

§ 78.12 Cattle from quarantined areas.

- (d) * * *
- (2) * * *

(i) Cattle from qualified herds in a quarantined area may be moved interstate from a farm of origin directly to a quarantined feedlot, or directly to a specifically approved stockyard and then directly to a quarantined feedlot, or directly to an approved intermediate handling facility and then directly to a quarantined feedlot if the cattle are negative to an official test within 30 days prior to such interstate movement and are accompanied by a certificate which states, in addition to the items specified in § 78.11 of this part, the test dates and results of the official tests; or

28. A new § 78.14 is added to read as follows:

§ 78.14 Rodeo bulls.

(a) A rodeo bull that is test-eligible and that is from a herd not known to be affected may be moved interstate if:

(1) The bull is classified as brucellosis negative based upon an official test conducted less than 365 days before the date of interstate movement;

(2) The bull is identified with an official eartag;

(3) There is no change of ownership since the date of the last official test;

(4) A certificate accompanies each interstate movement of the bull; and

(5) A permit for entry is issued for each interstate movement of the bull.

(b) A bull that would qualify as a rodeo bull, but that is used for breeding purposes during the 365 days following the date of being tested, may be moved interstate only if the bull meets the requirements for cattle in this subpart.

(Approved by the Office of Management and Budget under control number 0579-0047).

§§ 78.1, 78.2, 78.7, 78.8, 78.9, 78.11, 78.12, 78.22, 78.23, 78.24, 78.31, and 78.32 (Amended)

29. In addition to the amendments set forth above, §§ 78.1, 78.2, 78.7, 78.8, 78.9, 78.11, 78.12, 78.22, 78.23, 78.24, 78.31, and 78.32 are amended by revising the OMB control number citation at the end of each of these sections to read as follows: "(Approved by the Office of Management and Budget under control number 0579-0047)".

Done in Washington, DC, this 14th day of November 1991.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-27924 Filed 11-20-91; 8:45 am]

BILLING CODE 3410-34-01

FEDERAL HOUSING FINANCE BOARD**12 CFR Part 936**

[No. 91-562]

Community Support Requirements for Members of the Federal Home Loan Bank System

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is adopting final regulations to implement section 710(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). This section of FIRREA requires the Finance Board to adopt regulations establishing standards of community investment or service for members of the Federal Home Loan Bank ("FHLBank") System to maintain continued access to long-term advances. The Final Rule reflects public comment on the full range of policy and procedural issues involved in the establishment and implementation of community support standards.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, or Stephen D. Johnson, Attorney-Advisor, (202) 408-2847, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:**A. General**

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183 ("FIRREA"), established the Finance Board as an independent agency in the executive branch of the federal government. It is the successor agency to the Federal Home Loan Bank Board with respect to the oversight of the FHLBanks. In supervising the activities of the FHLBanks, the Finance Board must ensure that they carry out their housing finance mission, remain adequately capitalized and able to raise funds in the capital markets, and operate in a safe and sound manner.

All savings institutions insured by the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation ("FDIC") are members of the FHLBank System, as are many savings institutions insured by the Bank Insurance Fund. With the passage of FIRREA, membership in the FHLBank System ("System") was opened as well to commercial banks and credit unions that make long-term home mortgage

loans, subject to certain qualifications related to financial soundness and home financing policies.

B. Community Support Requirements in FIRREA

Section 710(c) of FIRREA added a new section 10(g) to the Federal Home Loan Bank Act of 1932, 12 U.S.C.A. 1430(g), as follows:

(g) Community Support Requirements.—(1) In General.—Before the end of the 2-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board shall adopt regulations establishing standards of community investment or service for members of Banks to maintain continued access to long-term advances.

(2) Factors To Be Included.—The regulations promulgated pursuant to paragraph (1) shall take into account factors such as a member's performance under the Community Reinvestment Act of 1977 and the member's record of lending to first-time homebuyers.

Although the legislative history on section 710(c) is limited, the changes made in related sections in FIRREA shed some light on congressional intent as to section 710(c). Specifically, FIRREA created the Affordable Housing Program and the Community Investment Program, which expand FHLBank community-oriented lending activities and reflect a commitment to housing finance for those at lower income levels, including community development lending. This commitment is also evident in FIRREA's amendments to the Home Mortgage Disclosure Act of 1975, 12 U.S.C. 2803 ("HMDA"), and the Community Reinvestment Act of 1977, 12 U.S.C. 2901 ("CRA"). These amendments broadened HMDA reporting requirements to include the income, sex, and race of applicants and also made CRA examination data available to the public for the first time, facilitating public monitoring of financial institutions' community reinvestment activities.

These changes reflect an intent to make the FHLBank System a more effective means for institutions to engage in community lending and to strengthen the regulatory tools that ensure that community needs are being addressed. Therefore, in promulgating these regulations, the Finance Board has interpreted section 710(c) as another means for the System to support the public policy goals underlying community lending.

C. Public Participation in This Rulemaking

The Finance Board has regarded the development and implementation of these Community Support regulations as one of its most important responsibilities, and throughout the rulemaking process has sought the broadest possible input through public comments.

1. Advance Notice

The Finance Board initiated the rulemaking process by publishing an Advance Notice of Proposed Rulemaking (56 FR 387) ("Advance Notice") on January 4, 1991, soliciting public comment, both generally and as to specific questions and issues. The Finance Board received 66 comment letters in response to the Advance Notice. Comments were submitted by 27 financial institutions (mostly members of the FHLBank System), 10 FHLBanks, 9 community interest organizations and groups, 9 state and local agencies, 8 financial trade associations, and 3 private individuals and companies.

Most of the comment letters recommended that the Finance Board use existing regulatory programs, such as CRA and HMDA, enforced by other federal agencies, in establishing requirements for community support. In addition, the commenters urged the Finance Board to maximize the existing capacity of the FHLBanks to provide affordable housing finance and community development lending. The comment letters differed on the importance of CRA ratings for purposes of this regulation, with some recommending complete reliance on the CRA rating to the exclusion of any other criteria, while others recommended that the CRA rating be one of several elements to be considered.

2. Proposed Rule

Following a careful analysis of the Advanced Notice comments, the Finance Board published a Notice of Proposed Rulemaking (56 FR 26346) ("Proposed Rule") on June 7, 1991, incorporating many of the concepts and suggestions from the Advance Notice. The Finance Board received 99 comment letters in response to the Proposed Rule. Comments were submitted by 28 thrift and banking institutions, all 12 FHLBanks (23 letters), 9 FHLBank Advisory Councils, 11 individual members of FHLBank Advisory Councils, 9 community interest organizations and groups, 4 federal, state and local agencies, 10 financial trade associations (13 letters), 1 United

States Congressman, and 1 private citizen.

Comment letters regarding the Proposed Rule raised seven principal issues:

- The role of the FHLBanks;
- Use and review of CRA ratings;
- Effects on System membership and profitability;
- Public participation in the review process;
- FHLBank administrative burdens;
- Incentive programs; and
- The role of FHLBank Advisory Councils.

Any role of the FHLBanks in reviewing and rating members' Community Support was overwhelmingly opposed by the commenters; 54 of the 56 comment letters addressing this issue were opposed to the FHLBanks' role as outlined in the Proposed Rule. These comment letters came from a range of sources, including FHLBanks, Advisory Councils, FHLBank members, community groups, Congress, and financial trade associations. The reasons for opposition varied, but in essence, the comment letters all objected to any Finance Board delegation of responsibilities to the FHLBanks on the grounds that this would create a perception that the FHLBanks were returning to a pre-FIRREA role as industry regulators, a function FIRREA had eliminated.

