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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 936

[No. FHFB 91-194]

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

AGENCY: Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is requesting public comment on proposed regulations to implement section 710(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183, 418-419. This section requires the Finance Board to adopt regulations establishing standards of community investment or service for members of the Federal Home Loan Bank System ("FHL Bank System") to maintain continued access to long-term advances. FIRREA provides that the Finance Board adopt these regulations by August 8, 1991. The Finance Board requests public comment on the full range of policy issues and other considerations involved in establishing community support standards and regulations.

DATES: Comments must be received on or before July 22, 1991. No extension of the comment period will be possible, because the Finance Board seeks to meet a statutory deadline for promulgation of the final rule.

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

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

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 oversight of the FHL Bank System. In supervising the 12 Federal Home Loan Banks ("FHL Banks"), the Finance Board is directed to ensure that they carry out their housing finance mission, remain adequately capitalized and able to raise funds in capital markets, and are operated in a safe and sound manner.

The FHL Banks are central banks for the provision of residential credit and provide their members with a wide range of services, including short- and long-term loans (called "advances"), check clearing, safekeeping of securities, demand and time accounts, technical assistance (particularly in community-oriented lending), economic analysis, and access to federal funds markets.

The FHL Banks are located in Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle. All savings institutions which are insured by the Savings Association Insurance Fund ("SAIF") of the Federal Deposit Insurance Corporation ("FDIC") are members of the FHL Bank System, as well as many savings banks insured by the FDIC's Bank Insurance Fund ("BIF"). FIRREA opened membership in the FHL Bank System to commercial banks and credit unions that make long-term home mortgage loans, subject to qualifications of 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 USCA 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.

C. FIRREA Changes to the Community Reinvestment Act and the Home Mortgage Disclosure Act

FIRREA contains two other important and related sections concerning community investment and the requirement that federally regulated depository institutions serve the credit needs of their communities.

1. **CRA.** Section 1212(b) of FIRREA amended the Community Reinvestment Act of 1977, 12 USC 2901 ("CRA"), by adding a new Section 807 requiring that, upon completion of each CRA compliance examination, the examining federal depository regulatory agency prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. The written evaluations must have a public and a confidential section. The public section of the evaluation must discuss the agency's examination findings and conclusions, and must assign one of four CRA ratings to the institution. The FIRREA Conference Report confirms that the intent of the section was to promote enforcement of CRA by allowing the public to know what regulatory agencies are telling depository institutions and the community investment records of particular depository institutions. See H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess., at 460-461 (1989). The Conference Report also places special emphasis on the insured depository institution's record of serving the housing credit needs of low- and moderate-income persons, small business credit needs, small farm credit needs, and rural economic development. *Id.* at 461. These changes to CRA became effective with examinations commencing on or after July 1, 1990, pursuant to uniform guidelines promulgated by the financial regulatory agencies. These guidelines, titled "Uniform Interagency Community Reinvestment Act Final Guidelines For Disclosures of Written Evaluations and Revised Assessment Rating System,"

were published in the Federal Register on May 1, 1990 (55 FR 18163).

2. *HMDA*. Section 1211 of FIRREA Mortgage Disclosure Act of 1975, 12 USC 2803 ("HMDA"), that relate to the issue of community support and fair lending practices. These changes require the collection of mortgage application data grouped by census tract, income level, race, and gender. The Conference Report explained that the primary purpose of HMDA reporting is to assist regulatory agencies in identifying possible discriminatory lending patterns that warrant closer scrutiny. Conf. Rep. at 459.

D. Advance Notice of Proposed Rulemaking

The Finance Board considers the development of community support regulations one of its most significant responsibilities. Therefore, the Finance Board has sought and continues to request the broadest possible public comment on all aspects of these regulations.

