

(b) * * *

(3) The value at the producer price differential adjusted for the location of the plant(s) from which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed or such handler pursuant to §1124.60(k).

* * * * *

11. Section 1124.73 is amended by revising paragraphs (a)(2) (ii) through (vi), (c) introductory text, (c)(1), the reference "paragraph (a)(2) (i) through (iii) of this section" in paragraphs (c)(2) and (d)(2) to "paragraph (a)(2) (i) through (iv) of this section", (f)(2), and adding paragraph (a)(2)(vii) to read as follows:

§1124.73 Payments to producers and to cooperative associations.

* * * * *

(a) * * *

(2) * * *

(ii) Add the amount that results from multiplying the protein price for the month by the total pounds of protein in the milk received from the producer;

(iii) Add the amount that results from multiplying the other solids price for the month by the total pounds of other solids in the milk received from the producer;

(iv) Add the amount that results from multiplying the total hundredweight of milk received from the producer by the producer price differential for the month as adjusted pursuant to §1124.74(a);

(v) Subtract payments made to the producer pursuant to paragraph (a)(1) of this section;

(vi) Subtract proper deductions authorized in writing by the producer; and

(vii) Subtract any deduction required pursuant to § 1124.86 or by statute; and

* * * * *

(c) Each handler shall pay to each cooperative association which operates a pool plant, or to the cooperative's duly authorized agent, for butterfat, protein and other solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat, protein, and other milk solids received during the first 15 days of the month at not less than the butterfat, protein, and other milk solids prices, respectively, for the preceding month; and

* * * * *

(f) * * *

(2) The total pounds of milk delivered by the producer, the pounds of butterfat,

protein and other solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

* * * * *

§ 1124.74 [Amended]

12. Section 1124.74(c) is amended by revising, in two locations, the phrase "weighted average differential price" to "producer price differential".

§ 1124.75 [Amended]

13. Section 1124.75 is amended by adding the phrase "or statistical uniform price" after the words "estimated uniform price" in the second sentence of paragraph (a)(1)(i), and by revising the phrase "estimated uniform price" in the first sentence of paragraph (b)(4) to "statistical uniform price".

§ 1124.85 [Amended]

14. Section 1124.85 is amended by revising the reference "\$ 1124.60(h) and (j)" in paragraph (b) to "\$ 1124.60(i) and (k)".

Dated: December 30, 1996.
Michael V. Dunn,
Assistant Secretary, Marketing and Regulatory Programs.
[FR Doc. 96-33390 Filed 12-31-96; 8:45 am]
BILLING CODE 3410-02-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. 96-97]

Selection and Compensation of Federal Home Loan Bank Employees

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending the provisions of its regulations governing the selection and compensation of employees of the Federal Home Loan Banks (Banks) in order to streamline regulatory requirements and transfer specific functions currently performed by the Finance Board to the board of directors of each Bank. The final rule requires a Bank to obtain prior Finance Board approval of the appointment of a new President, but permits a Bank to reappoint an incumbent President without prior Finance Board approval. The final rule also gives the Banks broad authority to set Bank Presidents' salaries within established caps and authorizes the Banks to make incentive payments to their Presidents based on each Bank's performance and on fulfillment of its mission. The devolution of authority to

the Banks is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT:

Barbara Fisher, Director, Office of Resource Management, (202) 408-2586; or David Guy, Associate General Counsel, (202) 408-2536, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. Selection of Employees

Section 12(a) of the Federal Home Loan Bank Act (Bank Act) provides that each Bank may select, employ, and fix the compensation of Bank employees, subject to the approval of the Finance Board. See 12 U.S.C. 1432(a). Section 932.40 of the Finance Board's regulations, which governs the selection of Bank employees, provides that officers, legal counsel, and employees of a Bank shall be elected or appointed in accordance with the Bank's bylaws. See 12 CFR 932.40. Each Bank's bylaws are subject to the approval of the Finance Board. See 12 U.S.C. 1432(a). Under each Bank's bylaws, a Bank elects or appoints its President subject to Finance Board approval.

