

# Proposed Rules

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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 Parts 915, 917, 925, 930, 931, 932, 933, 956, 966

[No. 2001-05]

RIN 3069-AB06

### Capital Requirements for Federal Home Loan Banks

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** On December 20, 2000, the Federal Housing Finance Board (Finance Board) approved regulations to implement a new capital structure for the Federal Home Loan Banks (Banks) as required by the Gramm-Leach-Bliley Act. At that time, the Finance Board recognized that, as the Banks begin to determine their capital plans, unforeseen issues may arise that would require the Finance Board to refine, clarify or otherwise amend the final capital regulations to assure that each Bank can successfully develop and implement the new capital structure. Accordingly, to better consider the potential need for amendments to the final capital regulations, the Finance Board is seeking information and comment on the specific issues discussed in this Advanced Notice of Proposed Rulemaking (ANPR), as well as any other unforeseen issues or uncertainties that were not resolved in the final capital rule or that have arisen as the Banks have begun to develop their capital plans and could affect the development or implementation of the Banks' required capital plans.

**DATES:** The Finance Board will consider written comments on the advance notice of proposed rulemaking that are received on or before April 9, 2001.

**ADDRESSES:** Send comments to: Elaine L. Baker, Secretary to the Board, by electronic mail at [bakere@fhfb.gov](mailto:bakere@fhfb.gov), or by regular mail to the Board, at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments

will be available for inspection at this address.

#### FOR FURTHER INFORMATION CONTACT:

James L. Bothwell, Managing Director, (202) 408-2821; Scott L. Smith, Acting Director, (202) 408-2991; Ellen Hancock, Senior Financial Analyst, (202) 408-2906; or Julie Paller, Senior Financial Analyst, (202) 408-2842, Office of Policy, Research and Analysis; or Deborah F. Silberman, General Counsel, (202) 408-2570; Neil R. Crowley, Deputy General Counsel, (202) 408-2990; Thomas F. Hearn, Senior Attorney-Advisor, (202) 408-2976; or Thomas E. Joseph, Attorney-Advisor, (202) 408-2512, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Gramm-Leach-Bliley Act, Pub. Law No. 106-102, 133 Stat. 1338 (Nov. 12, 1999) (GLB Act), amended the Federal Home Loan Bank Act (Bank Act) to change, among other things, the capital structure of the Banks from a "subscription" structure to one that includes both risk-based and minimum leverage requirements. The GLB Act also required the Finance Board to prescribe uniform capital standards for the Banks and required each Bank to adopt and implement a capital plan consistent with provisions of the GLB Act and Finance Board regulations. Under the GLB Act, each Bank must submit a capital plan to the Finance Board for approval within 270 days after the publication of the final capital regulations, in other words by no later than October 29, 2001. *See* 66 FR 8262. (Jan. 30, 2001) (publication of final capital rule).

In addition to approving the new capital regulations, the Finance Board adopted on December 20, 2000 a resolution directing its staff to develop an ANPR that would seek comment on any issues that could arise in the capital planning process, actions of other regulatory bodies or other events in the general economy that could affect the capital development of the Banks, and could require further action by the Finance Board. Accordingly, the Finance Board is issuing this ANPR to help identify issues or uncertainties that were not contemplated by, or fully addressed in, the final capital rule or

that have arisen only after the Banks have begun to develop their capital plans.

This ANPR does not alter or delay the statutory deadline of October 29, 2001 by which the Banks must submit their capital plans to the Finance Board for approval. If the Finance Board determines that it should amend the capital regulations as a result of this ANPR, it would do so in accordance with the Administrative Procedures Act, either through a full notice and comment rulemaking or by interim final rule, depending on the nature and urgency of the change. Therefore, to best assure that any needed amendments will take effect by a date reasonably prior to the October 29 deadline, the Finance Board has established a 30-day comment period for the ANPR and intends to review comments received during the ANPR comment period expeditiously. For similar reasons, the Finance Board requests that commenters be as specific as possible in describing potential problems that could arise under the final capital regulations, discuss with specificity changes to the regulation that the commenters believe are needed to address such problems, and provide a legal analysis detailing the Finance Board's authority to adopt these suggested rule amendments, where applicable. The specific issues on which the Finance Board requests comment and discussion are described below.