The Finance Board published an Advance Notice of Proposed Rulemaking on January 4, 1991 (56 FR 387-389—"Advance Notice"). In the Advance Notice, the Finance Board solicited the expertise and insight of all interested parties, including community groups, FHL Banks, lenders, public interest groups, present and prospective FHL Bank System members, trade associations, state and local government agencies, other financial service providers, and private citizens. The questions posed and the issues raised in the Advance Notice were intended to elicit comments on issues of importance, but the listing was not intended to be exclusive or to preclude consideration of other issues considered relevant or important by others.

E. Comments Received in Response to the Advance Notice

The Finance Board received 66 comment letters in response to the Advance Notice. Comments were submitted by 27 thrift and banking institutions (mostly members of the FHL Bank System), 10 FHL Banks, 9 community interest organizations and groups, 9 state and local agencies, 8 financial trade associations, and 3 private individuals and companies. All but a few of the letters commented on at least three of the issues identified in the Advance Notice. Even letters that were short statements of opposition to any new regulations sometimes raised additional issues, such as problems facing rural financial institutions and the

difficulty faced by institutions concentrating on meeting new or higher capital standards. Several comment letters expressed the intention of providing more detailed comments at the proposed rulemaking stage.

The comment letters are discussed below with the issues presented in the same order as they were in the Advance Notice.

1. *Community investment*. The Advance Notice requested comments on the best definition of "community investment" as used in FIRREA. The principal question posed was whether the Finance Board should consider CRA ratings to be the measure of community investment or should more broadly interpret the concept.

Fifty-four comment letters addressed this issue. Most FHL Banks and at least 20 other industry commenters from thrifts, banks, and financial trade associations stated that CRA was a sufficient measure of community investment and that using any other measure would create an additional burdensome layer of regulation. Many of these comments pointed out that the CRA assessment factors are very broad, applicable to a wide range of institutions, and used by all federal financial regulatory agencies. The letters urged the Finance Board to make use of the existing CRA examination program and not place additional paperwork burdens on members.

Other financial institutions and several state agencies took the position that the concept of "community investment" should be more broadly interpreted than CRA, *i.e.*, that other works, such as charitable works, should be given significance that they do not receive in the CRA examination process. Others suggested that members should be provided with lists of examples of "good" community investment activities, including participation in state and local housing finance programs.

Other commenters, including most community groups, were less sanguine about the use of existing CRA procedures. Lack of enforcement in the past, limited scope, failure to include significant public participation, and the preponderance of high CRA ratings were all mentioned as reasons to regard the ratings with skepticism. Comments by community groups stated that the requirement for the Finance Board to develop community support requirements was broader than CRA and first-time homebuyer programs, as evidenced by the language of the provision.

2. *Service*. The Advance Notice sought comments on how to best define

"service." The vast majority of the comments were divided between those suggesting that CRA was a sufficient measure since it includes community service and those suggesting that the definition should be as broad as possible. These suggestions made with regard to "service" closely parallel those made concerning the definition of community investment.

The comment letters that supported the exclusive use of CRA as the measure of community investment or service generally opposed the idea that the Finance Board or the FHL review the assets held by a member or propound any listing of "approved" or "recommended" assets. One thrift institution suggested that the best measure of community service could be a member's use of existing FHL Bank programs for community investment and affordable housing.

One comment letter from a community group urged limiting the measure to lending activity and avoiding the inclusion of "anything that could be considered charity." Actual loan production data was suggested as the best measure by two comment letters from community groups. Several comment letters from community groups did recommend a review of members' portfolios of local loans and investments.

3. *Possible conflict with other provisions of FIRREA*. The Advance Notice noted that section 303 of FIRREA expanded the Qualified Thrift Lender ("QTL") test and that section 301 of FIRREA required new capital rules for thrifts. Comments were requested as to the impact of these and other regulatory changes on the ability of members to make community investment loans.

Of the approximately 28 comment letters that addressed this issue, one-half stated that the new rules, particularly the QTL test and increased capital requirements, were adversely affecting members' ability to make community loans. Other comment letters from a broad range of sources cited problems with (1) loans-to-one-borrower rules limiting the ability of members to lend for large multifamily projects, (2) capital rules adverse to multifamily rental projects, and (3) general shortages of capital for community support or any other purpose. Several letters, however, noted that the new QTL test provides specific favorable treatment for loans on residences affordable by low-income families, loans in areas designated as in need of additional financial services, and loans for churches, schools, nursing homes, and hospitals.