Section 932.40 also sets forth conflicts of interest prohibitions applicable to full-time officers or employees of a Bank, and to counsel retained by a Bank. See 12 CFR 932.40. These provisions generally prohibit a Bank employee from acting on behalf of a member or other institution insured by the former Federal Savings and Loan Insurance Corporation (FSLIC), except under specified circumstances and with the consent of the FSLIC. Existing § 932.40 extends this prohibition to counsel and attorneys of any Bank, whether employed on a salary, fee, retainer, or other basis, unless the Finance Board consents to such representation. See *id.*

B. Compensation

1. Bank Presidents

Under section 12(a) of the Bank Act, the compensation of all Bank employees is subject to Finance Board approval. See 12 U.S.C. 1432(a). However, under its existing regulation on Bank employee compensation, *prior* Finance Board approval is required only for compensation of a Bank's President. See 12 CFR 932.41(a). Section 932.41 of the Finance Board's existing compensation regulation requires the board of directors of each Bank annually to adopt and submit to the Finance Board for its

approval an appropriate resolution showing the contemplated compensation of its President. *See id.*

In setting the compensation of their Presidents, the Banks are governed by the Bank Presidents' Compensation Plan (Compensation Plan), adopted by the Finance Board on November 19, 1991, as amended from time to time. *See Bd. Res. No. 91-565* (as amended). The Compensation Plan establishes base salary guidelines, merit increase (to base salary) guidelines, and criteria for incentive payments for Bank Presidents. The Compensation Plan requires each Bank annually to submit for Finance Board approval recommendations for merit increases to its President's base salary and proposed incentive payments.

2. Other Bank Employees

Section 932.41(b) of the Finance Board's existing compensation regulation permits a Bank to fix the compensation of officers other than the President without prior Finance Board approval, provided that such compensation is within ranges established by the Finance Board and the total limits for such compensation in the Bank's approved budget. *See* 12 CFR 932.41(b). Each Bank may establish the amount and form of compensation for all other employees (including legal counsel) within the limits set forth in the Bank's approved budget. *See id.* Section 932.41(b) also prohibits a Bank from paying a bonus to any director, officer, employee, or other person. *See id.*

In Resolution No. 84-390, dated July 25, 1984, the Finance Board's predecessor agency, the Federal Home Loan Bank Board (FHLBB), established a cap on compensation of Bank employees other than the President, providing that the salary of the second-highest-paid Bank officer may not exceed 80 percent of the Bank President's salary. This resolution currently remains in effect. *See* 12 U.S.C. 1437 note.

II. Proposed Rulemaking

On August 16, 1996, the Finance Board published for public comment a notice of proposed rulemaking, which proposed to amend §§ 932.40 and 932.41 of its regulations to clarify the scope of the Banks' discretion in selecting and fixing the compensation of Bank Presidents and other Bank employees. *See* 61 FR 42570 (Aug. 16, 1996) (proposed rule). The proposed rule also included amendments to § 941.9 of the Finance Board's regulations to codify the Finance Board's existing practice regarding the

annual appointment and compensation of the Director of the Office of Finance (OF) and other OF employees. *See id.* The proposed rule provided for a 60-day comment period.

The Finance Board received letters from a total of 49 commenters, including all 12 Banks, a joint Bank committee on Bank Presidents' compensation, 32 Bank members, 2 not-for-profit housing organizations, one advocacy group, and one individual. The commenters generally supported the concept of transferring to the individual Banks more authority to determine the compensation of Bank employees and, in particular, the Bank Presidents. However, various commenters stated that the Banks should have more authority in this area than would be allowed under the proposed rule. Commenters also generally supported giving the Banks more control over the appointment of Bank Presidents than would be permitted under the proposed rule.

A discussion of the relevant comments is included below in the Analysis of the Final Rule. Where no comments were received on a particular regulatory provision, or a provision was not considered controversial, and the Finance Board has determined to adopt the provision as proposed, the provision generally is not discussed in this preamble. The Finance Board is deferring action on the portions of the proposed rule pertaining to the selection and compensation of OF employees and benefits until a later date.

III. Analysis of the Final Rule

A. Selection of Employees

1. Bank Presidents

Section 932.40(a) of the proposed rule codified the Finance Board's existing practice of approving the appointments of Bank Presidents for one-year terms. The preamble to the proposed rule interpreted the one-year appointment requirement to prohibit a President from holding over upon expiration of his or her term of office, and to supersede the existing provisions in the Banks' by-laws allowing for the holdover of Bank Presidents.

Twenty-two commenters opposed requiring Finance Board approval of the initial appointment and the reappointment of Bank Presidents. Many commenters believed that the Finance Board should rely on the boards of the Banks to appoint the Bank Presidents, given that the boards are duly elected by the members and appointed by the Finance Board, and the Banks are for-profit, privately capitalized institutions owned by their

stockholders. According to some commenters, requiring Finance Board approval of reappointment also may discourage qualified candidates from seeking the Presidencies. Several commenters recommended that the Bank's boards be permitted to enter into multi-year employment contracts with their Presidents.