The use and review of CRA ratings in the Proposed Rule was addressed in several ways by the comment letters. Forty-five (45) comment letters supported the general use of CRA as a basis for Community Support evaluations, while nine letters opposed any use of CRA. The provision in the Proposed Rule allowing the FHLBanks to evaluate the accuracy of CRA ratings assigned by the federal financial regulators was objected to in 42 comment letters and supported in only 14, with seven letters suggesting that CRA ratings be revised if the benefit would be to the member.

The 35 comment letters that addressed the issue of membership stated that the implementation of a Community Support regulation would reduce the attractiveness of FHLBank membership. Several of the letters predicted that the effect would not be severe because it would be offset by the attractiveness of FHLBank resources and technical assistance.

In addressing the issue of public participation in the Community Support review process, 17 of 25 comment letters opposed any public disclosure of the process. The eight comment letters

taking the opposite view urged even more public disclosures and participation in the review process.

FHLBank administrative issues, community lending incentives, and the role of the FHLBanks' Advisory Councils were also addressed in the comment letters. Seven comment letters were critical of increasing FHLBank Community Support expenditures at a time of FHLBank budget reductions, and 19 letters raised paperwork burden and duplication concerns. Incentives for Community Support activities were opposed in 14 letters, and supported in 11 comment letters. Fourteen (14) comment letters, many from Advisory Councils and their members, stated that the Proposed Rule would have required intrusive and improper activities.

The Finance Board gave careful consideration to all the points raised in the comment letters and incorporated many of the suggested changes and additions in the Final Rule.

D. Background

These regulations are being promulgated at a time when the entire mortgage finance industry is undergoing unprecedented change. The FHLBank System is likewise undergoing its own transition. The Resolution Trust Corporation thrift resolution process, the impact of new capital rules, expanded mortgage securitization, charter mergers, and the state of the housing market are placing enormous strain on all housing lenders, especially portfolio lenders. The FHLBank System has not escaped these forces. While some decrease in the System was expected after the passage of FIRREA, the scope and pace of the shrinkage has exceeded all projections.

Still, the System retains its fundamental health, as reflected in the recent series of reports to Congress on Government Sponsored Enterprises ("GSEs"). Each of the reports, by the Department of the Treasury, Congressional Budget Office, and General Accounting Office, found that the FHLBank System retains its historical profile of high credit quality, low interest rate risk, and abundant capital. Standard and Poor's gave the System a AAA credit rating, even without the implicit government guarantee inherent in its agency status. This is several levels higher than the rating provided to fellow housing GSEs, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation. Nevertheless, the System's level of outstanding advances has fallen 50 percent since FIRREA, undermining the role of the System in housing finance and decreasing its profitability. Among

other things, this loss of earnings has reduced the effectiveness of the System's tremendously successful Affordable Housing Program.

One of the benefits of FIRREA was its change of the FHLBank System's membership rules to include commercial banks and credit unions with a significant commitment to housing. This was in recognition of the fact that commercial banks have greatly expanded their role in mortgage finance. From a public policy standpoint, this expansion in membership is important for several reasons. System advances increase the profitability of mortgage origination at a time when mortgage funding sources and prices are unreliable and unstable. Also, System advances facilitate portfolio lending, which is critical to the origination of community loans that do not conform to the underwriting guidelines of the secondary market. Furthermore, low cost System advances help community lenders, banks and thrifts alike, to compete against large regional banks that have their own access to the capital markets and that are expanding into communities through the emergence of interstate branching. Housing finance benefits from a strong System, but more importantly, community lending benefits.

Another benefit of FIRREA was the elimination of the FHLBanks' regulatory responsibilities. Traditionally, the FHLBank Presidents served as Principal Supervisory Agents, on behalf of the government, in regulating their members. The removal of these responsibilities has restored a customer relationship between the FHLBanks and their members.

Community lending laws and responsibilities are also undergoing significant change. FIRREA made important changes in CRA, the full effects of which are just now being felt. Public notice of previously undisclosed CRA ratings and expanded HMDA reporting requirements are bringing the power of "sunshine" into what has been a little understood and often criticized process.

The inclusion of commercial banks and credit unions expands the effectiveness and efficiency of FHLBank System programs such as the Affordable Housing Program. It increases the health and profitability of the System as well. Since System membership for these newly eligible financial institutions is voluntary, these institutions must be motivated to join the System by products and services which meet their needs. Many such incentives exist, including special community lending products and services, technical

assistance, subsidized advances, and other tools for satisfying CRA. However, if the potential applicant believes that System membership brings with it another costly and intrusive layer of regulation, this may offset the perceived benefits of System membership.

Therefore, in promulgating the Community Support regulations, the Finance Board has attempted to strike a balance that both serves the important policy goals of FIRREA and enhances the System's role as a partner for community lending, but at the same time does not impair its attractiveness to new members. The Finance Board believes that this balance is reflected in the following elements of the final rule:

(1) Reliance on existing CRA documentation to minimize new paperwork burdens for members, avoid a costly new level of examination, and provide members with assurance that in most cases a satisfactory CRA evaluation will result in unrestricted access to System advances;

(2) Use of post-FIRREA CRA examinations to achieve consistency in the evaluation process;

(3) Review of community lending information not normally recognized in a CRA evaluation, such as participation in lending consortia, targeted community lending outside a member's delineated CRA community, and first-time home lending, to ensure that all Community Support activities are given credit and to build flexibility into the review of members for the purpose of maintaining access to System advances; and

(4) Retention of decision making at the Finance Board to ensure consistent enforcement and to avoid any perception of the FHLBanks as regulators.

Finally, consistent with the spirit of FIRREA in providing public disclosure of CRA ratings, these regulations will provide for a public comment process as part of the review of all members' Community Support activities. All comments received will be provided to the member as well as to the member's primary federal regulator. This will provide a member with notice of the community's perception of its activities in advance of its next CRA examination by its primary federal regulator.

E. Analysis of Final Rule

The following is a provision-by-provision discussion of key terminology, Community Support review procedures, and substantive differences between the Proposed Rule and the Final Rule.

1. Section 936.1—Definitions

a. *CRA Evaluation*—The Finance Board's use of the term "CRA Evaluation" in the Final Rule refers to the public section of the evaluation performed by a member's primary federal regulator pursuant to CRA. Only evaluations based on compliance examinations commenced on or after July 1, 1990, will be considered "CRA Evaluations." These CRA Evaluations use four (4) rating categories: "Outstanding," "Satisfactory," "Needs to improve," and "Substantial Non-compliance" as outlined in the Uniform Interagency Community Reinvestment Act Final Guidelines For Disclosure of Written Evaluations and Revised Assessment Rating System, published in the Federal Register on May 1, 1990 (55 FR 18163).

FIRREA amended CRA in three significant ways. First, it required the federal financial regulatory agencies to use a four-tier descriptive rating system instead of the previous numerical rating system in assessing the CRA compliance of financial institutions. Second, it required the agencies to make public a written evaluation of institutions' CRA performance, including a section for public disclosure that explains the agency's conclusions, discusses the supporting facts, and contains the institution's rating. Finally, FIRREA required that financial institutions disclose their CRA rating to the public for all examinations begun after July 1, 1990, by placing the public section of their CRA performance evaluation in their public comment file.