4. *Effect on discretionary members.* In the Advance Notice, the Finance Board sought advice on structuring the regulations so that they maximize the attractiveness of the FHL Bank System while providing a meaningful standard of community investment and service. The Finance Board noted that section 704 of FIRREA expanded eligibility for membership in the FHL Bank System to commercial banks and credit unions, which have recently and substantially expanded their commitment to the provision of residential mortgage credit. The standards for community investment and service would apply only to those banks and credit unions that elected to become FHL Bank System members.

More than 40 comment letters addressed the effect that the community support regulations might have on both mandatory and voluntary members. Most of these letters suggested that the existing advantages of FHL Bank System membership in assisting members in meeting community credit needs would certainly outweigh any adverse effect of the new community support regulations, provided that the regulations are pro-active in helping members improve and expand community activities rather than punitive and burdensome. Several letters discussed the use of positive incentives to offset any negative perceptions of the new regulations, as discussed in the next section.

Comment letters from community groups expressed the view that the Finance Board should limit its consideration to increasing community investment and allow Congress to correct any inequities. A number of industry comment letters argued that expanding membership is critical, but did state that all financial institutions should have the same requirements for community support. One commenter expanded this "level playing field" concept to include government sponsored enterprises, particularly the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

5. *Providing incentives for community-oriented lending.* The Finance Board requested comments on positive concepts and provisions that would provide incentives for FHL Bank System members to meet the credit needs of their communities. The majority of the comment letters stated that FHL Bank membership already offers a number of incentives, such as subsidized advances (Affordable Housing Program), discounted advances (Community Investment Program and

other FHL Bank funds), and technical assistance programs in community investment. Most letters supported the expansion and increased promotion of these existing programs. A handful of comments, apparently less familiar with the FHL Bank System, suggested establishing such incentives.

Additional incentives were discussed in approximately 20 comments. These were 2 general suggestions of tax relief and tax credits for community activities. One comment letter suggested that FHL Bank membership, in and of itself, should be awarded CRA "points."

A number of comment letters proposed special discounts on advances to members with outstanding records of community support. Several letters suggested that the discounts apply only to existing Affordable Housing, Community Investment, and special FHL Bank housing and development programs, but a number suggested that the discounts apply to all advances taken by the member with an outstanding record in the community. Most letters suggested the use of a CRA rating as the most practical measure for determining eligibility for special discounts. Monetary awards were also suggested by several commenters.

6. *Community Reinvestment Act issues.* The CRA issues raised in the Advance Notice and in the comment letters are largely discussed above in the discussion on community investment definitions and other subsections. With regard to institutions without CRA ratings, FHL Bank and other industry commenters suggested that members without CRA ratings be required to file an annual or periodic statement documenting community support. Several community group comment letters suggested requiring such reports from all members, because of the inadequacy of CRA as a true measure of community support.

7. *Home Mortgage Disclosure Act issues.* The Advance Notice sought comments on the consideration that should be given to HMDA data. Four comment letters opposed any use of HMDA data. More than 20 comments generally supported the use of HMDA data, with several community group comments adding that HMDA data is the best measure of an institution's community support performance. Fourteen letters noted that HMDA data is reviewed during the CRA examination and suggested that such use was sufficient.

8. *First-time homebuyers.* More than 40 comments addressed this issue. Three possible definitions of "first-time homebuyer" were suggested: the tax

code definition, the state mortgage revenue bond definition, and the National Affordable Housing Act definition.

Views regarding measurement in this category were divided. A number of thrift institutions suggested using a broad review of both marketing efforts and lending performed. Community groups, on the other hand, favored limiting consideration to actual loans to first-time homebuyers in low-income and minority neighborhoods, with little credit given for loans to such upwardly mobile groups as recent college graduates.