Ten commenters opposed requiring Finance Board approval of the reappointment of Bank Presidents, but these commenters either supported or would not necessarily object to the Finance Board having a role in approving the initial appointment of Bank Presidents.

While the Banks may be characterized as for-profit, privately capitalized institutions owned by their stockholders, the Banks exist primarily to carry out a public purpose: the promotion and expansion of housing finance. *See* 12 U.S.C.

§ 1422a(a)(3)(B)(ii). Therefore, a Bank's President is charged with representing and furthering not only the interests of the Bank's stockholders but also the interests of the public. The Bank Act provides that the primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. *See id.* § 1422a(a)(3)(A). The other statutory duties of the Finance Board are to: supervise the Banks; ensure that they carry out their housing finance mission; and ensure that they remain adequately capitalized and able to raise funds in the capital markets. *See id.* § 1422a(a)(3)(B).

The Finance Board believes that retaining approval authority over a Bank's selection of its highest officer is necessary to carry out the Finance Board's statutory duties. Therefore, § 932.40(a) of the final rule requires a Bank to obtain prior Finance Board approval of the appointment of a new President. However, a Bank may reappoint an incumbent President without prior Finance Board approval. For purposes of clarity and completeness, § 932.40(a) also restates the statutory requirements in sections 2B(a)(2) and 12(a) of the Bank Act providing, respectively, that: (1) a Bank President may be suspended or removed by the Finance Board for cause, which shall be communicated in writing to the President and the Bank, and (2) a Bank President serves at the pleasure of the Bank. *See id.* §§ 1422b(a)(2), 1432(a).

Twenty-four commenters opposed elimination of a Bank President's ability to holdover on the ground that, among other things, this may lead to a situation where a Bank is without leadership if the Finance Board fails to approve a new President. By requiring prior

Finance Board approval only of new Bank Presidents, the final rule allows for the holdover of an incumbent Bank President.

2. Other Bank Employees

Section 932.40(b) of the final rule adopts the language of the proposed rule providing that a Bank may appoint or elect officers other than the President and may hire other employees of the Bank without prior Finance Board approval.

3. Conflicts of Interests

Proposed § 932.40(c) updated the conflicts of interest provisions in existing § 932.40 by eliminating references to the FSLIC, which was abolished by Congress in 1989. *See id.* § 1437 note. The proposed rule retained, in substance, the existing requirement that a Bank employee shall not act in any capacity for certain specified institutions whose interests are likely to be in conflict with the interests of the Bank. Specifically, proposed § 932.40(c) prohibited a Bank employee from being employed by, or acting in any other capacity for, a Bank member or an institution eligible to make application to become a Bank member. The final rule adopts proposed § 932.40(c), without change.

B. Compensation of Bank Employees

1. Base Salaries

a. *Bank Presidents.* The proposed rule permitted each Bank to establish the base salary of its President within specific ranges, based on the Bank's asset size, and to pay yearly merit increases, up to a maximum rate set by the Finance Board. The general consensus of the commenters was that the boards of directors of the Banks should be permitted to set compensation for all Bank employees, including the Presidents, provided such compensation is reasonable and comparable to what is being paid in the marketplace. Commenters generally opposed Finance Board control over the compensation of the Bank Presidents, except to the extent that it relates to safety and soundness of the Banks. Commenters made a variety of arguments in support of these positions, including: (1) The establishment of detailed requirements governing compensation for Bank Presidents is not necessary to ensure that the Banks operate safely and soundly; (2) a Bank's strategic advantage of being a regionally based entity able to experiment with new ways to meet local housing needs is hindered by nationally mandated compensation goals; (3) placing the

compensation issue in the hands of a regulator is contrary to the intent and mission of the Banks, which are for-profit, shareholder-owned enterprises, and creates a conflict of interest for the Finance Board in its capacity as a regulator; and (4) codifying the Bank Presidents' salaries in regulation politicizes the compensation process and treats the Presidents like public, rather than private sector employees. Several commenters recommended that the Finance Board adopt the approach of other federal bank regulatory agencies that limit compensation only for executives of institutions with safety and soundness problems.

The Finance Board finds merit in the ideas that detailed regulatory requirements for the compensation of Bank Presidents do not necessarily further the goal of ensuring the safe and sound operation of the Banks, and that a Bank should have flexibility to establish compensation goals that encourage the Bank to address local housing needs. The Finance Board also agrees that management functions, such as the establishment of employee compensation, should be in the hands of the Banks to the maximum extent feasible.