As part of these changes, the Community Support provision of FIRREA requires the Finance Board to take into account the CRA performance of members. However, prior to July 1, 1990, CRA performance information was not disclosed to the public and was specifically exempt from disclosure under the Freedom of Information Act. Therefore, the use of pre-July 1, 1990, CRA information would have forced the Finance Board to use confidential examination information that it would not have been able to disclose. Also, the Finance Board would have been reviewing evaluations conducted under different criteria.

Therefore, to ensure fair and uniform treatment, the Finance Board has decided to only use post July 1, 1990 evaluations. Members without a CRA Evaluation based on exams conducted after July 2, 1990, will not be selected for Community Support review purposes until such evaluations are available. The final rule provides that the Finance

Board will promulgate new Community Support standards if all or substantially all members have not been examined for CRA compliance under the new guidelines within two years of the effective date of this regulation.

The Finance Board is sympathetic to the concerns expressed by community organizations, as well as lending institutions, of the inconsistency in CRA Evaluations. However, the Finance Board does not have the means or authority to conduct direct examinations of lending institutions. Therefore, it must rely, to the greatest extent possible, on the primary federal regulators to develop objective and verifiable measures to assess a lender's performance in meeting community credit needs.

b. Community Support—The term "Community Support" replaces the term "community-oriented lending" used in the proposed rule.

The Finance Board has defined Community Support to encompass and encourage a wide variety of efforts that benefit communities. The term includes the community lending concepts in FIRREA: The design and offering of loan products, actual lending, financial services and programs, and marketing and outreach efforts of all types, both for residential housing and community development. Participation in consortia is included to give credit to a member's Community Support activities within and beyond the institution's CRA delineated community.

As to actual extensions of credit, while the target households are those with moderate-income levels (no greater than 115 percent of median income), members are also expected to make demonstrable efforts to extend credit to benefit households at low-income (80 percent of the area median income) and very low-income (50 percent of the area median income) levels. The Finance Board realizes that not every member will be able to finance very low- and low-income housing, particularly where such housing is contingent upon the availability of additional subsidies.

Therefore, the Finance Board will be interested in reviewing evidence of both actual credit extensions and of efforts to extend credit to very low- and low-income households. The Finance Board will also consider applications to the Affordable Housing Program,

Community Investment Program, participation in FHLBank Community Support programs, or any other similar governmental or private sector programs that facilitate lending to low- or moderate-income households in determining whether the member has

made "demonstrable efforts" in this regard.

c. Displaced homemaker—This definition comes from the National Affordable Housing Act of 1990, Public Law 101-625, 104 Stat. 4079, and was added to complete the definition of first-time homebuyer. Several comment letters noted the absence of the definition in the proposed rule.

d. First-time homebuyer—The definition used in the final rule is the same used in the National Affordable Housing Act of 1990.

e. Long-term advance—Generally, "long-term" FHLBank advances are considered to be those with a term to maturity of greater than five years or more. However, for purposes of this regulation, and as a matter of policy, the Finance Board is applying a definition that deems long-term advances to include a maturity of greater than one year.

Long-term advances are designed to finance residential mortgage loans, which have a maturity between 15 and 30 years. However, the average life of such mortgage loans, when prepayments and refinancings are considered, has ranged between six and eight years. Moreover, housing industry and financial market conditions have reduced the level of FHLBank advances with a term greater than five years to less than 10 percent of total System advances.

Therefore, applying the traditional definition of long-term advances in the context of community support standards would result in a regulation with such a narrow scope as to frustrate the congressional objective behind these requirements. Accordingly, the Finance Board has determined that the definition of long-term advances, for purposes of this final rule, shall be deemed to include all advances with a term to maturity of greater than one year. Advances of a shorter duration will not be cumulated.

f. Low- or moderate-income household and very low-income household—These definitions reflect the definitions used in FIRREA and in the regulation establishing the Affordable Housing Program pursuant to FIRREA.

g. Minority—The definition is from FIRREA.

h. Primary federal regulator—This definition is derived from the codification of the Community Reinvestment Act at 12 U.S.C. 2902(1).

i. Rural—The definition is derived from the Farmers Home Administration definition at 7 CFR 1944.10, as amended by the National Affordable Housing Act of 1990.

2. Section 936.2—Purpose

This section of the final rule restates the FIRREA requirement to promulgate regulations on Community Support as the basis for continued access to long-term advances.

3. Section 936.3—Community Support Statements

This section describes the basic documentation that the Finance Board will use to review the Community Support activities of FHLBank members.

Each member, upon being selected for review, will submit a Community Support Statement, which will include: (1) A copy of the member's CRA Evaluation, or in the case of credit unions, an explanation of Community Support activities; (2) evidence of assistance to first-time homebuyers; (3) documentation of any final judgments regarding violations of fair housing or equal credit opportunity laws; and (4) any additional evidence of Community Support that the member wishes to submit. Failure to submit a Community Support Statement in response to a request shall subject a member to restrictions on long-term advances.

Following is a more detailed discussion of each of the components of the Community Support Statement.

a. CRA Evaluation requirement—Members that have received a CRA Evaluation of "Outstanding" or "Satisfactory" need only submit a copy of the CRA Evaluation to satisfy this component of the Community Support Statement requirements. Recent examination information provided by the federal financial regulatory agencies indicates that the vast majority of System members will fall in this category. Members that have received a CRA Evaluation of "Needs to improve" or "Substantial non-compliance" also must submit a statement of how the member has corrected or proposes to correct the deficiencies noted in its CRA Evaluation. Such a statement should address each noted deficiency with specificity.

The small group of members that are not covered by CRA, such as credit unions, will be required to submit a written statement explaining how they identify the credit needs of their members and how their loan products and financial services meet Community Support standards. The Board recognizes the unique circumstances of insurance companies and will work with these members on a case-by-case basis to fulfill the basic purpose of this Part as to these members. In promulgating this final rule, the Finance Board does not

intend, directly or indirectly, to broaden the coverage of CRA beyond the parameters set by Congress. This final rule relates to the FHLBank System's Community Support requirement only. While CRA ratings are one measure of those activities, Community Support reviews are not CRA proceedings.

b. Assistance to first-time homebuyers—The Finance Board will review the types of loan products, financial services, and other programs and activities intended to assist first-time homebuyers.

The Finance Board recognizes that for some period following the issuance of this regulation, members may not have data to specifically report their assistance to first-time homebuyers. Therefore, a general description of program, product development, and other outreach activities to this class of mortgagors will satisfy this requirement. Members may demonstrate assistance to first-time homebuyers in ways that are not included in the list of examples, but the Finance Board is particularly interested in actual loans, products, and services to first-time homebuyers, especially those in low- and moderate-income households. Members should report activities such as counseling, performed independently or in cooperation with local governments, non-profit housing developers, and community-based organizations.

Since there is currently no requirement under HMDA or CRA to collect data specifically on first-time homebuyers, an expansion of data collection related to first-time homebuyers would indicate a serious commitment by the member to identify and service this segment of its market. Therefore, members are encouraged, but not required, to report any expanded data collection on first-time homebuyers.

c. Violations of Fair Housing and Equal Credit Opportunity—The Finance Board has included in the requirements for the Community Support Statement a requirement for information on any final judgment of Fair Housing Act or Equal Credit Opportunity Act violations because such information would bear directly on Community Support and might be more recent than the CRA Evaluation.

d. Additional evidence of Community Support—The Finance Board intends members to have broad latitude to submit additional evidence of Community Support not acknowledged in the CRA Evaluation. The Final Rule contains examples of such additional evidence, but the listing is not intended to be all inclusive.