F. Analysis of Proposed Rulemaking

In developing the regulatory structure for this proposed rule-making, the Finance Board has been guided, in varying degrees, by the plain language of the statute, the record of Congressional intent, the comments received in response to the Advance Notice, and the realities of the present state of the thrift industry and the FHL Bank System.

Although the specific record of Congressional intent in Section 710 of FIRREA is limited, the record on related issues provides guidance as to the intent of Congress with respect to the role of the FHL Bank System and the thrift industry. FIRREA reaffirms the mission of the thrift industry as providing residential housing finance with management and financial policies that are consistent with safe, sound, and economic housing finance. The creation of the Affordable Housing Program and the Community Investment Program to expand FHL Bank community-oriented lending activities, place an emphasis on housing finance affordable for a broader range of income levels and on community development lending. In amending the CRA and HMDA, Congress also stressed the requirement that all financial institutions meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, minority individuals and rural areas.

1. *Proposed regulatory structure.* The implementation of community support standards will rely heavily on the FHL Banks, where credit decisions are made and interaction with members is routine. The Finance Board directly regulates only the FHL Banks. Other federal financial regulatory agencies have the statutory authority to examine and supervise individual member institutions, but the Finance Board does not have equivalent direct authority over individual member institutions.

Recognizing that economic conditions, housing finance needs, and internal operations vary from FHL Bank to FHL Bank, the proposed regulations would leave discretion with the FHL Banks in the implementation of the community support requirements. However, the requirements to establish and oversee minimum standards of community support will be uniform throughout the FHL Bank System and enforced by the Finance Board. The Finance Board anticipates, and will encourage, variety and innovation by the FHL Banks in the development and implementation of the pro-active aspects of the proposal, such as monetary incentives and technical assistance for members.

2. Role of the CRA. Section 710 of FIRREA expressly requires that the CRA performance of a member be one of the factors considered in evaluating the member's record of community support. Thus, the community support regulations may not rely entirely on CRA performance, but must consider other factors, including a member's record of lending to first-time homebuyers, as directed by the statute.

Congress seems to have intended that the Finance Board build upon the CRA in crafting the community support regulations. As pointed out repeatedly in the comment letters, in the complete CRA examination and rating process most elements relevant to community support, including HMDA data, are examined and considered by the financial regulatory agencies for each institution. Therefore, for the Finance Board to prescribe some form of second examination and rating procedure would be highly duplicative and wasteful of resources.

However, the Finance Board is mindful that the enforcement of the CRA prior to FIRREA was inconsistent. Pre-FIRREA CRA ratings may not always have been reliable indicators of how well an institution was meeting the credit needs of its community and, in any event, the ratings were not disclosed to the public. Therefore, the Finance Board plans to place principal reliance on post-FIRREA CRA ratings that are descriptive and available to the public.

Many members will not have a post-FIRREA CRA rating, because the ratings only apply to examinations commencing on or after July 1, 1990. In addition, some members of the FHL Bank System, e.g., credit unions, are not subject to the CRA. Therefore, the proposed regulations require each member to submit to its FHL Bank an annual statement of community support. For members with a post-FIRREA CRA rating, this annual submission will only

require the member to forward to its FHL Bank a copy (or a summary) of its current CRA statement (required to be kept in a public file by the CRA) and a copy of the public portion of its latest CRA rating. Members are encouraged but not required to submit any additional information for the FHL Bank to consider. For members not subject to the CRA or without a post-FIRREA CRA rating, the annual community support statement proposed herein will require an annual filing equivalent to a CRA statement. Members that are subject to the CRA but that have not been examined after July 1, 1990 will submit their current CRA statement (or a summary) and other evidence of their CRA activities.

The proposed regulations permit the FHL Banks and the Finance Board to review and re-evaluate CRA ratings to ensure that the rating is an accurate measure of the member's community support activities and programs. This provision is necessary because the CRA ratings do not change between examinations and occasionally do not accurately describe an institution's current level of community support.

