

party's failure to timely remit payment for the commodity.

Signed in Washington, DC, on June 29, 2006.

**Teresa C. Lasseter,**

*Executive Vice President, Commodity Credit Corporation.*

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 915

[No. 2006-12]

RIN 3069-AB31

#### Federal Home Loan Bank Elective Directors

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending its rules relating to the election of Federal Home Loan Bank (Bank) directors to allow each Bank greater latitude in providing members information about the range of skills and experience among board members the Bank believes is best suited to administer its affairs. The final rule is intended to enhance the corporate governance of each Bank by allowing a Bank to provide to its members, during the election process, information about the expertise the Bank has identified as appropriate to enhance the board of directors in providing overall board management of the Bank. The final rule also revises and reorganizes the prohibitions on actions during the election process.

**DATES:** *Effective Date:* The final rule is effective July 18, 2006.

**FOR FURTHER INFORMATION CONTACT:** John P. Kennedy, General Counsel, 202-408-2983, [kennedyj@fhfb.gov](mailto:kennedyj@fhfb.gov); or Thomas P. Jennings, Senior Attorney Advisor, Office of General Counsel, 202-408-2553, [jenningsst@fhfb.gov](mailto:jenningsst@fhfb.gov). You can send mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory and Regulatory Background

Congress has delegated to the Finance Board broad authority to fulfill its statutory mandates. Section 2B of the Federal Home Loan Bank Act (Bank Act) states that the Finance Board has the power “[t]o supervise the Federal Home Loan Banks and to promulgate and enforce such regulations and orders as

are necessary from time to time to carry out the provisions of” the Bank Act. 12 U.S.C. 1422b(a)(1).

The primary mandate for the Finance Board is to “ensure that the Federal Home Loan Banks operate in a financially safe and sound manner.” 12 U.S.C. 1422a(a)(3)(A). Within this broad authority, Congress also specifically authorized the Finance Board to “prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks.” 12 U.S.C. 1427(d).

The Finance Board has long had in place regulations addressing the manner in which persons are nominated and elected to the boards of the Banks. Effective December 30, 1998, the Finance Board amended various provisions of its regulations relating to director elections to devolve to each Bank, through its board of directors, the responsibility for administering the process for electing Bank directors. *See* Resolution Number 1998-47, *published at* 63 FR 65683 (November 30, 1998) (available electronically in the FOIA Reading Room on the Finance Board Web site at: <http://www.fhfb.gov/Default.aspx?Page=59>). Notwithstanding that devolution of authority to the Banks, the Finance Board remains responsible for the safety and soundness of the Banks and for periodically reviewing its regulations to ensure that they continue to carry out their intended purposes in a logical and efficient manner.

The Finance Board believes that an informed and capable board of directors is one of the more important elements in maintaining a safe and sound Bank. In recent months, the Finance Board has received suggestions that the electoral process could be improved if certain provisions of its regulations were revised to permit the Banks to be more involved in the process of identifying qualified and capable individuals to serve on the boards.

Accordingly, on April 18, 2006, the Finance Board published a proposed regulation with a 45-day comment period that would amend part 915—the provision of its regulations dealing with the election of directors—to allow the Banks more flexibility in providing information to their members during the election process. Briefly stated, the proposed rule would have allowed any Bank to assess the skills and experience of the existing individuals on the board of directors, to determine what skills or experience might be useful in enhancing the capabilities of the board, and to communicate its assessment of existing and desired skills to the members when

soliciting nominations from and providing ballots to the members of the Bank. The proposed rule also would have removed certain provisions of the regulations that prohibit persons associated with the Finance Board from being involved in the elections process, because those provisions dated to a time at which the Finance Board actually administered the elections at each of the Banks. *See* Resolution Number 2006-04, *published at* 71 FR 19832 (April 18, 2006) (available electronically in the FOIA Reading Room on the Finance Board Web site at: <http://www.fhfb.gov/Default.aspx?Page=59>). The final rule generally amends the various provisions of part 915 as set forth in the proposed rule.