4. Section 936.4—Review of Community Support Statements

a. Role of the FHLBanks—In the proposed rule, the FHLBanks would have evaluated a member on its Community Support activities and developed procedures for determination of eligibility for continued access to long-term advances. The preponderance of the comments on the proposed rule objected to the FHLBanks' role in evaluating their members. The FHLBanks, several Advisory Councils, and members objected to having the FHLBanks perceived as regulators, which the proposed rule's delegation of an evaluative role to the FHLBanks could have created. Commenters expressed concern that this role would hurt membership recruitment efforts to the extent it implied that the member would be subjected to another layer of regulation by joining the System. Public-interest commenters objected to the FHLBanks performing member evaluations on the grounds that the FHLBanks were not disinterested parties in reviewing their own members. In the proposed rule, the Finance Board would have retained a role as the reviewer, but the initial review of members' Community Support would have been performed by the FHLBanks. In proposing this arrangement, the Finance Board expected that the FHLBanks could more accurately identify the credit needs of their various districts and, in a constructive fashion, assist members directly in meeting those needs.

However, the Finance Board recognizes the difficulties and possible perceived conflicts that could arise if the FHLBanks were placed in a substantive evaluative role. Therefore, in the final rule, the FHLBanks have no evaluative responsibilities over member institutions. The FHLBanks are assigned a number of administrative responsibilities and will be required to provide technical assistance to members both by working with the member directly in developing a Community Support Statement, Community Support Action Plan, and through Bank programs, as specified in § 936.8. The administrative responsibilities that are assigned to the FHLBanks will consist of reviewing the Community Support Statements for completeness, notifying a member if the statement is incomplete, and forwarding to the Finance Board completed Community Support Statements, comment letters or other information received during the public comment period, as well as a list of members with incomplete or missing statements.

b. Role of the Finance Board—The Finance Board's role is to review the Community Support Statements for approval or disapproval within 60 days, pursuant to the standards in § 936.4. Also, the Finance Board will forward all public comments to the member's primary federal regulator.

The Finance Board will be responsible for giving written notice to the FHLBank and the member as to whether or not the member's Community Support Statement is approved. If a member's Community Support Statement is not approved, the Finance Board will furnish specific reasons for the disapproval, with enough information to assist the member in developing an Action Plan.

In reviewing a member's Community Support Statement, the Finance Board will place primary emphasis on a member's CRA Evaluation, focusing particularly on those assessment factors within the CRA Evaluation that are most directly related to Community Support. For example, the Finance Board will not focus on the technical implementation of the CRA within a given lending institution, but will focus on CRA Assessment Factors and Performance categories most relevant to the definition of Community Support.

The primary purpose of the FHLBank System is to provide funds for home finance, and the Finance Board will be focusing on member residential lending. FIRREA, however, provided expanded authority for Community Support lending for commercial and economic development of low- and moderate-income communities. Consequently, the Finance Board will also view positively CRA Evaluations and Community Support Statements that highlight commercial and economic development activities that benefit low- and moderate-income families or low- and moderate-income neighborhoods. Commercial lending institutions may submit evidence of extension of credit to these communities, either as identified in an institution's CRA Evaluation or as part of the Community Support Statement.

As a general rule, those members whose Community Support Statements include a CRA Evaluation of "Outstanding" or "Satisfactory" will receive approval of their Statements. The Finance Board anticipates that the CRA examination, in assessing the responsiveness of a lending institution to the credit needs in its community, will serve to address the key elements required in a Community Support Statement.

In a very limited number of instances, a CRA Evaluation that meets the

standards under CRA (and is thus rated "Outstanding" or "Satisfactory") may not completely satisfy Community Support standards. Under CRA examination guidelines, a member's CRA Evaluation may be based on a broad array of non-housing related credit products; a lending institution could conceivably receive a satisfactory rating based solely on loan products unrelated to housing or community development. Therefore, the Finance Board retains the authority to require an Action Plan for a member with a CRA Evaluation of "Outstanding" or "Satisfactory" if the Evaluation does not reflect a reasonable effort at Community Support activities and the member's Community Support Statement is not supplemented with other evidence that demonstrates such efforts. Consequently, in preparing a Community Support Statement, members should include information relevant to Community Support if such information is not included in the CRA Evaluation.

Members with a CRA Evaluation of "Needs to improve" or "Substantial noncompliance," will usually be asked to submit an Action Plan to improve their level of Community Support. The Finance Board recognizes that a member's CRA Evaluation of "Needs to improve" or "Substantial noncompliance" may not reflect the full extent of the member's Community Support efforts. For example, an institution's unsatisfactory rating may not reflect a creative and effective inner-city lending program or participation in a consortium because either the activity began after the CRA Evaluation was concluded or because it was targeted to households outside the member's delineated CRA community. Therefore, the Finance Board may not require an Action Plan for every member with a "Needs to improve" or "Substantial noncompliance" CRA Evaluation if the member demonstrates that it is meeting Community Support Standards. In preparing their Community Support Statements, members should provide the Finance Board with pertinent information on their Community Support activities not addressed or recognized in the CRA Evaluation.

In the case of a member who is required to submit an Action Plan, the Finance Board may convert a Community Support Statement into an Action Plan if the member's Statement meets the objectives of an Action Plan, including measurable goals.

c. Frequency of review—The Finance Board intends to review the Community Support performance of each FHLBank

System member approximately every two years. This schedule should allow the Finance Board and the member sufficient time to conduct an appropriate review of Community Support activities without creating an overly intrusive or duplicative procedure. The two-year schedule also corresponds with the CRA examination schedule announced by the Office of Thrift Supervision—the financial regulatory agency for the majority of FHLBank System members.

d. Finance Board selection of members for review—Beginning in 1992, the Finance Board will select approximately one-eighth of the FHLBank members in each district for review in each calendar quarter. Members will be selected from those which have received a post-July 1, 1990, CRA Evaluation and those that are not covered by CRA. The selection of members subject to the CRA will be, to the greatest extent practicable, based on the chronological sequence of the member's CRA Evaluation.

The Finance Board will provide each FHLBank a list of its members that have been selected for review and simultaneously publish a notice in the Federal Register. This notice will include: (1) the name and address, by FHLBank district, of members to be reviewed; (2) the deadline for the members' submission of their Community Support Statements to their FHLBanks; and (3) a closing date for the 30-day comment period during which the public can submit comments on the Community Support activities of the members being reviewed.

e. FHLBank notice to members—Within 15 days from the date that each FHLBank receives the notice from the Finance Board listing the FHLBank's members to be reviewed, the FHLBank shall give written notice to each member.

Each notice from the FHLBank to the members being reviewed for Community Support performance must contain the following information:

- Notice that the member is being reviewed;
- An explanation of the Community Support Statement requirements;
- A description of the review process, including the dates when information must be submitted, the scope of the review process, and penalties for non-compliance;
- A description of FHLBank programs and technical assistance available to aid the member;
- A contact person and address where the member should send its Community Support Statement; and

—Notice that the member's Community Support Statement and any documentation submitted by the member will be available to the public upon request.

The Finance Board will develop a uniform notice as a model for the FHLBanks.

f. Public comment process—The Finance Board has incorporated public participation in the Community Support review process, anticipating that written public comments will help to identify both met and unmet credit needs and a member's Community Support effectiveness. In order to initiate the public comment process, the Finance Board will publish in the Federal Register a notice announcing the Community Support review schedule as discussed in paragraph (d) above. Within 15 days of this publication, the FHLBanks will issue a notice to members of its Advisory Council, public interest and community organizations in its district, and any other organizations or citizens that have requested to be so advised, announcing the commencement of a 30-day public comment period. This notice shall include:

- The name and address of each member being reviewed;
- The deadline for submission of public comments;
- A description of the process used in the Community Support evaluation; and
- An address and contact person for submission of public comments.