3. Incentives. Many comment letters supported the concept of providing additional incentives to members to promote increased performance in community support and investment. Therefore, the proposed regulations would require each FHL Bank to develop incentives, monetary and other, appropriate to their membership and operations. The Finance Board intent is to further institutionalize community support in the business plans and operations of members.

4. Technical assistance to members. In keeping with the overall intent of Congress in FIRREA and broad support in the comment letters, the proposed regulations contain a number of requirements for the FHL Banks and the Finance Board to support the community-oriented lending efforts of FHL Bank System members. The assistance will come primarily from the FHL Banks so that it can be appropriately focused on district and local needs. Technical assistance may include such activities as community lending and affordable housing newsletters, conferences and speaking engagements, "network" development and referrals, member CRA program support, and publications. FHL Bank officials and the Community Investment Officers will assist members in outreach programs to non-profit housing developers, minority neighborhoods, and other institutions engaged in community development and affordable housing activities. FHL Banks will

provide members with examples and models of community support, practical suggestions for expanding work with non-profit developers and community groups, and outreach opportunities in low- and moderate-income neighborhoods with particular emphasis on minority and non-English speaking communities.

G. Request for Comments

The Finance Board requests comments from the public, the FHL Banks, their Advisory Councils, community or public interest groups, members of the FHL Bank System, other financial regulatory and housing agencies, and all other interested parties. All comments received before the deadline will be reviewed and considered. However, the Finance Board urges all interested parties to submit their comments early in the comment period. No extension of the deadline will be possible, because the Finance Board is expediting action on these regulations in order to meet the deadline imposed by FIRREA.

H. Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act, 5 USC 603, the Finance Board is providing the following regulatory flexibility analysis.

1. Need for an objective of the rules. As explained in the SUPPLEMENTARY INFORMATION, these Finance Board regulations are mandatory under FIRREA.

2. Issues raised by commenters and agency assessment and response. These issues are discussed in the SUPPLEMENTARY INFORMATION.

3. Significant alternatives minimizing small-entity impact and response. There are no alternatives that would be less burdensome in meeting the objectives discussed in the SUPPLEMENTARY INFORMATION.

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 Statement of policy.
936.3 Bank community investment assistance to members.
936.4 Finance Board support of Bank activities.

Sec.

- 936.5 Bank review of member community activities.
- 936.6 Community support standards.
- 936.7 Incentive programs.
- 936.8 Restrictions on access to long-term advances.
- 936.9 Finance Board review and reporting.
- Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*; sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 21B, as added by sec. 511, 103 Stat. 394 (12 U.S.C. 1441b).

§ 936.1 Definitions.

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

(b) *Affordable Housing Program* means the program required by Section 10(j) of the Federal Home Loan Bank Act and defined in 12 CFR part 960.

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

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

(e) *Community Investment Program* means the program(s) established by the Banks pursuant to section 10(i) of the Federal Home Loan Bank Act.

(f) *Community-Oriented Lending* means providing loans:

(1) To finance home purchases by families whose income does not exceed 115 percent of the median income for the area;

(2) To finance purchase and rehabilitation of housing by families whose income does not exceed 115 percent of median income for the area;

(3) To finance commercial and economic development activities that benefit low- and moderate-income neighborhoods; and

(4) To finance projects that further a combination of the purposes described in paragraphs (f)(1) through (3) of this section.

(g) *Community Reinvestment Act Examination Rating or CRA Rating* means a rating assigned utilizing the four-tiered descriptive rating system as provided by the Uniform 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 from time to time. Copies of the Final Guidelines may be obtained from the Federal Housing Finance Board, Housing Finance Directorate, 1777 F Street, NW., Washington, DC 20006.

(h) *First-Time Homebuyer* means an individual and his or her spouse who

have not owned a home during the 3-year period prior to 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.

See Pub. L. No. 101-625, Nov. 28, 1990 (12 U.S.C. 1715).

(i) *Long-Term Advance* means, for purposes of this part, an advance for a term in excess of one year, or the extension of a shorter term advance that results in the total term of the advance being in excess of one year.

