits in all member commercial banks and thrifts.

Although subject to limits, there are other means by which members can access the services of more than one FHLBank. For example, certain members currently obtain unsecured credit from FHLBanks of which they are not members. Finance Board policies permit the FHLBanks to extend short-term unsecured credit to eligible counterparties, but restrict those counterparties to institutions that are in the banking, housing, finance, or securities industries. The Finance Board also imposes credit-quality restrictions on a FHLBank's extensions of unsecured credit. Nothing in the Bank Act or in the Finance Board's regulations or policies, however, requires an eligible counterparty to be a member of the FHLBank extending the unsecured credit. Thus, a member may obtain limited amounts of unsecured loans (typically, federal funds) from its own FHLBank, as well as from other FHLBanks. The unsecured credit market is thus an area where FHLBanks already have the potential to compete with one another. As of August 31, 2001, 80 percent of the unsecured credit outstanding from the FHLBanks to members had been extended by FHLBanks to members of other FHLBanks.

The FHLBanks' AHPs provide another way that member activities can reach across FHLBank districts. Over the 10-year history of the AHP, 8 FHLBanks have provided AHP funds to their members to support 118 out-of-district AHP projects, which represents approximately 2.4 percent of total AHP funds. This percentage has been higher in recent years, reaching 5.7 percent in 1999 and 3.3 percent in 2000. The AHP regulation gives a FHLBank the discretion to prohibit the use of its AHP funds to support out-of-district projects. See 12 CFR 951.5(b)(10)(i)(B).<sup>11</sup> Nonetheless, all but two of the FHLBanks currently permit such out-of-district funding.

Finally, member assets may be spread among FHLBank districts as a result of inter-FHLBank operations. For example, advances and acquired member assets (AMAs) can be sold or "participated" between and among the FHLBanks.<sup>12</sup>

<sup>11</sup> During the AHP rulemaking process, commenters indicated that there were both advantages and disadvantages to allowing FHLBanks to adopt prohibitions on funding of out-of-district projects. Accordingly, the Finance Board determined to leave the decisions on whether to adopt such prohibitions to the discretion of each FHLBank, in consultation with its Advisory Council.

<sup>12</sup> All 12 FHLBanks have established various member mortgage asset programs to assist their

Although the sale or participation of advances is relatively uncommon, currently more than half of the total outstanding balance of AMAs has been participated by the acquiring FHLBanks to other FHLBanks.

Although not all multi-district activities translate into greater competition among the FHLBanks, for those that do, there are a number of factors that mitigate the extent of such competition among FHLBanks. Specifically, FHLBanks are required to apply standards and criteria for evaluating member advances consistently and without discrimination. Thus, FHLBanks may not offer discounted pricing to a "FHLBank shopper" unless that client has creditworthiness or other qualifications for better terms for which all members could potentially qualify. Further, Finance Board regulations (12 CFR 950.5(b)) require that FHLBanks price their advances at or above their marginal cost of funds, providing a lower limit for advance prices that protects the FHLBanks' profitability. Finally, any such competition that could prove destructive would be detected and addressed by safety-and-soundness requirements that are enforced by annual on-site Finance Board examinations and off-site monitoring.

The current inter-district activities by members have affected the regional franchises of the FHLBanks, in spite of the existing practice that allows institutions to become members of only one FHLBank. Modifying existing practice to allow institutions to become members of more than one FHLBank concurrently would likely serve to increase the potential competition among the FHLBanks. Nonetheless, such a modification may also have benefits for the stability of any one FHLBank. Depending on how such concurrent memberships are structured, they may act to limit the concentration of risks that arise when institutions become disproportionately large members of a single FHLBank. Whether such changes would promote or detract from the ability of the FHLBank System to achieve its public purpose is an important issue for consideration. Part III of this notice identifies specific questions on this and other issues raised in this section.

members. The programs all involve the investment by the FHLBank in loans originated by members.