However, the Finance Board disagrees with the idea that it should approach the regulation of Bank employee compensation in the same manner as regulators of private entities, such as commercial banks and savings associations, which are not government chartered corporations. Although the primary duty of the Finance Board is to ensure the financial safety and soundness of the Banks, the Finance Board also has a statutory mandate to ensure that the Banks carry out their programmatic purposes in the area of housing finance. *See id.* § 1422a(a)(3)(A), (B)(ii). Unlike the institutions regulated by other federal bank regulators, the Banks exist primarily to serve the public interest. *See id.* § 1422a(a)(3)(B)(ii). Consequently, the Finance Board has an interest in exercising some control over the compensation of Bank Presidents, not only to ensure the safety and soundness of the Banks, but also to ensure that the programmatic goals of the Banks are met.

The Finance Board currently determines the salary ranges for Bank Presidents using a comparability model based on the salaries of the chief operating officers (COO) of private financial subsidiaries of similar asset size and geographic location, offset by staff size. The preamble to the proposed rule specifically requested comment on the appropriate universe of entities that

should be used in establishing the comparability of the Bank Presidents' salaries. For instance, it has been suggested that the salaries of the Bank Presidents should be comparable to the salaries of the Presidents (or their equivalent) of the Federal Reserve Banks, other segments of the financial services industry, or other federally or state-created entities with similar size, functions, and mission. The Bank Presidents' Compensation Committee (Compensation Committee), which is comprised of persons appointed from each of the 12 Banks, retained Hewitt Associates, LLC, to review the proposed rule. The Hewitt Associates study (Hewitt study) concluded, among other things, that the banking industry is the appropriate comparator group for the Bank Presidents in setting compensation, and that the chief executive officer (CEO) of a bank subsidiary is a more appropriate match than a COO of a subsidiary.

Most of the Banks' comments on this issue are in accord with the conclusions of the Hewitt study. Several Banks and the Hewitt study concluded that an offset based on asset base and staff size should be used in the development of compensation levels. The two Bank members that addressed this issue believed that Bank Presidents' compensation should be comparable with the salaries of CEOs of organizations of similar size, scope, and risk.

In light of the public purpose of the Banks, the issue for the Finance Board in determining comparability of compensation is not how the Bank Presidents are different from comparable positions in the private sector, but how the Bank Presidents are different from comparable positions with governmental or quasi-governmental entities.

The Hewitt study concluded that the Federal Reserve Banks (FRBs) are not an appropriate comparator group for the Banks because the Banks are profit-driven in that they are owned by their members, who are entitled to dividends. Further, the Banks operate in a competitive environment and must market their services to members and prospective customers. In addition, the Banks make statutorily mandated annual payments of \$300 million to the Resolution Funding Corporation, *see* 12 U.S.C. 1441b, and at least \$100 million to the Affordable Housing Program, *see id.* § 1430(j).

In contrast to the Banks, the FRBs' primary mission is governmental, and the FRBs do not manage an investment portfolio. One Bank commenter stated that the FRBs are not appropriate

comparators for the Banks on this issue because: (1) they carry out governmental monetary and regulatory functions; (2) their boards are advisory in nature; (3) their stock pays a fixed return; and (4) their profits are returned to the Department of the Treasury.

In recognition of the expressed arguments against detailed regulatory requirements for Bank Presidents' compensation, the final rule does not adopt those provisions in the proposed rule prescribing salary ranges and merit increase rates. The final rule provides for the Finance Board, on an annual basis, to determine and publish by November 30 individual caps on the base salaries payable to each of the Banks' Presidents for the subsequent calendar year. The base salary cap for each Bank President shall be based on the average base salary of a CEO of a subsidiary financial institution in the Bank's primary metropolitan statistical area with an asset size comparable to that of the Bank, as of June of the prior year, reduced by five percent and rounded to the nearest \$5,000. The five percent reduction is intended to reflect the public purpose of the Banks. Each Bank shall establish, on an annual basis, a reasonable base salary for its President, not to exceed 100 percent of the applicable base salary cap published by the Finance Board. However, those Bank Presidents whose currently approved and recommended base salaries for 1997 exceed the 1997 cap will not experience any reduction in base salary. These Presidents' base salaries will be capped at their current levels until the annual cap set by the Finance Board for the Bank exceeds the 1997 base salary currently approved and recommended for the President by the Bank's board of directors. By January 2 of each year, a Bank must report to the Finance Board the approved base salary of its President for that year.

b. *Other Bank Employees.* The proposed rule permitted each Bank to establish base salaries for employees other than the President without prior Finance Board approval, provided such salaries are reasonable and comparable with the base salaries of employees of the other Banks and other similar businesses, such as similar financial institutions, with similar duties and responsibilities. Section 932.41(b)(2) adopts the provisions of the proposed rule, with the additional requirement that no employee's base salary shall exceed the base salary of the Bank President. This is intended to ensure the effectiveness of the cap on the Bank President's salary.