(j) *Low-Income* means families and households whose income does not exceed 80 percent of the median income for the area.

(k) *Median Income* means the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development. The data is available from HUD USER, P.O. Box 6091, Rockville, MD 20850.

(l) *Member* means an institution admitted to membership in a Federal Home Loan Bank.

(m) *Moderate-Income* means families and households whose income does not exceed 115 percent of the median income for the area.

(n) *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- and moderate-income families, 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- and moderate-income families. See 12 CFR 960.1(e).

(o) *Very Low-Income* means families and households whose income does not exceed 50 percent of the median income for the area.

§ 936.2 Statement of policy.

In this part, it is the purpose and policy of the Banks to:

(a) Provide funds to members for residential housing finance;

(b) Assure that member management and home financing policies are consistent with sound and economical home financing;

(c) Assist members in meeting the credit needs of the entire community where they do business, including low- and moderate-income neighborhoods, minority neighborhoods, and rural communities, consistent with safe and sound operation;

(d) Operate special financial and credit programs, such as the Affordable Housing and Community Investment Programs, to enhance the ability of members to provide community-oriented lending and affordable housing finance;

(e) Encourage members to address critical community investment and affordable housing needs in all areas, urban and rural;

(f) Treat community investment and affordable housing activities with equal priority as is given other credit activities of the Banks;

(g) Work in partnership with community groups, public interest organizations, individual citizens, and others in delivering financial services to all communities; and

(h) Advance high standards of community investment and service for members of Banks to maintain continued access to long-term advances.

§ 936.3 Bank community investment assistance to members.

(a) Each Bank shall provide timely notice to all members of offerings and activities of the Bank's Affordable Housing Program, Community Investment Program, and equivalent Bank programs to help members meet community investment and affordable housing finance needs.

(b) Not less than quarterly, the Bank's Community Investment Officers shall provide to all members a summary of community-oriented lending and affordable housing finance projects being undertaken by members within the Bank District. Information concerning Bank activities of others may also be included. The purposes of the summary are to provide members with specific practical examples of innovative community-oriented lending and affordable housing finance, to

facilitate the exchange of expertise and experience in meeting community credit needs, and to promote an expanded awareness of business opportunities inherent in community revitalization, development, and growth.

(c) Community Investment Officers and other appropriate Bank officials shall establish and maintain technical assistance programs to support community-oriented lending by members, promotional activities, and outreach programs to:

(1) Promote the use or expanded use of long-term advances, both special and regular, for community-oriented lending and affordable housing finance;

(2) Identify opportunities for members to expand financial and credit services in neighborhoods and communities that are underserved, particularly low- and moderate-income areas, minority neighborhoods, and rural communities;

(3) Increase community awareness of the resources of the Federal Home Loan Bank System; and

(4) Provide technical assistance to individual members.

(d) Community Investment Officers shall work in partnership with their Bank's Advisory Council in developing and implementing initiatives to increase the use of long-term advances for community-oriented lending and affordable housing finance.

§ 936.4 Finance Board support for Bank activities.

(a) The Finance Board shall provide the Banks with access to CRA examination reports of members that are received from financial regulatory agencies and other information required to carry out Bank responsibilities under this part.

(b) The Finance Board shall facilitate the prompt dissemination of data and information to and among the Banks.

(c) The Finance Board shall provide technical assistance, training, and promotional assistance to the Banks.

(d) The Finance Board will work with financial regulatory agencies to facilitate national, state, and local efforts to promote and monitor community-oriented lending, community reinvestment, affordable housing finance, and financial services for all communities.

§ 936.5 Bank review of member community activities.

(a) On an annual basis on a date set by the Bank, each Bank shall request and each member shall submit to the Bank, a statement of community support. This statement shall include a copy or summary of the member's most recent CRA statement, a copy of its

most recent CRA rating, and any additional evidence of community support activities and record that the member chooses to submit, such as a description of special credit products for, and loan origination to, minority and first-time homebuyers. Members without a CRA rating, as defined in § 936.1(g) of this part, shall be required to submit to the Bank an annual statement of community support explaining the ways in which the member meets the objectives of the Community Reinvestment Act and otherwise helps meet the credit needs of its community, members, or customers.