## II. Petitions for Multiple FHLBank Memberships for a Single Depository Institution

It is against this background of the current practice and structure of the FHLBank System that three FHLBanks have submitted petitions to the Finance Board requesting that the Finance Board permit a single depository institution to become a member of more than one FHLBank concurrently.

### A. Current Rules

Currently, each member of the FHLBank System is a member solely of the FHLBank in the district of which the member maintains its principal place of business. No single institution is a member of more than one FHLBank, although, as noted above, there are over 100 holding companies nationwide that own separate affiliates that are members of different FHLBanks. If a holding company that owns a member of one FHLBank acquires a depository institution that is a member of another FHLBank and then holds the two institutions as separate subsidiaries, each subsidiary can remain a member of its own FHLBank. If, however, the holding company opts to merge the two institutions, current rules provide that the FHLBank membership of the disappearing institution terminates when it is merged into the other institution.<sup>13</sup> (See 12 CFR 925.24(a).) As a result of one such merger, the Finance Board has been presented with an issue that it has not previously addressed, which is whether a single depository institution may be a member of more than one FHLBank at the same time.

### B. Petitions for Multiple FHLBank Memberships

On December 11, 2000, the Finance Board received from the Federal Home Loan Bank of Dallas (Dallas FHLBank) a petition (Petition) requesting that the Finance Board approve an application that would allow an institution that currently is a member of the Federal Home Loan Bank of San Francisco (San Francisco FHLBank) to become, in addition, a member of the Dallas FHLBank. The institution seeking dual FHLBank memberships, Washington Mutual Bank, FA (WMBFA), is a federal savings association located in Stockton, California.<sup>14</sup> WMBFA applied for

<sup>13</sup> The result would be the same even if no holding company were involved. Thus, if a member of one FHLBank were to merge into a member of another FHLBank, the membership of the former institution would terminate upon the cancellation of its charter, which typically occurs when the merger takes effect.

<sup>14</sup> As of June 30, 2001, WMBFA was the largest member of the San Francisco FHLBank, with

membership in the Dallas FHLBank in connection with its merger with Bank United, a federal savings bank located in Houston, Texas, that had been the largest member of the Dallas FHLBank.<sup>15</sup> As described above, upon consummation of the merger into WMBFA on February 13, 2001, Bank United's membership in the Dallas FHLBank terminated. Before submitting the Petition to the Finance Board, the Dallas FHLBank had approved the membership application submitted by WMBFA, contingent upon the Finance Board also approving the application under section 4(b) of the Bank Act (12 U.S.C. 1424(b)). The Finance Board published a notice of its receipt of the Petition, and received requests to intervene and comment letters from 11 parties, including five FHLBanks, two FHLBank members, three community development organizations, and a trade association. Certain of those parties have asked the Finance Board to address the issues associated with multiple FHLBank memberships through a rulemaking, rather than through an adjudication of the Petition. More recently, the Finance Board has received from the Federal Home Loan Bank of New York (New York FHLBank) a similar petition to allow Fleet National Bank, Providence, Rhode Island (Fleet), a member of the Federal Home Loan Bank of Boston, to become a member of the New York FHLBank as a result of its merger on March 1, 2001 with Summit Bank, Hackensack, New Jersey (Summit-NJ), which formerly had been a member of the New York FHLBank.<sup>16</sup> The Finance Board also has received from the Federal Home Loan Bank of Chicago (Chicago FHLBank) a similar petition to allow Charter One Bank, F.S.B., Cleveland, Ohio (Charter One), a member of the Federal Home Loan Bank of Cincinnati, to become a member of the Chicago FHLBank as a result of its merger on July 2, 2001 with Liberty Federal Bank, Hinsdale, Illinois,

(Liberty Federal), which formerly had been a member of the Chicago FHLBank.