2. Incentive Payments

a. *Bank Presidents.* The proposed rule required incentive payments to Bank Presidents to be based solely on the performance of the Bank, rather than on the President's individual performance. The proposed rule established specific criteria on which a Bank President's incentive payment is to be based, and required the boards of directors of the Banks to establish numerical performance targets and measures to be used in determining a Bank President's incentive payment. Specifically, the proposed rule provided that at least 20 percent of any incentive payment for a Bank President must be based on certain specified criteria illustrating the Bank's emphasis on the portion of its mission involved with support for member credit activities; at least 30 percent of any incentive payment must be based on certain specified criteria illustrating the Bank's emphasis on additional support for housing and community development finance; and the remaining portion of the incentive payment must be based on the Bank's performance in achieving other objectives established by the Bank's board of directors.

The proposed rule provided that performance targets must be set at such a level as to show an improvement in the Bank's performance over the prior year or an extraordinary achievement in attaining the designated target. In order to obtain the maximum incentive payment, the proposed rule required a Bank President to achieve 150 percent of the performance target for a given incentive criterion.

Nine Banks specifically opposed the setting of standard criteria for incentive payments throughout the Bank System. Commenters recommended that each Bank's board of directors be permitted to establish incentive payment criteria in order to ensure a complete reflection of the issues the boards believe are critical. Several Banks commented that there is no logical relationship between meeting 150 percent of a performance target and an outstanding level of performance.

The final rule gives the Banks more flexibility to determine the basis for incentive payments to Bank Presidents, but retains the requirements that such payments be based solely on the performance of the Bank and that they be based in part on the Bank's measured progress in the achievement of its mission.

Section 932.41(c)(2) of the final rule provides that at least fifty percent of the Bank President's incentive payment must be based on the extent to which the Bank meets reasonable numerical

performance targets established by the Bank's board of directors related to the Bank's achievement of its housing finance mission, which shall include substantial consideration of growth in innovative products directed at unmet credit needs, growth in pre-committed Community Investment Program (CIP) advances, growth in non-advance credit support and risk management products for members, as well as growth in advances, including long-term advances. Pre-committed CIP advances means CIP advances provided in support of new CIP lending activity, not refinancings of existing CIP-eligible loans.

The remaining portion of the incentive payment must be based on the extent to which the Bank meets reasonable numerical performance targets related to the achievement of goals established by the Bank's board of directors, in its discretion. By January 31 of each year, the board of directors of each Bank that intends to make any incentive payment to its President for such year shall adopt a resolution establishing the performance measures and targets on which such incentive payment will be based. Any incentive payment made to a Bank President shall be based solely upon the extent to which a Bank achieves the performance targets established by the board of directors.

The preamble to the proposed rule requested comments on the appropriateness and the reasons for limiting a Bank President's total incentive payment to a maximum percentage of base salary, at some point in the range between zero and 37.5 percent. Under the existing Bank President's Compensation Plan, prior to the most recent amendment, the maximum incentive payment payable to a Bank President was 37.5 percent of base salary. The Compensation Plan was amended on July 25, 1996, to limit an incentive payment to 31.25 percent of base salary. See Bd. Res. 96-54 (July 25, 1996).

Eight Banks opposed the 31.25 percent and 37.5 percent limits on incentive payments as arbitrary and not reflective of marketplace conditions. Several Banks commented that their boards should be permitted to set limits on incentive compensation based on the industry-wide average. Commenters also stated that the Banks should be permitted to determine the appropriate mix between base salary and incentive compensation for their employees. The final rule attempts to provide the added flexibility recommended by commenters.

The final rule provides that a Bank may establish an incentive payment program or programs for its employees. The maximum incentive payment to a Bank President may not exceed the difference between that President's base annual salary approved by the Bank and 125 percent of the annual base salary cap, as published by the Finance Board. The effect of this provision is to limit a Bank President's total cash compensation payable in salary and incentive compensation to 125 percent of the amount of the base salary cap established by the Finance Board for that Bank.

The proposed rule prohibited a Bank from making any incentive payment to its President if the most recent examination of the Bank by the Finance Board identified an unsafe or unsound practice or condition with regard to the Bank. The Finance Board specifically requested comment on whether there are other events or conditions that should result in a prohibition on incentive payments to Bank Presidents.