##### II. Analysis of the Public Comments and Final Rule

The Finance Board received 17 comments in response to the proposed rule, which addressed the Finance Board's proposal to expand the ability of the Banks to communicate with their members during the election process and its proposal to remove prohibitions on the conduct of persons associated with the Finance Board. The commenters included 6 Banks. Most commenters supported the proposal, though almost all offered suggested revisions to the rule. Three commenters opposed the proposal, 2 citing a perceived potential for the process to further impede the ability of some members to obtain representation on the Bank boards of directors, and 1 expressing a concern about the possible bias in the information to be provided to the members as well as the perception created by the deletion of prohibitions barring the involvement of Finance Board employees in the elections process. The comments can be divided into 6 substantive areas, which are discussed separately below.

###### A. Self-Assessments Under § 915.9(a)

Section 915.9(a) of the proposed rule would have allowed the board of directors of each Bank to conduct an annual assessment of the skills and experience needed on the board of directors and to inform its members of those identified needs. The final rule adopts this provision substantially as proposed.

Section 915.9(a) of the final rule is permissive in nature—it authorizes, but does not require, a board of directors to assess how well the skills and experience of the incumbent board members align with the needs of the Bank. It also authorizes, but does not require, a board to determine whether it could benefit from the addition of

persons with particular skills or experience and, if so, whether to provide the members with that information in advance of the nominations and voting process. The Finance Board believes that the board of directors of a Bank, as the body charged by Congress to “administer the affairs of the bank fairly and impartially and without discrimination in favor of or against any member,” 12 U.S.C. 1427(j), is the most appropriate body to oversee the self-assessment. The final rule does not prescribe the process or the procedures through which the board of directors is to conduct a self-assessment of its needs, although it vests ultimate responsibility for these decisions with the board. Thus, the rule would allow a board of directors to consult with the members or with management in assessing what skills and experience would be of most use to the board.

Although the rule includes a list of skills and experience as part of § 915.9(a), it is intended only as an example of the types of skills that a Bank might determine it needs on its board of directors. A board may well decide that it could benefit from the addition of persons with other skills, and it could include those skills as part of its assessment. Indeed, because the business plans of the Banks vary, the needs of the individual Banks with respect to the skill sets of the boards as a whole also will likely vary. The rule is intended to allow each Bank adequate flexibility to determine its own particular needs.

The commenters addressed several issues relating to the assessment of director skills and experience. Some commenters suggested that the rule include a more expansive list of skills, while others were concerned that identifying specific skills in the rule might make it more difficult for the chief executive officer of a member—who may have a broad range of business and financial skills, rather than the individual skills listed—to be nominated or elected. Because the list of skills is intended to be illustrative rather than exclusive, the Finance Board does not believe that the list needs to be expanded. In a similar fashion, the Finance Board believes that the concerns about chief executive officers being handicapped in their ability to be nominated or elected are not well-founded. The rule does not affect the ability of a member to nominate a person of its choosing, and any member can nominate its own officers or directors. The rule also does not limit the right of a member to vote for whomever it believes to be the best qualified, regardless of whether that

person possesses the qualifications identified by the assessment. Moreover, because all elected directors must either be an officer or a director of a member of the Bank, it is likely that the list of nominees will continue to include a significant number of persons who serve as chief executives of their institution.

Other commenters questioned the need or usefulness of the rule, contending that there is no need for such a rule because such assessments are not barred by statute or regulation, it would allow certain members to perpetuate their representation on the board, or would be unlikely to produce better candidates than are nominated under the current structure.

Although it is correct that there are no statutory or regulatory impediments to conducting a self-assessment, the final rule responds to concerns expressed by some parties that the rules be amended to state more clearly that such actions are permissible. Moreover, certain provisions of the existing regulations—§§ 915.6 and 915.8—do regulate the content of the notice that the Banks provide to their members regarding nominations, which starts the election process, as well as the content of the ballots. Given both of those facts, the Finance Board believes that it is appropriate to include these new provisions as part of the rules that already address communications with the members during the elections process. Moreover, such provisions will ensure—for those Banks that undertake the assessment and inform their members of the desired skills and experience—that members receive the information at a time when it can assist them in deciding who they may want to nominate.

As to the concern about a self-perpetuating board, the Finance Board notes that all directors not only have a statutory duty to act fairly and impartially to all members, as set forth in 12 U.S.C. 1427(j), but also a fiduciary duty as representatives of the members. The Finance Board believes that any conduct by a director that placed the interests of the individual director or the director’s institution above the interests of the Bank likely would violate both of those duties and would be sanctioned accordingly.