### C. Legal Considerations

A fundamental threshold issue is whether the Bank Act authorizes an institution to become a member of more than one FHLBank. For example, within the context of section 4(b) of the Bank Act, the question is raised whether an institution may become a member of more than one FHLBank, or whether it is simply provided an alternative, in limited circumstances, to become a member of a FHLBank other than the one in whose district it has its principal place of business. (See 12 U.S.C. 1424(b).) Since its enactment in 1932, section 4(b) of the Bank Act has been amended only one time, which amendment struck from the statute references to "nonmember borrowers" that the Congress described as obsolete.<sup>17</sup> If the Finance Board were to determine that section 4(b) of the Bank Act authorizes an institution to become a member of more than one FHLBank, the Finance Board also would have to establish standards for determining what constitutes "demanded by convenience" under section 4(b) for any institution that seeks membership in an adjoining FHLBank. In Part III of this notice, the Finance Board requests comment on what factors the Finance Board should consider in determining whether an additional membership would meet the "demanded by convenience" requirement established by section 4(b) of the Bank Act. As a related matter, the Finance Board also requests comment on how the "demanded by convenience" standard should be applied in the case of an institution that simply seeks to become a member of an adjoining FHLBank, *i.e.*, in lieu of becoming a member of the FHLBank where it maintains its principal place of business.

### D. Multiple FHLBank Membership Issues

If the Finance Board were to permit multiple FHLBank memberships under the Bank Act, a number of regulatory issues would need to be resolved, some of which may require statutory or regulatory amendments. Part III of this notice identifies specific questions on these issues for which the Finance Board is soliciting comment. Several of these issues are discussed further below.

#### 1. Membership Restrictions

If the Finance Board were to permit multiple FHLBank memberships for a single depository institution under section 4(b) of the Bank Act, a financial institution that conducts significant portions of its business in different states could, in theory, become a member of several FHLBanks, depending on how many FHLBank districts adjoin the FHLBank district where the institution maintains its principal place of business. For example, an institution with its principal place of business in the Cincinnati or Dallas FHLBank districts could, in theory, become a member of up to six other FHLBanks. An institution with its principal place of business in the Des Moines FHLBank district could, in theory, become a member of up to five other FHLBanks. In contrast, an institution with its principal place of business in the Boston FHLBank district could become a member of only one other FHLBank. Such a result raises questions about the disparate treatment of members under the Bank Act, particularly as amended by the GLB Act, which was intended to equalize access to the FHLBank System for all members. While permitting multiple FHLBank memberships arguably could mitigate concerns about large member concentration in a particular FHLBank, the solution may be rendered more or less effective depending on geography. Moreover, the solution may be completely unavailable in the case of a merger of two members whose FHLBank districts do not adjoin. If membership in one FHLBank carries with it the opportunity to become a member of up to six other FHLBanks but membership in another FHLBank carries the opportunity to become a member of one or two other FHLBanks, then some FHLBanks and their members may be placed at a disadvantage relative to certain other FHLBanks and their members. Such disparate treatment of FHLBanks and their members could raise both legal and safety and soundness concerns for the Finance Board.

approximately 43 percent of its total advances and 41 percent of its total capital stock. WMBFA has over 1,126 branch offices located in California, Texas, and Florida. Washington Mutual, Inc., Seattle, Washington, is a savings and loan holding company that owns WMBFA, as well as two institutions that are members of the Federal Home Loan Bank of Seattle, and one that is a member of the Federal Home Loan Bank of Topeka.

<sup>15</sup> As of December 31, 2000, Bank United held approximately 26 percent of the total advances and 18 percent of the total capital stock of the Dallas FHLBank. Bank United also had over 150 branch offices Texas.

<sup>16</sup> The merger also involves two other institutions, Summit Bank, Bethlehem, Pennsylvania, and Summit Bank, Norwalk, Connecticut, neither of which is relevant for FHLBank membership purposes.