(b) The Bank shall provide notice of receipt of members' community support statements to its Advisory Council and nonprofit and public interest organizations in the District. The notice shall include the member's most recent CRA rating. The entire community support statement need only be made available to the public upon request. Notice of availability to the public and a description of the request procedure shall be provided in the public notice.

(c) The Banks shall develop procedures that, at a minimum, enable the Banks to:

(1) Review the member's annual statement of community support to assess the member's performance in accordance with the measurement criteria of § 936.6 of this part;

(2) Determine whether a member continues to be eligible for access to long-term advances;

(3) Review a member's eligibility for special discounts and incentives available from the Bank;

(4) Refer a member for technical assistance by the Bank's Community Investment Officer or other appropriate Bank officials and departments;

(5) Review additional evidence of community support activities, or lack thereof, from the member or the public;

(6) Establish an open and fair review process to evaluate a member in accordance with § 936.6 of this part;

(7) Refer complaints concerning a member's community support activities to the appropriate regulatory agencies;

(8) Notify complainants of the disposition of their complaints; and

(9) Forward the results of the Bank's review of the member's community support performance to the Finance Board.

(d) Bank procedures should be developed in consultation with the Bank's Advisory Council established and maintained pursuant to § 936.14 of this chapter.

(e) A description of Bank procedures, a summary of activity in the preceding year, and projections for the coming

year, shall be included in the community investment activities section in the Bank's annual budget plan submitted for Finance Board approval. For calendar year 1991, interim plans shall be submitted for Finance Board approval within 60 days of the effective date of this Part.

§ 936.6 Community support standards.

(a) Annual statements of community support shall be reviewed by the Bank to determine:

(1) That the member's credit policies and lending practices are consistent with the intent and purpose of CRA;

(2) That the member serves the convenience and needs of each of the communities in which it does business or, in the case of institutions not subject to CRA, the convenience and needs of its markets, customers, and members;

(3) That the member has a satisfactory record of lending to first-time homebuyers;

(4) That the member helps meet the credit needs of its entire community, market, customers, and members, including low- and moderate-income neighborhoods and individuals, minority neighborhoods and individuals, and urban and rural communities.

(b) The Bank may review the CRA rating of a member, using the same review standards as it uses for reviewing annual statements of community support, to determine if the rating continues to be an accurate assessment of the member's community support activities for purpose of this part. Such reviews may be undertaken in cooperation with the member's regulator. Bank determinations shall be supported by reasonable evidence and be subject to Finance Board review and approval.

§ 936.7 Incentive programs.

(a) Within the limits of safe and sound financial operation, each Bank shall adopt, subject to Finance Board review and approval, an incentive program for community support by members. The community support incentive program shall include discounts and/or preferred terms on long-term advances, except Affordable Housing Program advances, for members with outstanding records of community support. The Bank may in its discretion include such other incentives as it may adopt, subject to Finance Board review and approval.

(b) In designing and modifying the community support incentive programs, the Bank shall consult with its Advisory Council.

(c) A Bank's community support incentive program shall be in addition to

and in further support of its Affordable Housing Program, Community Investment Program, and other special lending programs.

§ 936.8 Restrictions on access to long-term advances.

(a) No restrictions shall be placed on access to long-term advances by members with CRA ratings of "Outstanding" or "Satisfactory" or by members who have filed an annual statement of community support acceptable to the Bank, except as provided by § 936.8(e) of this part.

(b) Members with a CRA rating of "Needs to improve" or "Substantial noncompliance" shall be required within 30 days of notice received to submit to the Bank a community support action plan stating specific efforts that the member will undertake in the succeeding year to improve its community support activities to meet the requirements of this part. The plan shall include specific goals that the member has chosen to measure its performance under the plan.

