

Rules and Regulations

Federal Register

Vol. 58, No. 6

Monday, January 11, 1993

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

[INS No. 1349-92]

RIN 1115-AC95

Statement of Organization; Name Change for Border Patrol Sector Number 3

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends 8 CFR 100.4 by changing the name of sector headquarters number 3 from "Mayaguez, Puerto Rico" to "Ramey, Puerto Rico". This change is necessary to avoid confusion, since sector number 3 is physically located in Ramey, Puerto Rico.

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Marion E. Moody, Assistant Chief Patrol Agent, Border Patrol, Immigration and Naturalization Service, 425 I Street, NW., room 7227, Washington, DC 20536, telephone (202) 514-1109.

SUPPLEMENTARY INFORMATION: Originally the Immigration and Naturalization Service intended to install a Sector Headquarters and station in Mayaguez, Puerto Rico, along with maintaining a station in Ramey, Puerto Rico. As a result of budget constraints and lack of suitable space, the Service no longer plans to open a Sector office in Mayaguez. Therefore 8 CFR 100.4 is being amended to change the name of sector headquarters number 3 from "Mayaguez, Puerto Rico" to "Ramey, Puerto Rico", since the sector number 3 headquarters is physically located in Ramey, Puerto Rico.

The Service's implementation of this rule as a final rule is based upon 5 U.S.C. 553(b)(A) as it is a rule of agency

organization. The immediate implementation of this final rule is based upon the "good cause" exception found at 5 U.S.C. 553(d) in that the usual notice provisions are unnecessary because the rule will benefit the public by showing the actual city in which the sector headquarters is physically located.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 100

Authority delegation (Government agencies), Organization and functions (Government agencies).

Accordingly, part 100 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 100.4 [Amended]

2. In section 100.4, paragraph (d) is amended by changing the name of Sector number 3 from "Mayaguez, Puerto Rico", to "Ramey, Puerto Rico".

Dated: December 9, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 93-461 Filed 1-8-93; 8:45 am]

BILLING CODE 4110-0-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. 92-749]

Eligibility of Federal Home Loan Bank Directors

AGENCY: Federal Housing Finance Board.

ACTION: Interim rule.

SUMMARY: The Federal Housing Finance Board (Board) is amending its regulations to revise the dates by which all incumbent directors of the Federal Home Loan Banks (FHLBanks) must submit Personal Certification and Disclosure forms to the Board. The amendments also clarify the date by which nominees for elective director must submit Personal Certification and Disclosure forms to the Board. The amendments also change the date by which the Board must announce the results of the election for FHLBank directors. These date changes are intended to apportion the submission of forms over a longer period in order to enable the Board to devote more time to the review of the forms. The amendments also define more precisely the period during which a director or officer of a member of the FHLBank System who was formerly ineligible to be a FHLBank elective director may once again be eligible to hold that office.

DATES: Interim rule effective on January 11, 1993. Comments must be received on or before March 12, 1993.

ADDRESSES: Comments may be mailed to: Executive Secretariat, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, District Banks Directorate, (202) 408-2872; Brandon Straus, Attorney-Advisor, Office of Legal and External Affairs, (202) 408-2589, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 7 of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1421 *et seq.* (Supp. I 1989), vests the management of each FHLBank in a board of elective and appointive directors. *Id.* sec. 1427(a). Bank Act subsection 7(d) authorizes the Board to prescribe rules for the nomination and election of elective FHLBank directors. *Id.* sec. 1427(d). The Board has authority to prescribe rules governing the appointment of appointive FHLBank directors pursuant to its general rulemaking authority in Bank Act subsection 2B(a). See *id.* sec. 1422b(a)(1).