<sup>17</sup> The House Conference Report on FIRREA, which amended the Bank Act in 1989, states that those nonmember borrower provisions were removed because they were obsolete. See H.R. Conference Report No. 101-222, 101st Cong., 1st Sess. at 426 (Aug. 4, 1989). FIRREA left intact section 5(f) of the HOLA, which separately addressed the adjoining district issue for federal savings and loan associations. It was not until the Gramm-Leach-Bliley Act of 1999 that section 5(f) of the HOLA was amended. That amendment provided for voluntary FHLBank membership for federal savings associations, but made no reference to the adjoining district issue. Section 5(f), as amended, states: "After the end of the 6-month period beginning on November 12, 1999, a Federal savings association may become a member of the [FHLBank] System, and shall qualify for such membership in the manner provided by the [Bank] Act." 12 U.S.C. 1464(f).

One possible means of addressing those concerns would be to limit the number of FHLBanks in which any one institution could be a member. For example, if the Finance Board were to limit institutions to no more than two FHLBank memberships, then any concerns about disparate treatment of members based only on geography may well be moot, although the possibility of the member "FHLBank shopping" (*i.e.*, playing one FHLBank against another) would remain. If the Finance Board were to permit an institution to become a member of more than one FHLBank, the Finance Board, in Part III of this notice, requests comment on how best to treat all members equally under the Bank Act, whether the Finance Board should limit the number of FHLBanks that a member may join, and if so, how it should structure those limits in order to discourage activities such as "FHLBank shopping."

## 2. FHLBank Capital Stock

Under the existing capital stock purchase requirements, which remain in effect until a FHLBank implements its new capital structure plan under the GLB Act, each member must subscribe to an amount of FHLBank stock equal to the greater of 1 percent of the member's residential mortgage assets or 5 percent of its outstanding advances. (*See* 12 U.S.C. 1426(b)(1), (2).) As the FHLBanks implement their capital structure plans, that subscription formula will be replaced by provisions in each plan that establish a minimum stock investment for all members. (*See* 12 U.S.C. 1426(b)(1)(B), (c)(1).) Because each FHLBank has significant latitude in determining how to structure the minimum investment for its members (*i.e.*, as a percentage of the member's assets, outstanding advances, or other business activity) and what classes of stock to issue, it is unlikely that the stock purchase requirements for any two FHLBanks will be identical, as is the case under current law.

Under either the existing or the GLB Act capital regime, if a member of one FHLBank were to become a member of one or more additional FHLBanks, it would have to purchase some amount of the stock of each of the additional FHLBanks. The Bank Act does not expressly provide for a member to invest a lesser amount than is required by the current statutory formula or the minimum investment established under the capital plan for the FHLBank. Similarly, the Bank Act does not authorize a member to maintain its required investment on a proportionate basis, *i.e.*, where the amount of the required investment is allocated among

the stock of each of the FHLBanks that has admitted the institution to membership. Moreover, section 7(j) of the Bank Act requires the board of directors of each FHLBank to administer the affairs of the FHLBank fairly and impartially and without discrimination in favor of or against any member borrower. (*See* 12 U.S.C. 1427(j).) That provision suggests that a reduction of the stock purchase requirement for the benefit of particular FHLBank members would not be permissible if it were to discriminate against other members.

In light of the above, and if the Finance Board were to provide regulatory guidance on multiple FHLBank memberships, the Finance Board, in Part III of this notice, requests comment on how best to apply the existing and the GLB Act stock purchase requirements to an institution if it were allowed to become a member of more than one FHLBank. The Finance Board also requests comment on whether it should defer any action on the issue of multiple FHLBank memberships until after the capital structure plans for the FHLBanks have been implemented, recognizing that a determination as to how to apply the new capital structure in such circumstances logically should not be done until the contents of those plans are known.

## 3. Collateral Securing FHLBank Advances to Members

Section 10(a) of the Bank Act provides generally that all advances from a FHLBank to members shall be fully secured by eligible collateral. (*See* 12 U.S.C. 1430(a).) Section 10(d) of the Bank Act provides that a FHLBank shall reserve the right to require at any time, when deemed necessary for its protection, deposits of additional collateral security or substitutions of security by the borrowing institution, and each borrowing institution shall assign additional or substituted security when and as so required. (*See* 12 U.S.C. 1430(d).) Section 10(e) of the Bank Act further provides generally that any security interest granted to a FHLBank by any member shall be entitled to priority over the claims and rights of any party, other than a *bona fide* purchaser that is entitled to priority under other law or a person with an actual perfected security interest. (*See* 12 U.S.C. 1430(e).) Part 950 of the Finance Board's regulations implements the provisions of the Bank Act on advances and collateral. (*See* 12 CFR part 950.)