The Finance Board acknowledges, as suggested by the comments, that the process of assessing the qualifications of the board as a whole and identifying the needs of a Bank will not by itself result in the election of a more qualified board. The objective of the rule, however, is to provide both the Banks and their members an avenue through which they may improve the quality of

the boards. The Finance Board believes that key factors in achieving that result include information as to the needs of the Bank’s board and information as to the qualifications of the nominees for the directorships. To the extent that the collective skills and experience of a Bank’s board of directors may not align precisely with the needs of the Bank despite efforts to achieve that result, the board of directors still would retain the authority to hire consultants to advise it in any areas where the collective skills of the board members may be less than optimum. The Finance Board believes that a Bank should do all that it reasonably can to obtain a well-performing board of directors, even if those efforts are not guaranteed to succeed every time.

Other commenters suggested that the Finance Board allow members a greater role in conducting the self-assessment, allow Banks to form nominations committees composed of Bank directors and other representatives from members, and allow management to work with the board in the nominations and election process. As noted previously, by statute the board of directors of each Bank is charged with responsibility for administering the affairs of the Bank and the Finance Board believes that the board is the appropriate body to determine what skills and experience are most likely to enhance its ability to carry out its duties. Moreover, the suggestions that the final rule allow the establishment of nominations committees and the greater involvement of management in the nominations process go beyond the scope of the proposed rule. The proposal was intended to allow an opportunity for the Banks to develop and then provide to the members additional information regarding the needs of the boards and the skills and experience of individual candidates seeking election to the board. It was not intended to alter the substantive nature of the nominations process, which is tied closely to the statutory provisions that authorize the members, and not the Bank, to nominate persons to stand for election to the boards of the Banks. Accordingly, the final rule does not include provisions addressing the issues raised by those commenters. As the party responsible for conducting the assessment, the board also has the authority to determine what resources, if any, it needs in order to conduct any self-assessment. Clearly, Bank management works for the board of directors and, if so directed by the board, can undertake tasks to aid the board in doing the self-assessment.

*B. Information at the Nominations Stage—§ 915.6(a)(3)*

Proposed § 915.6(a)(3) would have authorized each Bank to send to the members, as part of the initial notice for nominations, a brief statement of the skills and experience that the Bank's board of directors has identified. The final rule adopts the substance of § 915.6(a)(3) as proposed with clarifying changes to the language used.

Some commenters raised concerns about providing the members with such information at the start of the nominations process, including concerns that the information might steer nominations to a preferred candidate, or that it might cause persons with other qualifications not to be nominated, and suggested that the rule explicitly state that a member can nominate any eligible person without regard to whether that person has the experience identified by the Bank.

As to the timing concern, the purpose of the rule is to allow both the Bank and its members to be better informed about the needs of the Bank at the board level and the qualifications that prospective nominees might bring to the board. If a Bank opts to undertake the self-assessment, the Finance Board believes that it is better for the members to receive the information at the beginning of the election process, before nominations are due. Accordingly, the final rule retains the provision allowing the information to be made available to the members prior to the submission of nominations.

With respect to the concern about steering nominations, the Finance Board does not believe that the risks of that occurring are significant. As an initial matter, the information provided to the members will relate only to the needs of the Bank; it will not be specific to any individuals and should not cause any member to fail to nominate an individual the member believes is an appropriate candidate. Moreover, each member has a legal right to nominate any eligible person, without regard to whether the person possesses the skills or experience identified by the Bank. Having directors who meet the eligibility requirements is a minimum standard, while having directors with the skills and experience identified by the Banks is a goal to which the Banks would aspire.

Commenters suggested that the rule require a Bank to include with the statement identifying the needed skills and experience a statement that a member may nominate any otherwise eligible persons. Existing Finance Board rules already include a provision stating

that any member eligible to vote in an election may nominate persons for that election. Consequently, the Finance Board does not believe such a revision to the final rule is necessary and has not adopted that suggestion.