Public comments will be accepted by the FHLBank for a period of 30 days for subsequent transmittal to the Finance Board. The FHLBanks will collect and convey the public comments to the Finance Board, but will perform no evaluation or analysis thereof. The comment letters will be taken into consideration in the Finance Board's review of the member's Community Support Statement.

5. Section 936.5—Community Support Action Plans

In order to provide the member with the maximum opportunity to become a participant in Community Support activities, the Finance Board has created a mechanism in the regulation—the Community Support Action Plan—by which a member can propose activities and goals it will work to meet and which will postpone any sanction in the form of restricted access to long-term advances. Only a member whose Community Support Statement is not approved will be required to submit an Action Plan. The Finance Board will

review the Action Plan, and if approved, the member will then have a year in which to implement its Plan. Only if the Finance Board finds that the member has failed to implement the Plan will long-term advances be restricted. The Finance Board has created this process in order to carry out the intent in FIRREA and encourage participation in Community Support, not simply to restrict access to long-term advances.

Within 45 days of the Finance Board's notice to a member that an Action Plan is required, the member must submit to its FHLBank, for subsequent transmittal to the Finance Board, an Action Plan which includes the following information: (1) How the member has addressed or will address any Community Support Statement deficiencies identified by the Finance Board; (2) how Community Support activities and goals will be achieved through the Action Plan; and (3) measurable goals which can be identified by the member and the Finance Board in reviewing the member's progress. In developing an Action Plan, the member should include measurable goals, with as much specificity as possible, and should include such information as:

- A community credit needs assessment, with a description of how the member intends to meet those credit needs through available products, lending, and service;
- Specific outreach or marketing plans that identify the minority and very low-, low-, and moderate-income communities to be targeted and describe the marketing plans in detail;
- A description of credit products that the member has initiated or plans to implement;
- A description of the member's existing or planned participation in FHLBank programs or other governmental programs which address the needs of minority and very low-, low-, and moderate-income communities; and
- A description of a member's participation in technical assistance programs or other activities intended to improve its community lending performance.

In developing an Action Plan, a member is not expected to underwrite loans that are not in keeping with safe and sound lending practices. The Finance Board anticipates that the members' community lending will meet the credit needs of their communities and at the same time will offer a return to the members without exposure to undue risk. To this end, members will be encouraged to avail themselves of the services provided by the FHLBanks or similar technical assistance programs.

6. Section 936.6—Review of Community Support Action Plans

As with the review of Community Support Statements, the review of Action Plans will be performed by the Finance Board. The FHLBanks will collect the required information from the member and will be available to the member for assistance. Within 15 days of receiving a Community Support Action Plan from a member, the member's FHLBank shall review the Action Plan for completeness and forward the Action Plan to the Finance Board. In reviewing for completeness, the FHLBank will ensure that the member is meeting the reporting requirements in § 936.5. The Finance Board will have 30 days after receipt of an Action Plan to notify the member if the Action Plan has been approved.

In reviewing an Action Plan, the Finance Board will not require any specific investment or service activity, but rather, will conduct an overall assessment of how the member's goals address the various Community Support needs of its community. The Finance Board will determine whether the Action Plan reflects a reasonable commitment to satisfy the Community Support standards of this part. The Finance Board does not require a member to set unrealistic or disproportionate community lending goals. The Finance Board will seek efforts and activities intended to determine and measure community credit needs and to satisfy them with products, services, programs, and underwriting guidelines.

Once an Action Plan is approved, the Finance Board will review within one year the member's implementation of the Action Plan to determine whether or not the goals outlined by the member have been met. In the month preceding the one-year anniversary of the member's Action Plan, the Board will request a report from the member detailing results of efforts under the Action Plan and achievement of goals. The member may consult with its Bank or directly with the Board in preparing the report. If at any time within that one-year period the Finance Board is satisfied that the member is meeting the goals in the Action Plan, the Action Plan may be suspended. A member may amend its Action Plan at any time during implementation or seek extensions, if appropriate, subject to the Finance Board's approval. If the member does not substantially meet its goals, the Finance Board may extend the Action Plan or seek modifications thereto.

7. Section 936.7—Restrictions on Access to Long-term Advances

The Finance Board has structured the regulation so that only after clear opportunity to address any deficiencies in Community Support activity will a member's access to long-term advances be restricted. In the great majority of cases, the Finance Board expects that the availability of the Action Plan process will be sufficient to address any member deficiencies in commitment to Community Support.

If the member fails to develop an Action Plan that adequately addresses its Community Support deficiencies or if the member fails to adequately implement its Action Plan, the Finance Board may restrict the member's access to long-term advances. The Finance Board's intent is not to penalize members, but to facilitate members' ability to work within their communities, meeting credit needs and forming private/public partnerships in community lending. To further these ends, even members whose access to long-term advances are restricted will not be restricted from advances under the Affordable Housing Program or the Community Investment Program.

If a member refuses to submit a Community Support Statement in response to a Finance Board request or does not correct lending practices that resulted in an adjudication of fair housing or fair lending violations, the Finance Board may restrict a member's access to long-term advances without requiring an Action Plan.

Once the Finance Board decides to restrict a member's access to long-term advances and that decision is communicated to the member, the Finance Board will not consider a member's request for reinstatement for six months. A member may petition the Finance Board for a reinstatement of long-term borrowing privileges after the first six months from the date the restriction is imposed. Such petition should specify progress that has been made by the member in meeting Community Support needs and targeted in its Action Plan. In considering a petition for reinstatement, the Finance Board will evaluate a member's progress on an Action Plan.

If a restriction on a member's access to long-term advances would undermine that member's safety and soundness, the member may petition the Finance Board for a waiver. The petition should include a clear and concise explanation of the basis for the member's request.

Section 936.8—Bank Community Support Programs

The Finance Board takes seriously FIRREA's intent to ensure that the FHLBank System satisfies its mission of providing housing finance and meeting the credit needs of all communities, including low- or moderate-income communities. Toward that end, the Finance Board is requiring the establishment of Community Support Programs in each of the 12 FHLBank districts to assist members' participation in community lending, especially in those activities that address a community's most critical housing and community development needs.

The implementation of this regulation includes the establishment and expansion of existing Community Support Programs at each FHLBank to provide technical assistance, information and resource sharing, and analysis of community credit needs. The FHLBank Affordable Housing and Community Investment Programs mandated by FIRREA have already assisted many members to participate in community lending, and the FHLBanks are already providing other similar services to their members and communities. The Finance Board intends to leave discretion to the FHLBank to develop whatever programs are necessary to meet the particular Community Support needs of their district. By working closely with the Advisory Councils, the FHLBanks will be able to continue to assist members in identifying community credit needs and community investment opportunities and to fulfill their Community Support obligations.

At a minimum, the FHLBanks must make available technical assistance to members in developing Community Support Statements and Community Support Action Plans. The FHLBanks are also to identify community investment needs and opportunities and promote the use of advances for Community Support lending and affordable housing finance. At its election, a FHLBank may contract with intermediaries experienced in providing technical assistance training in community investment or development.