The current Board regulations on appointive director eligibility and elective director eligibility set forth dates by which incumbent directors, nominees for elective director (director nominees), and candidates for appointive director (director candidates) must submit to the Board a certification that they meet certain statutory and regulatory eligibility requirements as well as a statement of disclosure of certain financial relationships. See 12 CFR 932.18(f), 932.21(g). These certifications and disclosures must be made by completing Personal Certification and Disclosure Forms (Forms), denominated A-1, A-2, E-1, or E-2. These forms have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 3069-0002. Satisfactory completion of the Forms is a prerequisite for incumbent elective and appointive directors to remain eligible to serve on a FHLBank board. Satisfactory completion of the Forms is also a prerequisite to the ratification of the election of director nominees and the appointment of director candidates by the Board.

Under the current regulations, incumbent appointive directors must submit their Forms annually by November 15, and incumbent elective directors must do by December 1. However, during the months of October through December, the Board also must review Forms submitted by director candidates and director nominees. Director candidates are required to submit their Forms "[p]rior to the initial appointment." *Id.* § 932.18(f). Most director appointments are made near the end of the year because the four year terms of appointive directors expire on December 31. However, some appointments are made other than at year end in order to fill appointive directorships that have been vacated at mid-term.

Director nominees must submit their Forms "[p]rior to each election." *Id.* § 932.21(g). The process of election of director nominees takes place from September 25 to October 25 of each year. *Id.* § 932.14(a), (c). The Board must announce the results of the election by November 15. *Id.* § 932.14(d). As a result of this series of deadlines set forth in the current regulations, the Board is required to review the incoming Forms of approximately 110 incumbent directors while at the same time reviewing Forms from up to sixty director nominees in time for the Board to ratify the election of those nominees on November 15.

II. Analysis of Interim Rule

A New Date For Submission of Personal Certification and Disclosure Forms by Incumbent Directors

In order to allow the Board more time to review the Forms of director candidates and director nominees, which are submitted to the Board in the final months of the calendar year, the Board is amending § 932.18 and § 932.21 of its regulations to provide that incumbent elective and appointive directors must submit Forms E-2 and A-2, respectively, annually by March 1. This change is intended to apportion the submission of Forms over a longer period so that the Board has more time to review individual Forms.

In order to avoid duplicative certification and disclosure requirements for certain new directors, the interim rule creates some exceptions to the requirements for submission of Forms E-2 and A-2. Newly elected elective directors, who were required to submit a Form E-1 in the year in which they were elected, would be exempt from submitting a Form E-2 in the following year. Similarly, appointive directors who submitted a Form A-1 in October, November, or December of the year prior to the year in which their appointment took effect would be exempt from submitting a Form A-2 by March 1 of the following year.

As a consequence of these exceptions, newly elected directors will not be required to submit Forms for up to a fifteen month period: from late October of the year in which they were elected to March 1 of the second year of their terms. In addition, appointive directors who submitted Form A-1 in October, November, or December of the year prior to the year in which their appointment took effect will not be required to submit a Form for up to a seventeen month period: from October 1 of the year prior to the year in which their appointment was effective to March 1 of the second year of their terms.

The Board believes that allowing first year directors to serve several added months before they are required to meet the certification and disclosure requirements as incumbent directors poses minimal risk to the FHLBanks and the FHLBank System because all incumbent directors are required by regulation to report, on their own initiative, any ineligibility or suspected ineligibility to the Board within thirty days of occurrence. See *id.* §§ 932.18(f)(2), 932.21(g)(2).

B New Dates for Submission of Personal Certification and Disclosure Forms By Elective Director Nominees

The current regulation governing the nomination of director nominees requires each director nominee to complete a "questionnaire" and return it to the Board prior to August 20 in order for the director nominee's name to be placed on the ballot for the next election. *Id.* § 932.13(c)(3). In practice, the Board now requires that director nominees fill out and return to the Board by August 20 that portion of Form E-1 in which director nominees certify that they meet all statutory and regulatory eligibility requirements for election. The Board no longer uses a "questionnaire." Therefore, the interim rule changes the language of § 932.13(c)(3) to reflect this practice.