If the Finance Board were to permit one depository institution to become a member of more than one FHLBank, questions are raised as to how a

FHLBank would ensure that its advances to a member would remain fully secured if that member also had obtained advances from other FHLBanks. In that case, each FHLBank would have the right under section 10(d) of the Bank Act to require a member at any time to deposit additional collateral or to substitute collateral. Whereas the FHLBanks now rely in many cases on a "blanket lien" on a member's assets, that approach may not be workable where two or more FHLBanks have made advances to one member, unless the FHLBanks have agreed to subordinate their respective interests in certain assets of the member. Although delivery of collateral to each FHLBank also would solve these concerns, it could entail substantial administrative costs to both FHLBanks, which could affect the pricing of advances to all members. Moreover, if a member of more than one FHLBank were to be placed into receivership, the FHLBanks may well have competing claims to the same collateral (unless they have perfected their respective security interests), which may require the Finance Board to impose separate collateral requirements for institutions that are members of more than one FHLBank. Questions of how to prioritize security interests of two FHLBanks over the claims and rights of any party, as provided by section 10(e) of the Bank Act, also are raised. (*See* 12 U.S.C. 1430(e).) In Part III of this notice, the Finance Board requests comment on how permitting multiple FHLBank memberships would affect the collateral practices of the FHLBanks from which those members obtain advances, and what safeguards the Finance Board could adopt in its advances and collateral regulations to ensure that advances to such members do not present any undue risks to the FHLBanks or to the FHLBank System.

## 4. Directors and Voting Rights

If an institution were to be permitted to become a member of more than one FHLBank, the Finance Board would have to determine whether that institution could participate in the election of directors (*i.e.*, by voting or by having its representatives serve on the board) at any FHLBank other than the one where it maintains its principal place of business. Similarly, the Finance Board would have to determine whether the stock owned by such an institution in its "non-principal" FHLBank could be included in determining the amount of FHLBank stock required to be held by the members of those FHLBanks. Each year, the Finance Board allocates elective directorships among the states

based on the amount of FHLBank stock required to be held by the members that are located in each state. The FHLBanks also use the required stock holdings to calculate the statutory ceiling on the number of votes that any one member may cast in an election of directors.

Under section 7(b) of the Bank Act, each elective directorship of a FHLBank must be designated by the Finance Board as representing the members of that FHLBank that are located in a particular state, and may be filled only by an officer or director of a member that is located in that state. (See 12 U.S.C. 1427(b).) For each elective directorship, only the members that are located in the particular state may vote, with each share of FHLBank stock required to be held by the member carrying one vote. The maximum number of votes that any one member may cast, however, is capped at the average number of shares of FHLBank stock required to be held by members in that state as of the end of the calendar year.

Currently, each member of a FHLBank is designated as being located in a particular state, based on the location of its principal place of business, which in turn is based on the location of its home office, as specified in its charter. (See 12 CFR 925.18(b).) Based on that designation, a member may vote for FHLBank directors, and the officers and directors of the member are eligible to serve as a FHLBank director representing that state. Under current practice, an institution is deemed to have only one "principal place of business," although it may be in a state other than the home office is located. (See 12 CFR 925.18(c) (allowing for an alternative location for the principal place of business).) Even if the Finance Board were to permit an institution to become a member of one or more additional FHLBanks, it is not clear that the member could have any principal place of business other than its current state and, therefore, it is unclear whether the lack of a principal place of business within the additional FHLBank districts would preclude the member from participating in the elections of the additional FHLBanks or from having its stock included in determining the average amount of FHLBank stock held by the members of the additional FHLBanks. The concept of a "principal place of business" suggests exclusivity, *i.e.*, notwithstanding that an institution may conduct its business from a multitude of locations, only one of those locations will be its home office, corporate headquarters, or the location at which most of its business is conducted.