Each FHLBank shall provide notice to all members and interested parties of the FHLBanks' programs, such as the Affordable Housing Program or Community Investment Program, to assist the member in meeting community credit needs. At least twice a year, each FHLBank will provide its members with a summary of Community Support lending and affordable housing projects being undertaken by members or non-

members, which are specific enough to provide the member with community lending models.

Each FHLBank shall maintain a current mailing list of community groups and interested parties to be notified of the quarterly review process under § 936.4. This list should include public interest organizations, public agencies, community organizations, and citizens who have requested to be given notice of the Community Support review process. The mailing list should be representative of the various community interests. The Finance Board anticipates that the mailing list will be supplemented from attendance lists at community investment conferences or other outreach programs sponsored by the FHLBanks.

The FHLBank should make clear in its outreach programs that an organization or individual which so requests will be placed on the mailing list.

Finally, as part of its Community Support Program, each FHLBank is required to adopt incentives for community support participation. Under the proposed rule, these incentives would have required discounts and/or preferred terms on regular advances for members with superior performance in community investment. Some commenters were concerned that this requirement could adversely affect a FHLBank's safety and soundness. The Finance Board did not have this intent in proposing such incentives. Accordingly, the final rule permits such incentives but does not require them.

The Finance Board expects that incentive plans submitted to it for review and approval will include a process to identify potential award or incentive recipients from members and public sources. In reviewing records of Community Support, the Banks must use the definitions and concepts contained in this final rule, but will be given latitude in determining award and incentive structures, amounts, and categories.

As part of an incentive program, the regulation allows the FHLBanks to include awards and technical assistance to non-profit developers and community groups as well. To qualify, these awards or technical assistance programs should be undertaken with the objective of simulating new partnerships between lenders and community organizations. Advisory Council member organizations may be eligible to participate in the programs, but the Banks will be expected to administer the programs to ensure there is no favoritism or conflict of interest.

9. Section 936.9—Reports

FIRREA, in section 721, requires that the Finance Board prepare an annual report to Congress presenting the Advisory Councils' evaluation of the FHLBanks' affordable housing activities during the preceding year. This section of the final rule expands the Finance Board's reporting requirement to include a discussion of the Community Support activities, and directs each Advisory Council to include an analysis of their FHLBank's Community Support activities when reporting annually to the Finance Board.

F. Findings and Certifications

Impact on the economy. This final rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 issued by the President on February 17, 1981. An analysis of the final rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on small entities. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the undersigned hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities, since it requires only the minimum burden required by the statute in the way of documentation.

Regulatory agenda. This final rule was listed in the Finance Board's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Information collection requirements. The information collection requirements contained in this final rule will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. A notice of such requirements will be published in the **Federal Register** at the time. When these collections have been approved, the Finance Board will publish a document to that effect in the **Federal Register**.

List of Subjects in 12 CFR Part 936

Credit, Federal Home Loan Banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends chapter IX, title 12, Code of Federal Regulations, by adding a new Part 936, to read as follows:

PART 936—COMMUNITY SUPPORT REQUIREMENTS

- Sec.
936.1 Definitions.
936.2 Purpose.
936.3 Community Support Statements.
936.4 Review of Community Support Statements.
936.5 Community Support Action Plans.
936.6 Review of Community Support Action Plans.
936.7 Restrictions on Access to Long-Term Advances.
936.8 Bank Community Support Programs.
936.9 Reports.

Authority: 12 U.S.C. 1422a, 1422b, 1429, 1430 (a) (g), (i), and (j), and 1432(a).

§ 936.1 Definitions.

(a) *Advance* means a loan, provided pursuant to a formal agreement supported by a promissory note and fully secured, from a Bank to one of its members.

(b) *Advisory Council* means the advisory council established by a Bank as required by section 10(j)(11) of the Federal Home Loan Bank Act, 12 U.S.C. 1430(j)(11), and the implementing regulations in 12 CFR part 960.

(c) *Affordable Housing Program* means the program required by section 10(j) of the Federal Home Loan Bank Act, 12 U.S.C. 1430(j), and the implementing regulations in 12 CFR part 960.

(d) *Area* means a metropolitan statistical area, a county, or a non-metropolitan area, as established by the Office of Management and Budget.

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

(f) *Board* means the Federal Housing Finance Board or an official duly authorized to act on its behalf.

(g) *Community Investment Program* means the program(s) established by the Banks as required by section 10(i) of the Federal Home Loan Bank Act, 12 U.S.C. 1430(i).

(h) *CRA Evaluation* means the public disclosure portion of a Community Reinvestment Act Performance Evaluation, given to a member by its primary federal regulator pursuant to a compliance examination. The CRA Evaluation uses the four-tier Descriptive Interagency Community Reinvestment

Act Final Guidelines For Disclosure of Written Evaluations and Revised Assessment Rating System, approved on April 25, 1990, and effective July 1, 1990, as they may be amended. These guidelines are available from federal financial regulatory agencies or the Federal Housing Finance Board, Housing Finance Directorate, 1777 F Street, NW., Washington, DC 20006.

(i) *Community Support* means:

(1) Extensions of credit for purchase, construction, or rehabilitation of owner-occupied and rental housing for households whose incomes do not exceed 115 percent of the median income for the area, with demonstrable efforts to finance housing for households whose incomes do not exceed 80 percent of the area median income and for households whose incomes do not exceed 50 percent of the area median income;

(2) Extensions of credit to finance commercial and economic development activities that benefit very low-, low- or moderate-income neighborhoods, including very low-, low-, and moderate-income minority neighborhoods and rural communities;

(3) Development and extension of other loan products, financial services and programs to address community credit needs, including those described in Comprehensive Housing Affordability Strategy Plans, 24 CFR part 91, or as identified by FHLBank Advisory Councils;

(4) Outreach plans and related outreach activities targeted to households in minority, very low-, low-, or moderate-income, or rural communities, including first-time homebuyers;

(5) Home participation in loan consortia, regional lending activities, and similar efforts that benefit very low-income and low- or moderate-income households or which further the activities described in paragraphs (i) (1) through (4) of this section, both within and outside a member's usual market areas and communities;

(6) Any additional loan products, financial services programs or activities that further the items described in paragraphs (i) (1) through (5) of this section; and

(7) In the case of institutions not covered by CRA, such as credit unions, loan products, financial services, programs or activities that further the items described in paragraphs (i) (1) through (5) of this section.

(j) *Community Support Action Plan* means a written report containing the information described in § 936.5 that a member may be required to furnish to the Board.

(k) *Community Support Statement* means a written statement containing the information described in § 936.3 that a member must furnish to the Board.

(l) *Displaced Homemaker* means an individual who is an adult; has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(m) *First-time Homebuyer* means an individual or an individual and his or her spouse who have not owned a home during the three-year period prior to the purchase of a home, except that:

(1) Any individual who is a displaced homemaker may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse; and

(2) Any individual who is a single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

(n) *Long-term Advances* means advances with a term to maturity of greater than five years. However, for purposes of this part 936 only, long-term advances are deemed to be advances with a term to maturity of greater than one year.

(o) *Low- or Moderate-income Household* means a household whose income does not exceed 80 percent of the median income for the area, with adjustments for household size, as determined by the U.S. Department of Housing and Urban Development.

(p) *Median Income* means the median household income for an area, with adjustments for household size, as determined by the Department of Housing and Urban Development. Data is available from HUD USER, P.O. Box 6091, Rockville, MD 20850.

(q) *Member* means a financial institution admitted to membership and owning capital stock in a Bank.

(r) *Minority* means any black American, Native American, Hispanic American, or Asian American.

