



## REGULATORY INTERPRETATION 1999-RI-20

**Date:** December 9, 1999

**Subject:** Applicability of Newly Enacted Statutory Five-Year Waiting Period to Institutions Seeking To Reapply For Federal Home Loan Bank Membership

### ***Request Summary:***

A Federal Home Loan Bank (FHLBank) submitted a request that Federal Housing Finance Board (Finance Board) staff agree not to recommend taking any action<sup>1</sup> to enforce the ten-year waiting period in section 933.30 of the Finance Board Membership Regulation (12 C.F.R. § 933.30), if the FHLBank were to allow two institutions that voluntarily withdrew from membership more than five but less than ten years ago to reapply for membership immediately, given the recent amendment to the Federal Home Loan Bank Act (Bank Act) that reduced the waiting period from ten years to five years.

### ***Background:***

Two state-chartered savings banks voluntarily withdrew from membership in the FHLBank in December 1989 and February 1990, respectively. Both banks now seek to reapply for membership in the FHLBank as soon as possible for reasons related, in part, to their Year 2000 contingency planning. Neither bank would be eligible to reapply for membership if section 933.30 of the Finance Board Membership Regulation were applicable, as the ten-year waiting period has not yet expired for either bank, but both banks would be eligible to reapply for membership if the recently enacted statutory amendment providing for a five-year waiting period controls.

### ***Analysis or Discussion:***

#### I. Applicability of New Section 6(g)(1)

Former section 6(h) of the Bank Act provided:

Notwithstanding any other provision of this chapter, an institution which withdraws from membership may acquire membership in any Federal Home Loan Bank only after the expiration of a period of ten years thereafter, except where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between banks or in connection with obtaining a charter as a Federal savings association . . .

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<sup>1</sup> For the reasons set forth in the Analysis, we have determined that a Regulatory Interpretation rather than a No-Action Letter is the appropriate response to the FHLBank's request.

12 U.S.C. § 1426(h). Section 933.30 of the Finance Board Membership Regulation implements former section 6(h) in virtually identical form. *See* 12 C.F.R. § 933.30. One of the FHLBank members voluntarily withdrew from membership in December 1989, and the other FHLBank member voluntarily withdrew from membership in February 1990. If section 933.30 remains in effect until formally rescinded or amended by the Finance Board, the ten-year waiting period for each bank would not expire until December 1999 and February 2000, respectively, and the banks could not reapply for membership until after the full ten years had passed.

The Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act) repealed section 6(h) of the Bank Act and replaced it with new section 6(g), which provides that:

- (1) IN GENERAL – Except as provided in paragraph (2), and notwithstanding any other provision of this Act, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.
- (2) EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998. – Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Finance Board and the requirements of this Act.

Pub. L. No. 106-102, sec. 608. Thus, the statutory waiting period for readmission has been reduced from ten years to five years by this amendment, which took effect upon enactment.

As a general matter, and notwithstanding the amendments made to the Bank Act by the Modernization Act, the regulations lawfully promulgated by the Finance Board remain in effect until they are formally repealed or amended by the Finance Board.<sup>2</sup> In some instances, however, an existing regulation may be in direct and irreconcilable conflict with certain provisions of the Modernization Act. In such a case, it is our view that the regulation, though not yet formally repealed or amended, must yield to the new law. In our opinion, these requests present such a conflict.

The Finance Board has not yet amended section 933.30 to conform it to the requirements of new section 6(g). As a result, the regulations retain the ten-year waiting period established under prior law, which is in direct and irreconcilable conflict with the five-year waiting period established by Congress as of November 12, 1999. Therefore, the ten-year waiting period imposed by section 933.30 must yield to, and in our view is overridden by, the amended five-year waiting period in new section 6(g)(1).

Thus, in the case of the two banks seeking to reapply for FHLBank membership, the five-year waiting periods expired in December 1994 and February 1995, respectively. Accordingly, both banks are eligible to reapply for membership immediately, and may do so without further involvement of the Finance Board in accordance with the FHLBank's existing procedures for the admission of new members.

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<sup>2</sup> The Finance Board currently is in the process of reviewing its existing regulations and preparing amendments to rescind or conform those regulations pursuant to the statutory amendments in the Modernization Act.

## II. Applicability of New Section 6(g)(2)

Although not applicable to these institutions, the Modernization Act includes a separate readmission provision applicable only to institutions that voluntarily withdrew from FHLBank membership prior to December 31, 1997. Under new section 6(g)(2), such institutions may reapply for membership immediately, but “subject to the approval of the Finance Board and the requirements of [the Bank Act].” Pub. L. No. 106-102, sec. 608. To date, the Finance Board has not received any requests from former members seeking readmission under that provision, and thus has not determined what approval requirements would apply to such institutions.

### ***Interpretation:***

The ten-year waiting period in section 933.30 of the Finance Board Membership Regulation conflicts with, and has been overridden by, section 6(g)(1) of the Bank Act, as amended, which generally applies a five-year waiting period to institutions that voluntarily withdraw from FHLBank membership and subsequently seek to reapply for membership.

<p>A <u>Regulatory Interpretation</u> applies only to the particular transaction or activity proposed by the requestor, may be relied upon only by the requestor, and is subject to modification or rescission by action of the Board of Directors of the Finance Board. 64 Fed. Reg. 30880 (June 9, 1999), <i>to be codified at</i> 12 C.F.R. part 903.</p>
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