Some commenters suggested that the final rule prescribe how a Bank must describe the identified skills and experience in any communication sent to the members, while others sought revisions to clearly state that only the board of directors can decide what information to include in the initial notice. Because the current regulations at 12 CFR 915.6(a) provide that "a Bank" must provide the notice to the members, the Finance Board views the preparation and sending of the notice as a ministerial function which is subject to the oversight of a Bank's board of directors, which can determine how much, or how little, involvement to have. Moreover, § 915.3(a) of the Finance Board regulations requires the disinterested directors, or a committee thereof, to provide the oversight with respect to the election of directors. The Finance Board views this provision as requiring that the disinterested directors carry out the details of providing the information to the members. Proposed § 915.6(a)(3) would require that the statement of skills be brief and that it be a statement of the skills identified pursuant to § 915.9, which are the skills identified by the board of directors. Prescriptive regulation should not be necessary in order to assure that the skills identified by the boards of directors are indeed described accurately and briefly, if at all, in the initial notice to members.

*C. Information Accompanying the Ballots—§ 915.8(b)*

Proposed § 915.8(b) would have allowed each Bank to send with the ballots a brief statement of the skills and experience that the Bank's board of directors has identified as needed on the board. The Finance Board has retained that provision in the final rule with some clarifying changes.

The Finance Board received comments similar to those made with respect to the initial notice under proposed § 915.6(a)(3). The Finance Board believes that its response to the comments on the initial notice are equally applicable to the similar comments on proposed § 915.8(b). The Finance Board also received comments raising other issues, including a request that the final rule authorize the Banks to form a nominations committee. One commenter recommended that the committee be permitted to make nominations, while the other suggested

that the committee make recommendations to members, but allow the members to decide whether to nominate those persons. These commenters would allow the Banks to endorse particular candidates or to provide information in the form of a proxy statement that contains information about the candidates and the Bank's recommendations or endorsements of specific individuals.

The Finance Board is not prepared to expand the final rule to incorporate the recommendations made by these commenters. As an initial matter, the suggestions relating to nominations committees and proxy statements go beyond the scope of the changes at the heart of the proposed rule, which were intended to allow the Banks to provide greater information to members about the needs of the Banks and the experience of the prospective directors. They were not intended to alter the nature of the nominations process, which each of those suggestions would do to some degree. Those suggestions also raise questions as to the legal limits on what type of changes to the nominations and election process would be permissible under the Bank Act, which the Finance Board has not addressed in the proposed rule. Moreover, since 1989, Finance Board rules have prohibited Bank personnel (other than incumbents acting in their personal capacity) from communicating that the Bank endorses specific individuals. In light of that history and the policy reasons underlying it, the Finance Board declines to go beyond authorizing the disclosures set forth in the final rule.

Two commenters requested that the final rule prevent a Bank from altering the statement that it provides to its members between the initial distribution with the nominations announcement and the subsequent distribution of the ballots. Those persons were concerned that in the absence of such a provision a Bank would be free to change its directorship needs assessment for the purpose of directing votes to particular candidates. In the preamble to the proposed rule, the Finance Board stated that the two statements are not required to be the same. See 71 FR at 19834.

Although the Finance Board believes that in most situations there would be no reason to change the information from one communication to the next, it is possible that events could occur after the initial distribution that could cause the initial communication to no longer be full, complete, or accurate. For example, directors could resign or become ineligible to serve between the

time of nominations and the election, thus creating a need that was not apparent when the Bank distributed the results of the assessment to its members at the nominations stage of the process. If such an event were to occur, the Finance Board believes that the board of directors should be able to provide its members with a revised statement of the most current skills assessment by the board, and the Finance Board is revising the rule accordingly. The Finance Board also is revising the final rule to require each Bank to explain to its voting members why any changes to the statement are warranted.

The Finance Board recognizes that, for purposes of the elections occurring this year, it is likely that the Banks will not have included the results of a self-assessment with the nominations notice previously sent to the members. If any Bank has conducted a self-assessment prior to the distribution of the ballots, the Finance Board believes that the Bank and its members should be able to benefit from that effort. Accordingly, the Finance Board will permit any such Banks to include the results of their assessment with the ballots that it provides to its members. We anticipate that in subsequent years the Banks that choose to conduct a self-assessment and inform their members of that action will do so sufficiently in advance of the start of the nominations process to allow the inclusion of those materials with the nominations materials as well as with the ballots.

#### *D. Ballot Information About the Nominees—§ 915.8(a).*

Proposed § 915.8(a)(1) would have authorized the Banks to include on the ballots a brief description of each nominee's skills and experience. Like the authorizations in proposed §§ 915.6(a) and 915.8(b) with respect to information that could be included in the initial notice and with the ballots, such information would be permitted, but is not required to be on the ballots.