(s) *Primary Federal Regulator* means the federal financial supervisory agency responsible for conducting CRA compliance examinations of members and generally has the same meaning as "appropriate Federal financial supervisory agency" used in the codification of the Community

Reinvestment Act at 12 U.S.C. 2902(1). As specifically applied to CRA compliance, these are:

- (1) The Comptroller of the Currency with respect to national banks;
- (2) The Board of Governors of the Federal Reserve System with respect to State chartered banks which are members of the Federal Reserve System and bank holding companies;
- (3) The Federal Deposit Insurance Corporation ("FDIC") with respect to State chartered banks and savings banks which are not members of the Federal Reserve System and the deposits of which are insured by the FDIC; and
- (4) The Office of Thrift Supervision in the case of a savings association (the deposits of which are insured by the FDIC) and a savings and loan holding company.

(i) *Rural* means any open country, or any place, town, village, or city which is not part of or associated with an urban area and which: Has a population not in excess of 2,500 inhabitants, or has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or has a population in excess of 20,000 and is not contained within a standard metropolitan statistical area and has a serious lack of mortgage credit for low- or moderate-income households, as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development. Any area classified as rural as a result of data received from or after the 1990 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2000, if such area has a population in excess of 20,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for low- or moderate-income households.

(u) *Very Low-income Household* means a household whose income does not exceed 50 percent of the median income for the area, with adjustments for household size, as determined and published by the Department of Housing and Urban Development.

§ 936.2 Purpose.

In this part 936, the Board is promulgating Community Support requirements and procedures pursuant to section 710(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, 418-419. Section 710(c) added a new section 10(g) to the Federal Home Loan Bank Act of 1932, 12 U.S.C. 1430(g), which provides that the Board shall establish standards of community investment or service for

members of Banks to maintain continued access to long-term advances.

§ 936.3 Community Support Statements.

(a) A Community Support Statement shall be submitted by each member to its Bank on a schedule established by the Board as described in § 936.4. A member who is subject to the Community Reinvestment Act but does not have a CRA Evaluation, as defined in this part, will not be reviewed until the member receives a CRA Evaluation. However, if within two years from the effective date of these regulations, substantially all members have not received CRA Evaluations, the Board intends to develop separate Community Support Standards for purposes of this part.

(b) A Community Support Statement shall include:

- (1) In the case of a member with a CRA Evaluation of "Outstanding" or "Satisfactory," the CRA Evaluation;
- (2) In the case of a member with a CRA Evaluation of "Needs to improve" or "Substantial non-compliance," the CRA Evaluation and an explanation of how the member has corrected or proposes to correct the deficiencies identified in the CRA Evaluation;
- (3) In the case of credit unions and other members who are not subject to the Community Reinvestment Act, a detailed description of the member's Community Support activities;
- (4) In all cases, evidence of assistance to first-time homebuyers, such as:
 - (i) A description of special credit products benefiting first-time homebuyers by providing flexible underwriting or qualifying criteria;
 - (ii) Evidence of participation in governmental homeownership or other programs of benefit to first-time homebuyers;
 - (iii) A description of any special counseling programs or other such activities for first-time homebuyers;
 - (iv) Marketing plans to reach first-time homebuyers;
 - (v) Expanded collection of loan distribution data to include loan origination to first-time homebuyers; or
 - (vi) Any other tangible evidence of support for first-time homebuyers;
- (5) In all cases, identification and documentation of any final administrative or judicial ruling against the member, within the two years prior to the due date of submission of a Community Support Statement, based on violations of the Fair Housing Act (42 U.S.C. 3601 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), or any similar state or local law prohibiting discrimination in lending, including a statement of the violation,

finding, or verdict and an explanation of the steps taken by the member to remedy the violation or prevent a recurrence; and

(6) In all cases, any additional evidence of Community Support that the member wishes to submit, such as:

- (i) Mortgage and loan origination to minority households, very low-, low- or moderate-income households, rural communities, or first-time homebuyers;
- (ii) Marketing plans or activities specifically aimed at minority households, very low-, low- or moderate-income households, rural communities, and first-time homebuyers; and
- (iii) Other indications of the member's responsiveness to the credit needs of minority households, very low-, low- or moderate-income households, rural communities, and first-time homebuyers.

(c) A member that chooses not to submit a Community Support Statement shall be subject to restrictions on access to long-term advances as provided in § 936.7.

§ 936.4 Review of Community Support Statements.

(a) The Board shall begin review of selected members' Community Support Statements in March 1992. Review of members' Community Support Statements shall occur on a quarterly basis so that each member will be reviewed approximately every two years.

(b) The Board shall notify the Banks of the members in their districts who have been selected for review and immediately publish in the *Federal Register*:

- (1) The name and address of those members selected for review;
- (2) The closing date by which members chosen for review must submit their Community Support Statement to their Banks for transmittal to the Board and by which public comments must be submitted to the Banks for transmittal to the Board, provided that this date shall not be less than 45 days from the date of the *Federal Register* publication by the Finance Board announcing the quarterly review of the Community Support activities of members.

(c) Within 15 days of the *Federal Register* publication, each Bank shall, in writing:

(1) Notify members selected for review that their Community Support Statements are to be submitted to their Bank by the date designated in the *Federal Register*; and

(2) Notify their respective Advisory Councils, and community groups and individuals that are on the mailing list

maintained in accordance with § 936.8(e), of the members selected for Community Support review and of the closing date designated in the Federal Register for the Bank's receipt of written public comments.

(d) Within 15 days after the due date for receipt of Community Support Statements from those members undergoing review and public comments, each Bank shall:

(1) Review each member's Community Support Statement for completeness pursuant to the requirements of § 936.3(b);

(2) Notify any member whose Statement is incomplete and offer assistance in promptly completing the Statement;

(3) Forward to the Board:

(i) All Community Support Statements;

(ii) All written public comments received during the comment period; and

(iii) A list of members selected who failed to submit a Community Support Statement in accordance with § 936.3(b).

(e) Within 60 days after receiving the Community Support Statements and comment letters from each Bank, the Board shall:

(1) Review the Community Support Statements pursuant to paragraph (f) of this section;

(2) Forward all comments received to the member's primary federal regulator; and

(3) Notify the Bank and the member, in writing, whether or not a member's Community Support Statement is approved. If a member's Community Support Statement is not approved, the Board shall furnish the member with specific reasons for its decision and provide an additional 45 days for the member to develop and submit a modified Community Support Action Plan for Board review and approval, in accordance with §§ 936.5 and 936.6.

(f) In reviewing the Community Support Statements, the Board shall consider the following:

(1) The CRA Evaluation and any deficiencies cited by the primary federal regulator concerning residential lending activities or other assessment factors in the CRA Evaluation directly related to Community Support;

(2) Policies, programs, and activities to assist first-time homebuyers as described in § 936.3(b)(4);

(3) Information submitted by the member pursuant to § 936.3(b)(5);

(4) Any other evidence of Community Support activities submitted by the member pursuant to § 936.3(b)(6);

(5) Public comments received; and

(6) Evidence of Community Support loan volume commensurate with the member's financial condition and size, legal impediments, and local economic conditions.

§ 936.5 Community Support Action Plans.

(a) The Board shall require a Community Support Action Plan from any member whose Community Support Statement has been disapproved.

(b) A Community Support Action Plan shall be submitted by the member to the Bank within 45 days of the Board's notice to the member and the Bank that an Action Plan is required. The Action Plan shall include:

(1) A statement of how the member has addressed or will address those deficiencies cited by the Board in its review of the member's Community Support Statement;

(2) A statement of Community Support activities and goals to be pursued during the next 12 months; and

(3) Details of how the goals included in the Action Plan will be measurable.