In Part III of this notice, the Finance Board requests comment generally on the extent to which an institution if it were allowed to become a member of more than one FHLBank should be permitted to participate in the election of directors for its "non-principal" FHLBanks. The Finance Board also requests comment on whether allowing such an institution to participate in the elections of its "non-principal" FHLBanks would have any adverse effects, either as to the FHLBanks themselves or as to the other members of the additional FHLBanks that maintain their principal place of business within the district, particularly the community financial institutions. The Finance Board further requests comment on whether it would be advisable for a particular institution to be deemed to have more than one principal place of business for FHLBank membership purposes and, if so, how the additional principal places of business should be determined.

#### 5. Evaluation of "Demanded by Convenience" Membership Applications

All applicants for FHLBank membership must satisfy certain statutory eligibility criteria in order to be approved for membership. (See 12 U.S.C. 1424.) The Finance Board's membership regulation prescribes documentation and other requirements for evaluation of membership applications, including evaluation of an applicant's financial condition and other information based on the applicant's recent regulatory financial and examination reports. (See 12 CFR 925.6 through 925.17.) The regulation, however, does not specifically address how a FHLBank, or the Finance Board, should evaluate an application for an additional membership submitted under the provisions of section 4(b) of the Bank Act, nor does it specify what information is required to be submitted by an applicant seeking membership under that provision.

Moreover, applying the existing regulation to such applicants is apt to result in some inconsistencies, depending solely on whether an application is filed before or after the applicant has merged with a member of the FHLBank. For example, WMBFA submitted its application to the Dallas FHLBank prior to its merger with Bank United, which (if the existing regulations were to be applied to this type of application) would appear to allow the application to be processed based solely on an evaluation of the financial condition and other information of WMBFA prior to its

merger with Bank United. By contrast, Fleet submitted its application to the New York FHLBank after its merger with Summit-NJ, which (if the existing regulations were to be applied to this type of application) required the New York FHLBank to evaluate the financial condition and other information of the combined entity, *i.e.*, Fleet as it exists after the merger with the three separate Summit Bank subsidiaries. (See 12 CFR 925.15.)

Such materially different processing requirements illustrate the degree to which the current regulation lacks a coherent approach to the evaluation of applications for multiple FHLBank memberships under the provisions of section 4(b) of the Bank Act. In cases where an institution that is a member of one FHLBank seeks membership in another FHLBank as a result of its merger with a member of the latter FHLBank, the merger itself has been cited as a compelling factor justifying the additional FHLBank membership. In such circumstances, logic suggests that the eligibility of that out-of-district institution for membership in the additional FHLBank should be determined in light of the financial and other data of the post-merger entity, rather than the data of the institution as it existed prior to the merger. To proceed otherwise effectively would require the FHLBank (and the Finance Board) to determine the eligibility of an out-of-district institution for membership without regard to the in-district presence that the institution has acquired through the merger. The Finance Board believes that whatever process that might be adopted for the review of such membership applications if multiple FHLBank memberships were to be permitted should be applied consistently, and should not vary based solely on whether the merger occurs before or after the submission of the membership application. In Part III of this notice, the Finance Board requests comment on whether the procedures and criteria for evaluating such applications if multiple FHLBank memberships were to be permitted should be applied consistently to all such applicants, and whether there are any reasons why the Finance Board should not require that the analysis of the membership application be focused on the combined entity, *i.e.*, as it exists or will exist subsequent to its merger.

#### III. Solicitation of Comments

The Finance Board is soliciting comments on the following questions, which relate to how developments in the membership base have affected the FHLBank System, and how permitting a

single depository institution to become a member of more than one FHLBank might affect the FHLBank System. This part of this notice contains all the questions for which the Finance Board specifically seeks comment.