Several commenters suggested revisions to the provisions addressing the information that may be provided on the ballots. Some suggested that the final rule prescribe how such information would be obtained and displayed on the ballots; others suggested that only the board of directors be permitted to decide how to describe a nominee's skills and experience, while others would allow each nominee to describe his or her skills and experience. Three commenters opposed any such statement on the ballots, believing that it could not be done in a purely neutral fashion.

The Finance Board believes that the Banks, under the oversight of their disinterested directors and through the use of resources available to them, have the capability to obtain information on each candidate's skills and experience and to prepare a brief statement of such skills and experience, should they choose to do so. The intent of the proposed and final rule is to afford the Banks the opportunity to provide certain information to the members at various stages of the electoral process, but not to require that they do so. Given that the rule is not mandatory, and that the disinterested directors of the Banks already administer the elections, the Finance Board does not believe that it is necessary for the final rule to impose the level of detail that these comments suggest. The Finance Board, therefore, is adopting the language in § 915.8(a) substantially as proposed, but is adding a new sentence to clarify that even though other provisions on the ballots are mandatory, the inclusion of the candidates' skills and experience is at the discretion of each Bank's disinterested directors.

#### *E. Finance Board Involvement in the Election Process—§ 915.9(b) and (c)*

Proposed § 915.9 would have reorganized the prohibitions in current § 915.9 and authorized the board of directors of a Bank to assess its current and needed skills. Part of this reorganization would delete the prohibitions in current § 915.9(a)(1), which bar persons associated with the Finance Board from being involved in the elections process. As explained in the preamble to the proposed rule (see 71 FR at 19834), the Finance Board believes that these prohibitions are no longer necessary, because the Finance Board no longer administers the elections, as it did when these prohibitions were implemented.

Several comments expressed concern that removing the prohibitions would allow the Finance Board to become more involved in the election process. Other commenters expressed a similar concern that removal of the prohibition reflected a desire by the Finance Board to become more involved in the election process. On the other hand, another commenter suggested that the Finance Board remove all the prohibitions that limit the ability of other persons and entities to become involved in the elections process.

As noted above, the prohibition on involvement by Finance Board personnel in the elections process ceased to have any significant effect on the administration of elections when the Finance Board devolved that

responsibility to the individual Banks. Nevertheless, because some commenters believe that removal of the prohibition would allow or encourage Finance Board involvement in the election of directors, the Finance Board has accepted their suggestion that the prohibitions on the conduct of Finance Board directors, officers, attorneys, employees, and agents not be removed. The final rule revises proposed § 915.9(c) to make the prohibition applicable to both Bank and Finance Board directors, officers, attorneys, employees, and agents.

#### *F. Adequate Representation.*

Four commenters, 2 representing community banks and 2 representing credit unions, expressed concern that the proposed rule might adversely affect the ability of smaller members to have an adequate voice on the boards of directors of the Banks. In general, these commenters expressed a desire that the Finance Board take action that would enable more "minority" members to be represented on the boards of directors of the Banks, and expressed the view that the rule is likely to hinder the ability of such members to be represented on the boards.

As an initial matter, adding provisions to the final rule to address the type of issues raised by these commenters, i.e., whether the interests of all members are equally represented on the boards of directors of the Banks, would go well beyond the scope of the proposed rule. The purpose of the proposed rule was to authorize a process through which the Banks could take certain actions to provide members with additional information to allow them to improve the quality of their boards of directors, if they so choose. The purpose was not to allocate representation on the boards of the Banks to particular segments of the membership base.

Moreover, the Finance Board is not persuaded that the proposed rule, in and of itself, will have the effect perceived by those commenters, who have not offered any factual basis to support their concerns. The board structure of the Banks is set by statute, as are the voting rights of the members, which in certain respects already favor the smaller members. For example, the Bank Act limits the number of votes that each member may cast in an election to the average number of shares of stock required to be held by all members located in that state. 12 U.S.C. 1227(b). The effect of that provision is to disenfranchise the largest members of a Bank; to the extent that they own shares in excess of the average, those shares

have no voting rights. Smaller members are not affected by that limitation. While it may be true that at some Banks certain segments of the membership base do not have representatives from their industry on the boards of the Banks, that result reflects the fact that the Banks are cooperatives and operate with a board structure and voting rights that have been set by statute. If, as the Finance Board hopes, the final rule will facilitate a process wherein the members can nominate and vote for candidates who possess skills and experience needed by the Bank to carry out its housing finance mission in a safe and sound manner, then the interests of all members should benefit.