Several Banks opposed the prohibition on incentive payments based on examination findings because such a practice would make the examination process more adversarial and potentially could deny a President an incentive payment based on an examination finding that may be reversed upon appeal. One Bank and the Compensation Committee recommended clarifying that if an examination finding of an unsafe or unsound practice or condition is subsequently resolved in favor of the Bank, the Bank's board will be allowed to pay a Bank President an incentive payment retroactively. The final rule makes this clarification.

The Finance Board wishes to make clear that the proposed rule does not require a Bank to make incentive payments, but if a Bank chooses to make such payments, it must meet the requirements of § 932.41(c).

b. *Other Bank Employees.* The final rule adopts the provisions of the proposed rule authorizing the Banks to make incentive payments to employees other than the Bank Presidents that are reasonable and comparable with incentive payments made to employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. The final rule also provides that incentive payments for employees other than the Bank President shall be based on the extent to which an employee meets objective performance targets related to performance criteria established by the Bank's board of directors under the

Bank's incentive compensation program or programs. The final rule limits the incentive payment opportunities for employees other than the President such that the total incentive payment opportunity, expressed as a percentage of base salary, for an employee other than the Bank President shall not exceed the total incentive payment opportunity, expressed as a percentage of base salary, allowable for the Bank President.

3. Benefits

The proposed rule authorized the Banks to establish certain kinds of benefits plans for their employees and to provide benefits pursuant to such plans without prior Finance Board approval. The Finance Board is deferring action on the portions of the proposed rule governing benefits until a later date.

4. Severance Payment Plans

The proposed rule authorized the Banks to establish nondiscriminatory severance plans that provide benefits upon involuntary termination other than for cause, voluntary resignation, or early retirement, provided that total benefits paid do not exceed one year of employee base compensation.

Nine Banks believed that the Banks should be permitted to set their own severance policies, without the limitation that severance payments not exceed 12 months of base compensation. Commenters suggested that severance payments to employees who are discharged for cause may be warranted in some circumstances, and that the "for cause" exception could result in litigation over whether a Bank had cause to terminate an employee. One Bank objected to the denying severance to an employee in the case of early retirement.

The final rule retains the 12-month rule as a reasonable limitation on severance payments. In addition, the restriction on severance payments to employees terminated for cause is removed. The final rule provides for severance payments to be made in cases of involuntary termination. Thus, the final rule continues the restriction on severance payments for early retirees on the ground that severance payment plans are intended to provide for income replacement in the event of involuntary termination.

5. Change-of-Control Agreements

The Finance Board requested comments on whether the Banks should be permitted to enter into change-of-control arrangements with certain senior officers. Change-of-control agreements,

so-called "golden parachutes," typically are entered into with senior management and provide for guaranteed, and often enhanced, severance in the event of termination of employment following some period after a change of control.

All 12 Banks believed change-of-control agreements are important to maintaining the safety and soundness of a Bank in cases where merger or consolidation is imminent, and that the Banks' boards should be permitted to enter into and determine the terms of change-of-control agreements with Bank officers.

While the Finance Board is not opposed to the use of change-of-control agreements in the appropriate situation, the Finance Board is not authorizing the Banks to have such agreements with their employees at this time. The Finance Board will take into consideration the need for such agreements should events arise that would make change-of-control agreements relevant.

IV. Effective Date

The Finance Board has approved this final rule to become effective immediately upon publication, on the ground that, as described above, the final rule relieves restrictions placed on the Banks by the existing provisions of §§ 932.40 and 932.41 of its regulations. Therefore, the thirty-day delay in the effective date that otherwise would be required by section 552 of the Administrative Procedures Act is not applicable to this final rule. See 5 U.S.C. 553(d)(1).

V. Regulatory Flexibility Act

The final rule applies only to the 12 Banks, which do not come within the meaning of "small entities," as defined by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601. Therefore, in accordance with the RFA, the Finance Board hereby certifies that final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 932

Conflict of interests, Federal home loan banks.

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

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 932—ORGANIZATION OF THE BANKS

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

Authority: 12 U.S.C. 1422a, 1422b, 1426, 1427, 1432; 42 U.S.C. 8101 *et seq.*

2. Section 932.40 is revised to read as follows:

§ 932.40 Selection.

(a) *Bank Presidents.* Each Bank may appoint a President, subject to the following limitations:

(1) No appointment of a new Bank President shall be effective until approved by the Finance Board;

(2) A President shall serve at the pleasure of the Bank; and

(3) A President may be suspended or removed by the Finance Board for cause, which shall be communicated in writing to the President and the Bank.

(b) *Bank employees other than the President.* Each Bank may appoint or elect officers other than the President and may hire other employees of the Bank without prior Finance Board approval.

