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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. 93–47]

Modification of Federal Home Loan Bank Director Eligibility Requirements

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Board) is finalizing the provisions of an interim final rule published in the Federal Register on January 11, 1993, see 58 FR 3487 (Jan. 11, 1993), which contained technical amendments to the Board's regulation on eligibility of Federal Home Loan Bank (FHLBank) directors. The amendments contained in the interim final rule, and now adopted in final form, are intended to enable the Board to devote more time to the review of FHLBank director's qualifications for eligibility.

EFFECTIVE DATE: Effective date is July 7, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, District Banks Directorate, (202) 408–2872; Brandon B. Straus, Attorney-Advisor, Office of Legal and External Affairs, (202) 408–2589, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule is issued under the Board's statutory authority in section 7(d) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1427(d), to prescribe rules for the nomination and election of FHLBank directors and under the Finance Board's general rulemaking authority in section 2B(a)(1). See id. sec. 1422b(a)(1). On January 11, 1993, the Board published in the Federal Register an interim final rule containing certain technical revisions to its regulation on eligibility of FHLBank directors. See 58 FR 3487, Jan. 11, 1993. Although the interim final rule was effective immediately upon publication, the Board invited interested persons to submit written comments through March 11, 1993, which would be taken into consideration in developing a final rule.

II. Analysis of the Final Rule

A. Introduction

This final rule amends the Board's regulations on FHLBank director eligibility. The Board's regulations on FHLBank director eligibility require incumbent directors, nominees for elective director (director nominees), and candidates for appointive director (director candidates) to submit to the Board a certification that they meet certain statutory and regulatory eligibility requirements as well as a statement of disclosure of certain financial relationships. See 12 CFR 932.18(f), 932.21(g). These certifications and disclosures must be made by completing Personal Certification and Disclosure Forms (Forms), denominated A–1, A–2, E–1, or E–2. These forms have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 3069–0002. Satisfactory completion of the Forms is a prerequisite for incumbent elective and appointive directors to remain eligible to serve on a FHLBank Board. Satisfactory completion of the Forms is also a prerequisite to the ratification of the election of director nominees and the appointment of director candidates by the Board.

The final rule revises the dates by which all incumbent FHLBank directors must submit their Forms to the Board and clarifies the date by which nominees for elective director must submit their Forms to the Board. The final rule also changes the date by which the Board must announce the results of the election of FHLBank directors. In addition, the final rule contains several other technical amendments discussed below. The amendments contained in the final rule were published in the Federal Register on January 11, 1993, as an interim final rule. The final rule contains the amendments in the interim final rule with minor modification.

B. Section-by-Section Analysis

Section 932.13(c) of the final rule changes the language of § 932.13(c) of the Board's regulation on the nomination of director nominees. Prior to its amendment by the interim final rule, the Board's regulation governing the nomination of director nominees required each director nominee to complete a "questionnaire" and return it to the Board prior to August 20 in order for the director nominee's name to be placed on the ballot for the next election. *Id.* § 932.13(c)(3). In practice, the Board now requires that director nominees fill out and return to the Board by August 20 that portion of Form E–1 in which director nominees certify that they meet all statutory and regulatory eligibility requirements for election. The Board no longer uses a "questionnaire." Therefore § 932.12(c) of the final rule changes the regulatory language to reflect this practice.

Section 932.14(d) of the final rule changes the date by which the Board must announce the election of FHLBank directors from November 15 to December 31 in order to ensure that the Board will have sufficient time to review Forms of director nominees before ratifying their election.

The Board must, by regulation, wait until 5 p.m. on October 25 before opening the ballots in the election of FHLBank directors. *Id.* § 932.14(c). It is the current Board practice to wait until after the ballots have been opened to require those director nominees with the highest number of votes for each directorship to complete a Form E–1. The reason for this practice is that the Board wishes to require disclosure of personal financial relationships only by director nominees whose election has some likelihood of being ratified by the Board.