#### *A. Issues Regarding the Current Structure of the FHLBank System*

1. What are the implications for the FHLBank System of increasing consolidation among the membership base of the FHLBanks? Specifically, what are the risks to a FHLBank of having a significant portion of its business and capital stock concentrated in a small number of large members, and what is the best way to manage those risks? How does such concentration of business and stock affect the distribution of FHLBank services to the membership and the governance of the FHLBanks?

2. What are the implications for the FHLBank System of the current structure under which two or more depository institutions that are subsidiaries of the same holding company may become members of separate FHLBanks? Specifically, have such "affiliated memberships" caused competition among FHLBanks to a degree that was not contemplated when Congress created the FHLBank System? If so, is such competition either beneficial or harmful to the accomplishment of the public purposes of the FHLBank System?

3. What, if any, restrictions on the terms of membership for depository institutions that operate in more than one FHLBank district, or for depository institutions whose affiliates are members of other FHLBanks, are necessary or appropriate to minimize any risks that may be associated with such members or to preserve the cooperative nature of the FHLBank System?

4. What would be the implications of revising the structure of the FHLBank System to allow a single depository institution to become a member of more than one FHLBank? Would the risks or benefits of such a structure differ materially from those presented by the current structure, under which affiliated depository institutions may be members of different FHLBanks? Would revising the structure in such a manner affect the ability of the FHLBanks to achieve their statutory mission to support housing finance and community lending or affect FHLBank and FHLBank System safety and soundness?

5. Would allowing a single depository institution to become a member of more than one FHLBank affect the distribution of membership benefits to

small members relative to the larger members? How would it affect the distribution of membership benefits to large institutions that are members of only one FHLBank, relative to large institutions that are members of more than one FHLBank?

6. Certain depository institution members currently conduct a significant portion of their business beyond the geographic boundaries of their FHLBank district. What effect do these inter-district activities have on the safety, soundness, stability, and mission achievement of the FHLBank System?

7. What actions, if any, should the Finance Board take in response to the increasing amount of inter-district activities conducted by some members of the FHLBank System?

8. What are the implications, for distribution of Affordable Housing Program (AHP) funds, of continued consolidation within the membership base of the FHLBank System and the expansion of out-of-district financing activities? More specifically, how does inter-district consolidation and expansion of out-of-district financing activities affect the geographic distribution of AHP funds? Given that certain FHLBanks have limits on the amount a single institution may receive in AHP funds, how do these changes affect the distribution of AHP funds?

9. Should the Finance Board consider invoking its statutory authority to consolidate two or more FHLBanks and/or to readjust district boundaries, or take some other action, as a means to address any strains placed on the FHLBank System by the ongoing consolidation within the banking industry?

#### *B. Multiple FHLBank Membership Issues*

1. If the Finance Board were to determine that a single depository institution may become a member of more than one FHLBank under section 4(b) of the Bank Act, what factors should the Finance Board consider in determining whether a particular institution would meet the "demanded by convenience" standard required by section 4(b)?

2. What conditions, restrictions, or limitations should the Finance Board impose on a single depository institution if it were permitted to become a member of more than one FHLBank to ensure that the institution does not pose any undue risks to those FHLBanks, their respective members, or to the cooperative nature of the FHLBank System? What conditions, restrictions, or limitations should the Finance Board impose to allow the FHLBank System to better achieve its

housing finance mission if a single depository institution were to be permitted to become a member of more than one FHLBank?

3. Because the number of "adjoining districts" varies from FHLBank to FHLBank, how could the Finance Board best ensure that members in different FHLBanks, if permitted to become members of more than one FHLBank, would have equal opportunities under section 4(b) to become a member of a FHLBank in an adjoining district? Would a limitation on the number of FHLBanks that any one institution could join be an appropriate means to avoid disparate treatment of members?

4. How should the stock purchase requirements of each FHLBank be applied to an institution if it were permitted to become a member of more than one FHLBank? Should the Finance Board require such members to comply with the stock purchase requirements of each FHLBank in the same manner as those requirements apply to all other members, particularly in light of section 7(j) of the Bank Act, which requires each FHLBank to administer its affairs impartially and without discrimination against any member?