(c) *Prohibition on employment contracts.* A Bank shall not enter into an employment contract with an employee.

(d) *Conflicts of interest.* A Bank employee shall not also be employed by, or otherwise act in any capacity for, a member or an institution eligible to make application to become a member.

3. Section 932.41 is revised to read as follows:

§ 932.41 Compensation.

(a) *Definitions.* The following definitions apply for purposes of this section:

Bonus means a payment to an employee, other than base salary and benefits, that is not based on performance.

Incentive payment means a direct or indirect transfer of funds by a Bank to a Bank employee, in addition to base salary, based on the employee's on-the-job performance.

Nondiscriminatory means that the plan, contract or arrangement in question applies to all employees of a Bank who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract, or arrangement may provide different benefits based only on objective criteria such as base salary, total compensation, length of service, job grade or classification, which are applied on a proportionate basis.

Payment. (1) the term *payment* means:

(i) Any direct or indirect transfer of any funds or any asset;

(ii) Any forgiveness of any debt or other obligation; and

(iii) Any segregation of any funds or assets, the establishment or funding of

any trust or the purchase of, or arrangement for, any letter of credit or other instrument for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(A) The determination, after such date, of the liability for the payment of such amount; or

(B) The liquidation, after such date, of the amount of such payment.

(2) The term *payment* does not mean:

(i) Reimbursement of an employee by the Bank for necessary and customary expenses incurred by the employee in the scope of his or her employment while carrying out the business of the Bank; or

(ii) Benefits.

Severance pay plan means a severance pay plan or arrangement as that term is defined in the Employee Retirement Income Security Act of 1974 (as amended) (29 U.S.C. 1002(1)) (ERISA) and regulations thereunder which is nondiscriminatory and which provides for payment of severance benefits to all eligible employees upon involuntary termination, provided that no employee shall receive any such payment which exceeds the base compensation paid to such employee during the twelve (12) months immediately preceding termination of employment.

(b) *Base salaries of Bank employees.—*

(1) *Bank President.* (i) The Finance Board annually will determine and publish by November 30 caps on the base salary paid to the Bank President for the subsequent calendar year for each of the 12 Banks.

(ii) The base salary cap for each Bank shall be based on the average base salary of a chief executive officer of a subsidiary financial institution in the Bank's primary metropolitan statistical area with an asset size comparable to that of the Bank, as of June of the prior year, reduced by five percent and rounded to the nearest \$5,000.

(iii) Each Bank shall establish, on an annual basis, a reasonable base salary for its President, not to exceed 100 percent of the applicable base salary cap published by the Finance Board, except that for a Bank President whose approved base salary for the calendar year 1997 exceeds the cap published by the Finance Board for 1997, the Bank shall establish, on an annual basis, a reasonable base salary not exceeding the greater of the Bank President's approved base salary for the calendar year 1997 or

the base salary cap published by the Finance Board for the year.

(iv) By January 31 of each year, a Bank must report to the Finance Board the approved base salary of its President for that year.

(2) *Other Bank employees.* Each Bank shall establish base salaries for employees other than the President that are reasonable and comparable with the base salaries of employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities, provided that no employee's base salary shall exceed the base salary of the Bank President.

(3) *Documentation.* Each Bank shall maintain documentation supporting the reasonableness and comparability of their employees' base salaries.

(c) *Incentive payments for Bank employees.—*(1) *In general.* A Bank may establish an incentive payment program or programs for its employees.

(2) *Bank President.* (i) The maximum incentive payment to a Bank President may not exceed the difference between that President's base annual salary approved by the Bank and 125 percent of the annual base salary cap, as published by the Finance Board.

(ii) At least fifty percent of the Bank President's incentive payment shall be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to the Bank's achievement of its housing finance mission, which shall include substantial consideration of growth in innovative products directed at unmet credit needs, growth in pre-committed Community Investment Program advances, growth in non-advance credit support and risk management products for members, as well as growth in advances, including long-term advances. The remaining portion of the Bank President's incentive payment shall be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to achievement of goals established by the board of directors, in its discretion.

(iii) Any incentive payment made to a Bank President shall be based solely upon the extent to which a Bank achieves the performance targets established by the board of directors.

(iv) By January 31 of each year, the board of directors of each Bank that intends to make any incentive payment to its President for such year shall adopt a resolution establishing the performance measures and targets on which such incentive payment will be based.

(v) By March 1 of each year, the board of directors of each Bank making any incentive payment to its President for the prior year shall adopt and submit to the Finance Board a resolution showing the results for the individual performance measures and the amount of the incentive payment to the Bank President for the prior year.