The November 15 date prescribed by the prior Board regulation allowed only three weeks, from October 25 to November 15, for director nominees to submit their Forms and for the Board to review them before the election results must be announced. Section 932.14(c) of the final rule therefore changes the announcement date to December 31. The Board does not intend to delay the announcement of elections results until December 31 if the Board can ratify the results prior to that date.

Section 932.18(f) of the prior Board regulation required appointive directors to certify annually on November 15 of each year on Form A–1 or A–2, as applicable, that he or she meets all applicable eligibility requirements for his or her appointment. Section 932.18(f) of the final rule changes the date by which incumbent appointive directors must submit Form A–2 to the Board from November 15 of each year to March 1 of each year. This change is intended to allow the Board more time to review the Forms of director candidates and director nominees. As a result of this change, the Board no longer faces the task of reviewing the Forms of incumbent directors during the same time frame that it is reviewing the Forms of appointive director candidates and elective director nominees.

In order to avoid duplicative certification and disclosure requirements for newly appointed directors, appointive directors who submitted a Form A–1 in October, November, or December of the year prior to the year in which their appointment took effect would be exempt from submitting a Form A–2 by March 1 of the following year.

As a consequence of this exemption, appointive directors who submitted Form A–1 in October, November, or December of the year prior to the year in which their appointment took effect will not be required to submit a Form for up to a seventeen month period: From October 1 of the year prior to the year in which their appointment was effective to March 1 of the second year of their terms. The Board believes that allowing first-year appointive directors to serve several added months before they are required to meet the certification and disclosure requirements as incumbent directors poses minimal risk to the FHLBanks and the FHLBank System because incumbent appointive directors are required by regulation to report, on their own initiative, any ineligibility or suspected ineligibility to the Board within thirty days of occurrence. See *id.* § 932.18(f)(2).

Section 932.18 of the final rule also clarifies that incumbent appointive directors who are candidates for reappointment must, along with all other director candidates, submit a Form A–1 to the Board prior to being reappointed.

Section 932.21(d)(2) of the final rule amends the Board's regulation governing the eligibility of a person who was an officer or director of a member institution that did not meet its minimum regulatory capital requirements and therefore was ineligible to be an elective director. See *id.* § 932.21(d)(2). Prior to amendment, the regulation provided that a "director" who was formerly ineligible is once again eligible in the succeeding calendar year if the member that he or she serves as an officer or director meets the minimum regulatory capital requirements during each phase of the election process for the succeeding calendar year. *Id.* The final rule clarifies the regulation by expressly making it applicable to a "person" who was formerly ineligible rather than a "director" who was formerly ineligible. This change is intended to clarify the Board's intent and to reflect current Board practice of applying the regulation not only to elective directors who become ineligible, but to any person who might have been ineligible to serve as a director because he or she was employed by a member that did not meet its minimum regulatory capital requirements. This change is also intended to make the regulation's language parallel the language of § 932.21(d)(1), which defines the period during which a "person" who is an officer or director of a member that fails to meet minimum regulatory capital requirements is ineligible to be an elective director. *Id.* at § 932.21(d)(1).

Section 932.21(d)(2) also redefines the time frame during which a member must meet minimum regulatory capital requirements in order for a formerly ineligible person to once again be eligible to be an elective director. The final rule does not change the time frame, but it defines the time frame in terms of the calendar year rather than in terms of each "phase of the election process."

Section 932.21(g) of the final rule changes the date by which incumbent elective directors must submit Form E–2 to the Board from December 1 of each year to March 1 of each year. This change parallels the date change for submission of Forms by incumbent appointive directors in § 932.18(f) and is made for the same reasons.