The current elective director eligibility regulations require that "[p]rior to each election," director nominees must certify in Form E-1 that they meet certain statutory and regulatory eligibility requirements and must disclose to the Board certain financial relationships. See *id.* § 932.21(g)(1), (3). However, it is the current Board practice to wait until after the ballots have been opened to require those director nominees with the highest number of votes for each directorship to complete a Form E-1. The Board must, by regulation, wait until 5 p.m. on October 25 before opening ballots. *Id.* § 932.14(c). The reason for this practice is that the Board wishes to require disclosure of personal financial relationships only by director nominees whose election has some likelihood of being ratified by the Board.

The interim rule therefore replaces the phrase "[p]rior to each election" in subparagraphs (g)(1) and (g)(3) of § 932.21 with "[p]rior to the ratification of the election results by the Board." This change is intended to make clear that director nominees are not required to disclose their financial relationships to the Board on Form E-1 until after members cast their ballots and after the results are tabulated. See *id.* § 932.14(c). However, director nominees must submit the completed Form E-1 before the Board will ratify their election and declare the election results. The change made by the interim rule is intended to reflect this practice.

The Board recognizes that those director nominees who must fill out Form E-1 prior to ratification of their election by the Board will have filled out the certification section of Form E-1 twice: once by August 20 in order to have his or her name placed on the ballot and again after the election when

disclosing his or her financial relationships. The purpose of requiring director nominees to again certify eligibility after the election is to ensure that director nominees are still eligible to be FHLBank directors at the time the Board ratifies their election. Further, by certifying their eligibility after they are elected, director nominees are exempted from submitting a Form E-2 during the following year.

C. New Date for Declaration of Election Results

The current Board regulation governing the election of FHLBank elective directors provides that the Board will determine and announce the winners of the election by November 15, *Id.* § 932.14(d). However, director nominees are not required to complete Form E-1 until after they have been elected. Therefore, the November 15 date allows only three weeks for director nominees to submit their Forms and for the Board to review the Forms before the election results must be announced. Section 932.14(c) of the interim rule changes the announcement date to December 31. This change is intended to ensure that the Board will have sufficient time to review Forms of director nominees and ratify their election, should director nominees wait until mid- or late December to submit their Forms. The Board does not intend to delay the announcement of election results until December 31, if the Board can ratify the results prior to that date.

D. Clarification of Eligibility Requirement For Elective Directors Whose Institution Fails To Meet Its Capital Requirements

The Board is also amending the regulation governing eligibility of a person who was formerly ineligible to be an elective director due to non-compliance with minimum regulatory capital requirements by the member institution that the person serves as an officer or director. See *id.* § 932.21(d)(2). The current regulation provides that a "director" who was formerly ineligible is once again eligible in the succeeding calendar year if the member meets the minimum regulatory capital requirements during each phase of the election process for the succeeding calendar year. *Id.*

The interim rule clarifies the regulation by expressly making it applicable to a "person" who was formerly ineligible rather than a "director" who was formerly ineligible. This change is intended to clarify the Board's intent and to reflect current Board practice of applying the regulation not only to incumbent

elective directors but also to director nominees and prospective director nominees. This change is also intended to make the regulation's language parallel the language of paragraph (d)(1) of § 932.21, which defines the period during which a "person" who is an officer or director of a member that fails to meet minimum regulatory capital requirements is ineligible to be an elective director. *Id.* § 932.21(d)(1).

The interim rule further amends the regulation governing re-eligibility by rephrasing the time frame during which a member must meet minimum regulatory capital requirements in order for a formerly ineligible person to once again be eligible to be an elective director. The interim rule does not change the time frame, but it defines the time frame in terms of the calendar year rather than in terms of a "phase of the election process."