### III. Effective Date

Pursuant to 5 U.S.C. 553(d)(3), the Finance Board has found that "good cause" exists to have the final rule take effect immediately upon publication in the **Federal Register**. First, the rule requires no mandatory actions on the part of the Banks. The rule authorizes the Banks to take actions during the election process, but it does not require that those actions be taken. Thus, no Banks are required to take any steps to prepare for the effective date of the final rule.

Second, now is the time when most Banks begin their yearly election process. Some Banks already may have started the process by sending their first notice to the members. Having an effective date immediately upon publication in the **Federal Register** will give the Banks more of an opportunity to use the provisions of the final rule in this year's election process than they otherwise would have.

Third, § 915.9(b) and (c) removes prohibitions on certain conduct. This rule will not require any preparation efforts on the part of the Banks in order to adjust to the rule being in effect.

### IV. Paperwork Reduction Act

The final rule will have no substantive effect on any collection of information covered by the Paperwork Reduction Act of 1995 (PRA). See 44 U.S.C. 3501 et seq. Therefore, the Finance Board has not submitted this rule to the Office of Management and Budget for review.

### V. Regulatory Flexibility Act

The final rule will apply only to the Banks, which do not come within the meaning of "small entities" as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the final rule will not have

a significant economic impact on a substantial number of small entities.

### List of Subjects in 12 CFR Part 915

Banks, Banking, Conflict of interests, Elections, Federal home loan banks, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR part 915, as follows:

### PART 915—BANK DIRECTOR ELIGIBILITY, APPOINTMENT AND ELECTIONS

■ 1. The authority citation for part 915 continues to read as follows:

**Authority:** 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432.

■ 2. Amend § 915.6, by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, adding a new paragraph (a)(3), and revising redesignated paragraph (a)(4) to read as follows:

#### § 915.6 Elective director nominations.

(a) \* \* \*

(3) A brief statement describing the skills and experience the Bank believes are most likely to add strength to the board of directors, provided that the Bank previously has conducted the annual assessment permitted by § 915.9 and the Bank has elected to provide the results of the assessment to the members;

(4) An attachment indicating the name, location, and FHFB ID number of every member in the member's voting state, and the number of votes each such member may cast for each directorship to be filled in the election, as determined in accordance with § 915.5; and

\* \* \* \* \*

■ 3. Amend § 915.8, by revising paragraph (a), redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f), respectively, and adding a new paragraph (b) to read as follows:

#### § 915.8 Election process.

(a) *Ballots*. Promptly after verifying the eligibility of all nominees in accordance with § 915.7(a), a Bank shall prepare a ballot for each voting State for which an elective directorship is to be filled and shall mail the ballot to all members within that State that were members as of the record date.

(1) A ballot shall include at least the following provisions:

(i) An alphabetical listing of the names of each nominee for the member's voting state, the name, location, and FHFB ID number of the

member each nominee serves, the nominee's title or position with the member, and the number of elective directorships to be filled by members in that voting state in the election;

(ii) A statement that write-in candidates are not permitted; and

(iii) A confidentiality statement prohibiting the Banks from disclosing how a member voted.

(2) At the election of the Bank, a ballot also may include, in the body or as an attachment, a brief description of the skills and experience of each individual nominee.

(b) *Statement on skills and experience*. If a Bank has conducted an annual assessment permitted by § 915.9 and has included the results of the assessment as part of the notice to members required by § 915.6(a), it may include with each ballot a statement regarding the types of skills and experience the Bank has determined are most likely to add strength to the board of directors. If the statement differs from the statement provided under § 915.6(a)(3), the Bank also shall include an explanation of why the statements differ.

\* \* \* \* \*

■ 4. Revise § 915.9 to read as follows:

#### § 915.9 Actions affecting director elections.

(a) *Banks*. Each Bank, acting through its board of directors, may conduct an annual assessment of the skills and experience possessed by the members of its board of directors as a whole and may determine whether the capabilities of the board would be enhanced through the addition of persons with particular skills and experience. If the board of directors determines that the Bank could benefit by the addition to the board of directors of persons with particular qualifications, such as in financial management, accounting, hedging, risk management, capital markets, securities laws, or housing finance, it may identify those qualifications and so inform the members as part of the announcement of elections.