(vi) A Bank shall not make any incentive payment to its President if the most recent examination of the Bank by the Finance Board identified an unsafe or unsound practice or condition with regard to the Bank, provided that if the finding of an unsafe or unsound practice or condition subsequently is resolved in favor of the Bank by the Finance Board, the Bank may pay its President the incentive payment that he or she otherwise would have received.

(3) *Incentive payments for other Bank employees.* (i) Each Bank may make incentive payments to employees other than the President, provided that such incentive payments are reasonable and comparable with incentive payments made to employees of the other Banks and other similar businesses (including financial institutions) with similar duties and responsibilities. Each Bank shall maintain documentation supporting the reasonableness and comparability of their employees' incentive payments.

(ii) The total incentive payment opportunity, expressed as a percentage of base salary, for an employee other than the Bank President shall not exceed the total incentive payment opportunity, expressed as a percentage of base salary, allowable for the Bank President.

(iii) An incentive payment for an employee other than the Bank President shall be based on the extent to which the employee meets objective performance targets related to performance criteria established by the Bank's board of directors under the Bank's incentive compensation program or programs.

(d) *Severance plans.* A Bank may make payments in the nature of severance to its President and to other Bank employees only pursuant to a severance pay plan.

(e) *General limits on payments.* (1) No Bank shall make any payment to a Bank employee, except as provided in this section.

(2) The total amount of base salaries, incentive payments, and benefits paid to Bank employees shall be within the limit set forth in the Bank's approved budget. The board of directors of each Bank shall review annually the compensation for its employees, including appropriate documentation,

prior to approving the Bank's annual budget.

(f) *Prohibition on bonuses.* A Bank shall not pay any employee or other person a bonus.

(g) *Determination of employee status.* A Bank shall not treat an employee as an independent contractor in order to avoid complying with the requirements of this section.

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

Dated: December 20, 1996.

Bruce A. Morrison,
Chairman.

[FR Doc. 96-33329 Filed 12-31-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-CE-09-AD; Amendment 39-9872; AD 97-01-01]

RIN 2120-AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA24, PA28R, PA30, PA32R, PA34, and PA39 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that supersedes AD 95-20-07, which currently requires repetitively inspecting the main gear sidebrace studs for cracks on certain The New Piper Aircraft, Inc. (Piper) PA24, PA28R, PA30, PA32R, PA34, and PA39 series airplanes, and replacing any cracked main gear sidebrace stud. This AD retains the repetitive inspection and possible replacement requirements of AD 95-20-07; specifies in the "Applicability" section of the AD that certain Model PA34-200T airplanes could contain a certain main gear sidebrace assembly configuration that is not affected; and incorporates additional modification and replacement options. This AD results from additional information received by the Federal Aviation Administration (FAA) after the issuance of AD 95-20-07 on the design and service history of the affected airplanes concerning this subject. The actions specified by this AD are intended to prevent a main landing gear collapse caused by main gear sidebrace stud cracks, which could result in loss of control of the airplane during landing operations.

EFFECTIVE DATE: February 7, 1997.

ADDRESSES: Information that applies to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96-CE-09-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7362; facsimile (404) 305-7348.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper PA24, PA28R, PA30, PA32R, PA34, and PA39 series airplanes was published in the Federal Register on April 25, 1996 (61 FR 18299). The action proposed to supersede AD 95-20-07 with a new AD that would (1) retain the requirement of repetitively inspecting the main gear sidebrace assembly, and replacing any cracked main gear sidebrace stud. This includes the inspection-terminating replacement contained in AD 95-20-07; (2) specify in the "Applicability" section of the current AD that certain Piper Model PA34-200T airplanes could incorporate a main gear sidebrace assembly containing the 5/8-inch stud, part number (P/N) 78717-02, with a two-piece bushing, P/N 67026-09, and would not be affected by the proposed AD; and (3) incorporate, as an option, an inspection-terminating modification for Piper PA28R, PA32R, and PA34 series airplanes. This modification consists of reaming the existing two-piece bushings, P/N 67026-6, to an inside diameter of .624-inch to .625-inch, chamfering the bushing, and installing the 5/8-inch stud, P/N 78717-02.

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

Comment Issue No. 1: Include a Specific FAA-Approved Parts Manufacture Approval (PMA) in the AD as Replacement Parts

The commenter, Webco Aircraft (Webco), states that it holds a PMA for main gear sidebrace studs to equip the Piper Models PA24, PA24-250, PA24-260, PA24-400, PA30, and PA39 airplanes. Webco requests that the FAA