III. Notice and Public Participation

A. General Notice of Proposed Rulemaking

The Board is requesting public comment on this interim rule, although it is not required by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, to publish a general notice of proposed rulemaking. Publication of notice of a proposed rulemaking is not required because the Board finds that there is good cause that notice and comment procedure is unnecessary and contrary to the public interest in this instance. See *id.* sec. 553(b)(3)(B). Compliance with the public procedure requirements of APA section 553 is unnecessary because the interim rule makes minor technical amendments to the director eligibility regulations. The amendments do not impose any new substantive requirements on FHLBank directors and therefore do not involve matters of public interest or concern.

Implementation of the interim rule without prior public notice will not create a hardship for those people who are subject to the rule. The deadlines set forth in the new rule will allow incumbent directors an extra three months in which to comply with the certification and disclosure requirements. Director nominees will also have more time to comply with the certification and disclosure requirements because the interim rule makes clear that the deadline for submission of their Forms is no longer prior to the election, but prior to ratification of the election results by the Board, which takes place after the election. Public notice and comment is therefore unnecessary in the promulgation of the interim rule.

Although the content of the interim rule does not involve matters of the public interest, delaying the effect of the interim rule would be contrary to the public interest. The deadline changes in the interim rule allow the Board more time in which to review the Forms of FHLBank directors during the election process. It is in the public interest for the Board to have more time in which to review the qualifications of FHLBank directors because the safe and efficient operation of the FHLBank System is dependent upon the selection of qualified FHLBank directors. Delaying the effect of the interim rule in order to follow the notice and comment procedures would cause the rule to become effective after the deadlines that are changed by the rule have passed. This would deprive the Board of the benefit of the rule in the current election cycle. Therefore, delaying implementation of the interim rule would be contrary to the public interest.

The Board therefore finds good cause that compliance with notice and comment procedures in adoption of this interim rule is unnecessary and contrary to the public interest. Further, the interim rule comes within the exception to the notice and comment requirement for rules of agency procedure, under section 553(b)(3)(A) of the APA. See *id.* section 553(b)(3)(A).

B. Effective Date

The Board finds that section 553(d) of the APA, which generally requires publication of a substantive rule at least thirty days before the rule's effective date, is not applicable to this interim rule. The interim rule makes changes in the Board's procedure for accepting certification and disclosure Forms from FHLBank directors. The interim rule is not a substantive rule because it does not change any of the substantive requirements for director eligibility. Therefore, the requirement of a thirty-day delay in the effective date of a substantive rule does not apply to this interim rule, which is procedural.

The Board also finds that under APA subsection 553(d)(3), there is good cause that the interim rule be effective upon publication for the reasons stated in section III.A.

Although this interim rule is effective immediately, the Board requests public comment. The Board considers comments from the public helpful in formulating clear and effective regulations. Therefore, the Board will consider public comments on this interim rule in developing a final rule.

IV. Regulatory Flexibility Act

The Board is not required by the Regulatory Flexibility Act (Reg Flex Act), 5 U.S.C. 601 et seq., to prepare a regulatory flexibility analysis for this interim rule. The Reg Flex Act requires that a regulatory flexibility analysis be prepared whenever an agency promulgates a proposed or final rule after being required by the APA to publish a general notice of proposed rulemaking pursuant to section 553 of the APA. See 5 U.S.C. 603(a), 604(a). The Board is not required to publish a general notice of proposed rulemaking for this interim rule because the Board has found good cause that notice and comment is unnecessary and contrary to the public interest in the adoption of this interim rule. See id. sec. 553(b)(3)(B). Further, the rule comes within the exception to the notice and comment requirement for rules of agency procedure, under APA subsection 553(b)(3)(A). See id. sec. 553(b)(3)(A).

The interim rule does not impose any new reporting requirements. It merely changes the deadlines by which existing requirements must be met. The interim rule therefore will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 932

Banks, Banking, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

Accordingly, chapter IX, title 12, part 932, Code of Federal Regulations, is hereby amended as follows:

PART 932—ORGANIZATION OF THE BANKS

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

Authority: 12 U.S.C. 1422a, 1422b, 1426, 1427, 1464; 18 U.S.C. 207; 42 U.S.C. 8101 et seq.