§ 936.6 Review of Community Support Action Plans.

(a) Within 15 days after receiving a Community Support Action Plan from a member, the Bank shall:

(1) Review the Action Plan for completeness pursuant to § 936.5(b);

(2) Notify the member if an Action Plan appears to be incomplete; and

(3) Forward a copy of the Action Plan to the Board.

(b) Within 30 days of receiving the Action Plan, pursuant to the criteria in § 936.6(d), and shall notify the member and the Bank in writing as to whether the Action Plan has been approved. If the Action Plan is not approved, this notice shall include the reasons for disapproval.

(c) The Board's initial decision to disapprove a Community Support Action Plan shall not be effective for 30 days from the date of mailing written notice of disapproval to the member. During this 30-day period, the member may submit an amended Action Plan addressing the reasons given by the Board for disapproval of its initial Action Plan. Within 15 days of receipt of the amended Action Plan, the Board shall notify the member in writing of the board's decision approving or disapproving the amended Action Plan; this decision shall be effective immediately upon mailing of a written notice to the member.

(d) In reviewing a Community Support Action Plan, the Board shall consider the following:

(1) The extent to which the Action Plan addresses Board-identified deficiencies and sets appropriate and realistic goals to correct these deficiencies; and

(2) The extent to which the member's goals meet Community Support standards and are responsive to the credit needs in that member's community. In making these assessments, the Board will take into account such factors as a member's financial condition and size, and local economic conditions.

(e) One year from the date of the Board's approval of the Action Plan, the Board will review the member's implementation of the Action Plan to determine whether or not the goals outlined in the Action Plan have been met. In the month preceding the one-year anniversary of Board approval of a member's original or amended Action Plan, the Board shall request in writing, and the member shall submit, a report to the Board on the member's progress toward meeting the goals of the Action Plan. The member may consult with its Bank or directly with the board in preparing this report.

(f) Upon review of the member's performance, the Board may terminate, modify, or extend the Action Plan. If the Board finds that the member has not substantially met the goals of its Action Plan, the Board shall restrict the member's access to long-term advances pursuant to § 936.7.

§ 936.7 Restrictions on access to long-term advances.

(a) A member's access to long-term advances will be restricted only if the member:

(1) Refuses to comply with the procedures of this part;

(2) Submits a Community Support Action Plan that does not receive Board approval; or

(3) Fails to substantially meet the goals stated in its Action Plan within one year.

(b) The Board's decision to restrict a member's access to long-term advances shall not be effective for 30 days. During this 30-day period the member may submit additional information regarding its achievement of the goals of the Action Plan. The Board shall notify the member of its decision following review of the additional material and the Board's decision shall be effective immediately upon mailing of the notice to the member.

(c) A member with a CRA Evaluation of "Outstanding" or "Satisfactory" shall have unrestricted access to long-term advances unless the Board finds that its

Community Support Statement does not adequately establish a reasonable commitment to residential lending and Community Support, and these deficiencies are not corrected in an Action Plan as specified in § 936.5(b), or if the member, after an adjudication of violations of fair housing or equal credit opportunity laws, fails to correct its lending practices as appropriate.

(d) Under no circumstances will any member be restricted from access to advances under either the Affordable Housing or Community Investment Programs.

(e) Within 15 days of the date on which the Board determines the existence of one or more of the conditions in paragraph (b) of this section, the Board shall notify the member and its Bank that the member's access to new long-term advances, as used in this section, has been suspended. Upon receipt of the notice, the Bank shall make no new advances or extensions of advances for a term of longer than one year to the member.

(f) Any restrictions on a member's access to long-term advances may be waived by the Board where such restriction may, in the Board's judgment, undermine the member's safety and soundness. A request for a waiver shall be submitted directly to the Board, shall be in writing, and shall contain a clear and concise statement of the basis for the waiver.

(g) The Board will decide when to remove restrictions on a member's access to long-term advances. In making this decision, the Board will be guided by the member's performance in meeting the goals established under its Action Plan. A member may petition the Board for termination of restrictions after 180 days from the imposition of such restrictions. Such a petition shall state with specificity how the member has substantially met or exceeded the goals in its Community Support Action Plan. The Board will review any petition and given written notice to the member of its decision within 30 days of receipt of the petition. If the Board decides to lift restrictions to long-term advances, that decision will be effective immediately upon mailing of notice to the member.

§ 936.8 Bank Community Support Programs.

(a) Each Bank shall establish and maintain, subject to Board approval, a Community Support Program for members, consistent with the safety and soundness of the Bank. Such programs should:

(1) Provide technical assistance to individual members in developing

Community Support Statements and Community Support Action Plans;

(2) Promote and expand the use of advances, both special and regular, for Community Support lending and affordable housing finance;

(3) Identify opportunities for members to expand financial and credit services in neighborhoods and communities that are underserved, particularly minority households, very low-, low- or moderate-income urban, and rural communities; and

(4) Provide incentives to members of a monetary or nonmonetary nature; such incentives may include discounts and/or preferred terms on advances to members with outstanding records of Community Support and may also include awards and technical assistance to non-profit housing developers and community groups with outstanding records of public/private partnerships in Community Support with members of the Bank.

(b) Each Bank shall consult with its Advisory Council in developing and implementing initiatives to increase the use of advances for Community Support.

(c) Each Bank shall provide notice to all members and interested parties of activities of the Bank's Affordable Housing Program, Community Investment Program, and other Bank programs to help members meet their Community Support and affordable housing finance needs.

(d) Each Bank shall provide, twice a year, to all members:

(1) A summary of Community Support lending and affordable housing finance projects being undertaken by members within the Bank's district; and

(2) Any additional information concerning affordable housing finance activities of non-members of the Bank that may be of use to members.

(e) Each Bank shall maintain a mailing list of community groups and interested parties to be notified of the quarterly selection of members for review pursuant to the procedures specified in § 936.4.

§ 936.9 Reports.

Pursuant to 12 U.S.C. 1430(j)(12) and 12 CFR 960.14, the Finance Board provides an annual report to Congress presenting evaluations by the Advisory Councils of their Bank's performance of affordable housing activities during the preceding year. Beginning with reports filed in 1993 and each year thereafter, each Advisory Council will be encouraged to include an analysis of its Bank's Community Support activities in its report to the Finance Board. Beginning in 1993 and continuing each year thereafter, the Finance Board's

annual report to Congress shall include an analysis of Bank and Board activities pursuant to this part.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,
Chairman.

[FR Doc. 91-27945 Filed 11-20-91; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 911169-1269]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NMFS issues this technical amendment to clarify the regulations governing permits and fees for the reef fish fishery of the Gulf of Mexico. This rule (1) clarifies who must meet the earned income qualification for a permit when the vessel owner is a partnership; (2) clarifies that fees are charged to process a permit application, removes the amounts of fees from the regulations, and provides that the amounts of fees that must be remitted will be specified with each application; (3) clarifies that an application for renewal of a permit is not complete until all required reports have been submitted; and (4) makes other minor changes for clarity and conformance with standard usage. The intended effect of this rule is to clarify the regulations and ensure standardization of similar requirements among federally managed fisheries in the Gulf of Mexico.

EFFECTIVE DATE: November 21, 1991.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council, and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This technical amendment revises the permits section of the implementing regulations to: (1) Clarify who must meet the earned income qualification for a permit when the vessel owner is a partnership; (2)