In order to avoid duplicative certification and disclosure requirements for newly elected directors, elective directors who submitted a Form E–1 in the year in which they were elected would be exempt from submitting a Form E–2 by March 1 of the following year. As a consequence of this exemption, newly elected directors will not be required to submit Forms for up to a sixteen month period: From late October of the year in which they were elected to March 1 of the second year of their terms. The Board believes that allowing first-year elective directors to serve several added months before they are required to meet the certification and disclosure requirements as incumbent directors poses minimal risk to the FHLBanks and the FHLBank System because incumbent elective directors are required by regulation to report, on their own initiative, any ineligibility or suspected ineligibility to the Board within thirty days of occurrence. See *id.* § 932.21(g)(2).

Section 932.21 of the final rule also changes the language of the Board regulation governing the certification and disclosure requirements for director nominees. Prior to amendment, the elective director eligibility regulation required that "[p]rior to each election," director nominees must certify in Form E–1 that they meet certain statutory and regulatory eligibility requirements and must disclose to the Board certain financial relationships. See *id.* § 932.21(g)(1), (3). However, as explained above, it is the current Board practice to wait until after the ballots have been opened to require those director nominees with the highest number of votes for each directorship to complete a Form E–1, so that only director nominees whose election has some likelihood of being ratified by the Board will be required to disclose personal financial relationships.

In order to reflect this practice, the final rule replaces the phrase "[p]rior to each election" in subparagraphs (g)(1) and (g)(3) of § 932.21 with "[p]rior to the ratification of the election results by the Board." This change is intended to make clear that director nominees are not required to disclose their financial relationships to the Board on Form E–1 until after members cast their ballots and the results are tabulated. See *id.* § 932.14(c). However, director nominees must submit the completed Form E–1 before the Board will ratify their election and declare the election results.

The Board recognizes that those director nominees who must fill out Form E–1 prior to ratification of their election by the Board will have filled out the certification section of Form E–1 twice: Once by August 20 in order to have his or her name placed on the ballot and again after the election when disclosing his or her financial relationships. The purpose of requiring director nominees to again certify eligibility after the election is to ensure that director nominees are still eligible to be FHLBank directors at the time the Board ratifies their election. Further, by certifying their eligibility after they are elected, director nominees are exempted from submitting a Form E–2 during the following year.

During the sixty-day comment period following publication of the interim final rule, the Board received one comment letter from a trade association, which supported the Board's revisions. The commenter stated that the allocation of additional time to the review of Forms is appropriate and does not cause any risk to the Board or to the FHLBanks. Further, the exceptions to the filing requirement for newly elected elective directors and certain newly appointed directors, see 58 FR 3488, 3490 (Jan. 11, 1993), reduces the regulatory burden on those directors, on the FHLBanks, and on the Board.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a regulatory flexibility analysis be prepared whenever an agency promulgates a proposed or final rule after being required by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, to publish a general notice of proposed rulemaking pursuant to APA section 553. See 5 U.S.C. 553, 603(a), 604(a). The Board was not required to publish a general notice of proposed rulemaking for its interim final rule because the Board found good cause that notice and comment was unnecessary and contrary to the public interest in the adoption of the interim final rule. See *id.* section 553(b)(3)(B); 58 FR 3489. Further, the rule comes within the exception to the notice and comment requirement for rules of agency procedure, under APA subsection 553(b)(3)(A). See 5 U.S.C. 553(b)(3)(A); 58 FR 3489. Since the Board was not required to publish a general notice of proposed rulemaking in connection with the interim final rule, the Board is not required to prepare a regulatory flexibility analysis for this final rule.

The final rule does not impose any new reporting requirements. It merely changes the deadlines by which existing requirements must be met. The final rule therefore will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 932

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

Accordingly, chapter IX, title 12, part 932, Code of Federal Regulations is hereby amended as follows:

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, 1464; 18 U.S.C. 207; 42 U.S.C. 8101 *et seq.*

2. Section 932.13 is amended by revising the first two sentences of the paragraph (c) concluding text to read as follows:

§ 932.13 Designation and nomination of elective directorship.