2. Section 932.13 is amended by revising the first two sentences of paragraph (c) concluding text to read as follows:

§ 932.13 Designation and nomination of elective directorship.

(c) * * *

With such letter will be sent a list of nominees and a copy of Form E-1. Each nominee must certify to the Board on Form E-1 by August 20 that such nominee meets all applicable eligibility qualifications for his election set forth

in section 7 of the Act and this part.

* * *

3. Section 932.14 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 932.14 Election of directors.

(d) By December 31, the Board will declare elected the candidate receiving the highest number of votes cast, and where two or more directorships are to be filled from the ballot, the Board will declare elected each candidate receiving the next succeeding highest number of votes until the number of candidates declared elected equals the number of directorships to be filled. * * *

4. Section 932.18 is amended by revising paragraphs (f)(1) and (f)(3) introductory text to read as follows:

§ 932.18 Appointive director eligibility.

(f) Certification and reporting. (1) Prior to the initial appointment, each director candidate for appointive director shall certify in writing to the Board on Form A-1 that he or she meets all applicable eligibility qualifications for his or her appointment set forth in section 7(a) of the Act and this part. By March 1 of each year during the term of the directorship, each appointive director shall certify in writing to the Board on Form A-2 that he or she meets all applicable eligibility qualifications for his or her appointment set forth in section 7(a) of the Act and this part, except that any appointive director who submitted Form A-1 to the Board in October, November, or December of the year prior to the year in which his or her appointment took effect is not required to submit Form A-2 by March 1 of the year in which the appointment took effect.

(3) Prior to the initial appointment, each director candidate for appointive director shall fully disclose in writing to the Board on Form A-1 the financial relationships (as defined in § 931.30 of this chapter) set forth in paragraphs (f)(3) (i), (ii), (iii), and (iv) of this section of such director candidate. By March 1 of each year during the term of directorship, each appointive director shall fully disclose in writing to the Board on Form A-2 the financial relationships (as defined in § 931.30 of this chapter) set forth in paragraphs (f)(3) (i), (ii), (iii), and (iv) of this section of such appointive director, except that any appointive director who submitted a Form A-1 to the Board in October,

November, or December of the year prior to the year in which his or her appointment took effect is not required to submit Form A-2 by March 1 of the year in which the appointment took effect.

5. Section 932.21 is amended by revising paragraphs (d)(2), (g)(1), and (g)(3) to read as follows:

§ 932.21 Elective director eligibility.

(2) A person who is ineligible pursuant to paragraph (d)(1) of this section shall once again be eligible for election in the next succeeding calendar year in which the member(s) he or she serves as an officer or director meet(s) the applicable minimum regulatory capital requirements throughout the entire calendar year. Such compliance with applicable minimum regulatory capital requirements shall not be satisfied by the granting of an exemption or exception to such capital requirements by the appropriate federal regulatory agency.

(g) Certification and reporting. (1) Prior to the ratification of the election results by the Board, each director nominee for elective director shall certify in writing to the Board on Form E-1 that he or she meets all applicable eligibility qualifications for his or her election set forth in section 7 of the Act and this part. By March 1 of each year during the term of directorship, each elective director who was not elected in the immediately preceding year shall certify in writing to the Board on Form E-2 that he or she meets all applicable eligibility qualifications for his or her election set forth in section 7 of the Act and this part.

(3) Prior to the ratification of the election results by the Board, each director nominee for elective director shall fully disclose in writing to the Board on Form E-1, and by March 1 of each year thereafter during the term of the directorship each elective director who was not elected in the immediately preceding year shall fully disclose in writing to the Board on Form E-2, any financial relationships (as defined in § 931.30 of this chapter) set forth in § 932.18(f)(3) of this part of such director nominee or elective director.

By the Federal Housing Finance Board
Daniel F. Evans, Jr.,
Chairman.
[FR Doc. 93-537 Filed 1-8-93; 8:45 am]
BILLING CODE 6725-01-M