##### Dividends on Class A Stock

As was discussed as part of the final rule, the decision by Congress to confer on the Class B stockholders an ownership interest in the retained earnings of the Banks has created some uncertainty as to the ability of a Bank to pay dividends to its Class A stockholders. Briefly stated, the language of the GLB Act that created the ownership interest in favor of the Class B stockholders might be interpreted as creating a property interest for the Class B stockholders that would effectively preclude that property from being used as a source for dividends on the Class A stock. Further discussion of this issue is set out in some detail in the **SUPPLEMENTARY INFORMATION** section of the adopting release for the final rule. *See* 66 FR 8272, 8777-78 (Jan. 30, 2001). Rather than address the issue as part of the final rule, the Finance Board at that

time decided to defer consideration of this issue until it could have an opportunity to solicit comments. Nonetheless, because it is unlikely that the Congress intended the GLB Act to preclude the payment of dividends on the Class A stock, the Finance Board is inclined to propose an amendment to its capital regulations to make clear that a Bank that issues Class A stock will be permitted to pay dividends on that stock as determined by the board of directors of the Bank. Before issuing such a proposed rule, however, the Finance Board requests comments on how best to address the issue of payment of dividends on the Class A stock.

#### Capitalizing Out-of-District Assets

The investment by one Bank in the assets of another Bank (such as through the purchase of a participation interest) or in transactions that originated with the member of another Bank has been increasing in recent years. Such "out-of-district" assets may include Acquired Member Assets (AMA) and, as allowed under a recently adopted Finance Board rule, advances originated by another Bank or a participation interest in such advances. *See* 65 FR 43969, 43981 (July 18, 2000), *as corrected by* 65 FR 46049 (July 26, 2000) (adopting 12 CFR 950.25). Because the GLB Act and Finance Board regulations require a Bank to sell its stock only to its members, however, these out-of-district assets may present special problems to the extent that a Bank contemplated acquiring the incremental capital necessary to support these transactions through an activity-based stock purchase requirement. *See* 12 U.S.C. 1426(c)(5)(A), *as amended*; and 12 CFR 933.2(e)(2) *as adopted at* 66 FR 8320.

In addition, the GLB Act defines permanent capital specifically to "include the amounts paid for [C]lass B stock and the retained earnings of the [B]ank (as determined in accordance with generally accepted accounting principles) \* \* \*." 12 U.S.C. 1426(a)(5)(A), *as amended*. Further, under both the GLB Act and the capital regulations, only permanent capital can be used to satisfy a Bank's minimum risk-based capital requirement. *See id.* at 1426(a)(3), and 66 FR 8313 (adopting 12 CFR 932.3). Thus, the Finance Board is limited in its ability to define additional sources of permanent capital to meet the incremental risk-based capital requirements associated with new out-of-district assets. By contrast, the GLB Act provides that total capital may include an amount from any source that is available to absorb losses incurred by a Bank and that has been determined by the Finance Board to be

appropriately included in total capital. 12 U.S.C. 1426(a)(5)(B), *as amended*. Thus, the Finance Board has greater flexibility to define sources of total capital that could be used to satisfy the Banks' minimum leverage requirements. *See id.* at 1426(a)(2) and 66 FR 8813 (adopting 12 CFR 932.2).

The Finance Board did not address the issue of capitalizing out-of-district assets in the final capital rule.<sup>1</sup> The Finance Board is soliciting comment on how the Banks may capitalize their out-of-district assets, such as by use of subordinated debt. It seeks discussion on whether there is merit in considering the concept of capitalizing out-of-district assets at all, assistance in identifying problems that may hinder a Bank in implementing its capital plan or in meeting its capital requirements, and, if problems are identified, suggestions for solutions to such problems (including legal analysis to support the adoption of the suggested approach).

#### Other Unresolved Matters

In addition to the specific issues discussed above, the Finance Board seeks comments and discussion on other unforeseen issues that were not resolved in the final rule and that may introduce uncertainty or impediments into the process of developing and implementing the required capital plans. In particular, the Finance Board is interested in any tax or accounting issues or other regulatory issues that may have come to light as the Banks have begun development of their capital plans. The Finance Board requests that commenters be as specific as possible in describing any problems or potential problems arising under the capital rule and provide a complete analysis, including any supporting legal analysis, of any proposed solutions to these problems.

Dated: March 2, 2001.

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

Allan I. Mendelowitz,  
Chairman.

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<sup>1</sup> In the SUPPLEMENTARY INFORMATION section of the proposing release for the capital rule, the Finance Board did request comment on the concept of the issuance of joint or pooled stock by Banks that were jointly managing assets as one solution to the problem of capitalizing out-of-district assets. *See* 65 FR 43408, 43412 (July 13, 2000). Commenters' responses to this proposal were mixed, and in the whole did not provide the Finance Board with a sufficient basis for designing a practical solution to the problem.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-NM-268-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 767-300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767-300 series airplanes. This proposal would require a one-time general visual inspection to find chafing and determine adequate clearance of certain wire bundles in the ceiling panel near the main passenger door, and corrective actions. This action is necessary to prevent damage to the wires in the bundles due to contact between the bundles and the adjacent ceiling support bracket.

Such damage could result in electrical arcing, smoke, or fire in the cabin, and failure of certain systems essential to safe flight and landing of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 23, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-268-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-268-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.