(c) Members with a CRA rating of "Needs to improve" that fail to show demonstrable progress in community support activities after six months of experience with a plan shall only be allowed access to long-term advances for Community Investment Program and community-oriented lending purposes specifically approved by the Bank until the Bank recommends pursuant to § 936.8(i) of this part to the Finance Board that the member has made demonstrable progress in meeting the goals of its community support action plan.

(d) Members with a CRA rating of "Substantial noncompliance" shall only be allowed access to long-term advances for Community Investment Program and community-oriented lending purposes specifically approved by the Bank until the Bank recommends to the Finance Board, pursuant to § 936.8(i) of this part, that the member has made demonstrable progress in meeting the goals of its community support action plan.

(e) Members without a CRA rating that have not filed an annual statement of community support acceptable to the Bank and those CRA-rated members whose community support statements are found by the Bank to be unacceptable, shall be treated in the same manner as a member with a CRA rating of "Needs to improve" for purposes of this part.

(f) All members shall, at all times, be able to compete for the Affordable Housing Program as provided by part of this chapter.

(g) Plans submitted by a member to a Bank shall include, at a minimum, the following elements:

(1) A statement of new and expanded community support activities that the member intends to undertake in the succeeding year;

(2) An explanation of how the plan meets the credit needs of the member's community or, in the case of credit unions, members;

(3) A statement of goals to be achieved at the end of the first six months of the plan and by the end of the first year of the plan; and

(4) A description of how the goals included in the action plan will be quantified and measured by the member, the Bank, its Advisory Council, the Finance Board, and the targeted communities.

(h) The Bank receiving the community support action plan from the member shall:

(1) Review the plan for completeness and appropriateness with regard to the member's community, or, in the case of credit unions, members;

(2) Establish, on at least a quarterly basis, a schedule of consultations with the member to review progress being made under the plan and the results achieved under the plan;

(3) Assist the member in establishing goals to be achieved for the member to have unrestricted access to long-term advances; and

(4) Forward a copy of the completed community support action plan and the Bank's recommendations to the Housing Finance Directorate of the Finance Board for review. The Finance Board shall approve or disapprove the Bank's recommendation within ten working days following receipt.

(i) The decision to permit a member subject to an action plan unlimited access to long-term advances shall be upon recommendation of the Bank based on a review of the member's record of community support, including loan products and originations, subject to Finance Board review and approval. Members, individuals and organizations in the member's community or, in the case of credit unions, customers, may be contacted by the Bank or the Finance Board for additional information concerning the member's community support activities.

(j) Restrictions in this § 936.8 may be waived by the Bank for reasons of financial safety and soundness upon a request by the member's financial regulator or other documented request by the member.

§ 936.9 Finance Board review and reporting.

(a) The Finance Board shall conduct an ongoing review of Bank programs to support community-oriented lending, affordable housing finance, and community investment activities by members.

(b) Bank community support programs and results shall be subject to examination by the Finance Board pursuant to 12 U.S.C. 1440.

(c) The Banks shall submit such program plans, operational assessments, and reports as the Finance Board may require from time to time or on a regular schedule.

(d) Pursuant to 12 U.S.C. 1430(j)(12) and 12 CFR 960.14, the Finance Board provides an annual report to Congress presenting the evaluations of the Advisory Councils to the Banks concerning the affordable housing activity of the Banks during the preceding year. Beginning with reports filed in 1992 and continuing 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 1992 and continuing each year thereafter, the annual Finance Board report to Congress shall include an analysis of Bank and Finance Board activity pursuant to the community support requirements of this part.

By the Federal Housing Finance Board.

J. Stephen Britt,

Executive Director.

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OVERSIGHT BOARD

12 CFR Part 1507

Minority and Women Contracting Outreach Program

AGENCY: Oversight Board.

ACTION: Proposed rule

SUMMARY: This rule is proposed to establish in regulatory form an outreach program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in contracts entered into by the Oversight Board. Its purpose is to implement section 1216(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). This action should ensure the participation of firms owned or controlled by minorities and women in Oversight Board contracting.