(b) *Incumbent Bank directors*. A Bank director acting in his or her personal capacity may support the nomination or election of any person for an elective directorship, provided that no such director may purport to represent the views of the Bank or its board of directors in doing so.

(c) *Prohibition*. Except as provided in paragraphs (a) and (b) of this section, no director, officer, attorney, employee, or agent of a Bank or the Finance Board may:

(1) Communicate in any manner that a director, officer, attorney, employee, or agent of a Bank, directly or indirectly, supports the nomination or election of a particular person for an elective directorship; or

(2) Take any other action to influence votes for a directorship.

#### § 915.16 [Amended]

■ 5. Amend the last sentence of § 915.16(e) by revising the reference “§ 915.8(e)” to read “§ 915.8(f)”.

#### § 915.17 [Amended]

■ 6. Amend the last sentence of § 915.17(b)(1) by revising the reference “§ 915.8(b)” to read “§ 915.8(c)”.

Dated: July 12, 2006.

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

**Ronald A. Rosenfeld,**  
*Chairman.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM349; Special Conditions No. 25-319-SC]

#### Special Conditions: Dassault Aviation Model Falcon 900EX and Falcon 2000EX Airplanes; Enhanced Flight Visibility System (EFVS)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for certain Dassault Aviation Model Falcon 900EX and Falcon 2000EX airplanes. These airplanes will have an advanced enhanced flight visibility system (EFVS). The EFVS is a novel or unusual design feature which consists of a head up display (HUD) system modified to display forward-looking infrared (FLIR) imagery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is July 7, 2006. We must receive your comments by September 1, 2006.

**ADDRESSES:** You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM349, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM349. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Dale Dunford, FAA, Transport Standards Staff, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2239; fax (425) 227-1320; e-mail: [dale.dunford@faa.gov](mailto:dale.dunford@faa.gov).

**SUPPLEMENTARY INFORMATION:** The FAA has determined that the substance of these special conditions has previously been subject to the public comment process. These particular special conditions were recently issued and only three non-substantive comments were received during the public comment period. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-

addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

#### Background

On August 18, 2004, Dassault Aviation applied for an amendment to the type design for the installation and operation of an infrared enhanced flight visibility system (EFVS) on Model Falcon 900EX airplanes with modification M3083 installed, and Model Falcon 2000EX airplanes with modification M1691 installed. Commercially, these airplanes are identified as the Falcon 900EX EASy and the Falcon 2000EX EASy. In this document, all references to Falcon 900EX EASy and Falcon 2000EX EASy airplanes mean airplanes with the applicable modification installed. The original type certificate for the Model Falcon 900EX airplane is A46EU, revision 13, dated February 27, 2006. The original type certificate for the Model Falcon 2000EX airplane is A50NM revision 3, dated September 21, 2004.

The Dassault Aviation Model Falcon 900EX and Falcon 2000EX are transport category airplanes that operate with a crew of two. The Model Falcon 900EX has a wing span of 63 feet 5 inches, a length of 66 feet 4 inches, a maximum takeoff gross weight of 48,300 pounds, is powered by three Allied Signal Engines TFE 731-60-1C turbofan engines, and has a maximum range of 4,500 nautical miles. The Model Falcon 2000EX airplane has a wing span of 63 feet 5 inches, a length of 66 feet 4 inches, a maximum takeoff gross weight of 41,300 pounds, is powered by two Pratt & Whitney Canada Model PW308C turbofan engines, and has a maximum range of 3,800 nautical miles.

The electronic infrared image displayed between the pilot and the forward windshield represents a novel or unusual design feature in the context of 14 CFR 25.773. Section 25.773 was not written in anticipation of such technology. The electronic image has the potential to enhance the pilot's awareness of the terrain, hazards and airport features. At the same time, the image may partially obscure the pilot's direct outside compartment view. Therefore, the FAA needs adequate safety standards to evaluate the EFVS to determine that the imagery provides the intended visual enhancements without undue interference with the pilot's outside compartment view. The FAA intent is that the pilot will be able to use a combination of the information seen in the image and the natural view of the outside scene seen through the image, as