5. Given that the FHLBanks are now developing plans to implement a new capital structure, and given that members, if allowed concurrent memberships in two or more FHLBanks, might be subjected to different stock purchase requirements at each FHLBank, should the Finance Board use its authority to approve those plans to require that all FHLBanks impose equal, or very similar, stock purchase requirements for membership, advances, and other activities such as mortgage purchases?

6. How would single depository institutions if permitted to become members of more than one FHLBank affect the collateral practices of the FHLBanks from which those members obtain advances, and what safeguards should the Finance Board adopt to ensure that advances to such members do not present any undue risks to the FHLBanks or to the FHLBank System?

7. To what extent, if any, should an institution if it were allowed to become a member of more than one FHLBank be permitted to participate in the election of directors for its "non-principal" FHLBanks and, if such participation were allowed, would it have any adverse effects on the non-principal FHLBanks or on their members, particularly the smaller members, such as community financial institutions?

8. What financial and other information about the prospective member should the Finance Board

require to be submitted by an institution if it were permitted to apply for an additional FHLBank membership under the Bank Act? Specifically, in any case involving a merger of two institutions, should the eligibility of the surviving institution for the additional FHLBank membership be determined based on an analysis of the combined entity, *i.e.*, as it exists subsequent to the merger?

#### IV. Request for Comment

The Finance Board is interested in receiving comment on all aspects of the issues raised by the continued growth in inter-district activities of FHLBank members and the concept of multiple FHLBank memberships, in addition to the specific requests for comment made in this solicitation of comments.

Dated: September 26, 2001.

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

**J. Timothy O'Neill,**  
*Chairman.*

[FR Doc. 01-24588 Filed 10-2-01; 8:45 am]

BILLING CODE 6725-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA242-0291b; FRL-7059-1]

#### Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from automotive refinishing operations, metal parts and products coating, and applications of nonarchitectural coatings. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by November 2, 2001.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243; and, Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

**FOR FURTHER INFORMATION CONTACT:**

Jerald S. Wamsley, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1226.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following rules: ICAPCD Rule 427, Automotive Refinishing Operations; MBUAPCD Rule 429, Applications of Nonarchitectural Coatings; and, MBUAPCD Rule 434, Coating of Metal Parts and Products. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Since we do not plan to open a second comment period, anyone interested in commenting should do so at this time. If we do not receive adverse comments, we are planning no further activity. For further information, please see the direct final action.

Dated: August 24, 2001.

**Sally Seymour,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 01-24484 Filed 10-2-01; 8:45 am]

BILLING CODE 6560-50-U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[VA-T5-2001-02a; FRL-7073-4]

#### Clean Air Act Approval of Operating Permit Program Revisions; Virginia

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the operating permit program of the Commonwealth of Virginia. Virginia's operating permit

program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted final interim approval of Virginia's operating permit program on June 10, 1997, as corrected on March 19, 1998. Virginia has revised its operating permit program since receiving interim approval and this action proposes to approve those revisions. Any parties interested in commenting on this action proposing to approve discretionary revisions to Virginia's program should do so at this time. A more detailed description of Virginia's submittal and EPA's evaluation are included in a Technical Support Document (TSD) in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

**DATES:** Written comments must be received on or before November 2, 2001.

**ADDRESSES:** Written comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

**FOR FURTHER INFORMATION CONTACT:**

David Campbell, Permits and Technical Assessment Branch at (215) 814-2196 or by e-mail at campbell.dave@epa.gov.

**SUPPLEMENTARY INFORMATION:** On November 20, 2000, the Commonwealth of Virginia submitted revisions to its State operating permit program. These revisions are the subject of this document and this section provides additional information on the revisions by addressing the following questions:

*What is the State operating permit program?*

*What is being addressed in this document?*

*What is not being addressed in this document?*

*What changes to Virginia's operating permit program is EPA approving?*

*How does Virginia's Voluntary Environmental Assessment Privilege Law affect its operating permit program?*

*What action is being taken by EPA?*