* * * * *

(c) * * *

With such letter will be sent a list of nominees and a copy of Form E–1. Each nominee must certify to the Board on Form E–1 by August 20 that such nominee meets all applicable eligibility qualifications for his election set forth in section 7 of the Act and this part. * * *

* * * * *

3. Section 932.14 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 932.14 Election of directors.

* * * * *

(d) By December 31, the Board shall declare elected the candidate receiving the highest number of votes cast, and where two or more directorships are to be filled from the ballot, the Board shall declare elected each candidate receiving the next succeeding highest number of votes until the number of candidates declared elected equals the number of directorships to be filled. * * *

* * * * *

4. Section 932.18 is amended by revising paragraphs (f)(1) and (f)(3) introductory text to read as follows:

§ 932.18 Appointive director eligibility.

* * * * *

(f) *Certification and reporting.* (1) Prior to the initial appointment and prior to any reappointment, each director candidate for appointive director shall certify in writing to the Board on Form A–1 that he or she meets all applicable eligibility qualifications for his or her appointment set forth in section 7(a) of the Act and this part. By March 1 of each year during the term of the directorship, each appointive director shall certify in writing to the Board on Form A–2 that he or she meets all applicable eligibility qualifications for his or her appointment set forth in section 7(a) of the Act and this part, except that any appointive director who submitted Form A–1 to the Board in October, November, or December of the year prior to the year in which his or her appointment or reappointment took effect is not required to submit Form A–2 by March 1 of the year in which the appointment or reappointment took effect.

* * * * *

(3) Prior to the initial appointment and prior to any reappointment, each director candidate for appointive director shall fully disclose in writing to the Board on Form A–1 the financial relationships (as defined in § 931.30 of this chapter) set forth in paragraphs (f)(3) (i), (ii), (iii), and (iv) of this section of such director candidate. By March 1 of each year during the term of directorship, each appointive director shall fully disclose in writing to the Board on Form A–2 the financial relationships (as defined in § 931.30 of this chapter) set forth in paragraphs (f)(3) (i), (ii), (iii), and (iv) of this section of such appointive director, except that any appointive director who submitted a Form A–1 to the Board in October, November, or December of the year prior to the year in which his or her appointment or reappointment took effect is not required to submit a Form A–2 by March 1 of the year in which the appointment or reappointment took effect.

* * * * *

5. Section 932.21 is amended by revising paragraphs (d)(2), (g)(1), and (g)(3) to read as follows:

§ 932.21 Elective director eligibility.

* * * * *

(d) * * *

(2) A person who is ineligible pursuant to paragraph (d)(1) of this section shall once again be eligible for election in the next succeeding calendar year in which the member(s) he or she serves as an officer or director meet(s) the applicable minimum regulatory capital requirements throughout the entire calendar year. Such compliance with applicable minimum regulatory capital requirements shall not be satisfied by the granting of an exemption or exception to such capital requirements by the appropriate federal regulatory agency.

* * * * *

(g) *Certification and reporting.* (1) Prior to the ratification of the election results by the Board, each director nominee for elective director shall certify in writing to the Board on Form E–1 that he or she meets all applicable eligibility qualifications for his or her election set forth in section 7 of the Act and this part. By March 1 of each year during the term of directorship, each elective director who was not elected in the immediately preceding year shall

certify in writing to the Board on Form E–2 that he or she meets all applicable eligibility qualifications for his or her election set forth in section 7 of the Act and this part.

* * * * *

(3) Prior to the ratification of the election results by the Board, each director nominee for elective director shall fully disclose in writing to the Board on Form E–1 any financial relationships, (as defined in § 931.30 of this chapter) set forth in § 932.18(f)(3) of this part, of such director nominee. By March 1 of each year thereafter during the term of the directorship, each elective director who was not elected in the immediately preceding year shall fully disclose in writing to the Board on Form E–2 any financial relationships (as defined in § 931.30 of this chapter), set forth in § 932.18(f)(3) of this part, of such elective director.

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By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93–13276 Filed 6–4–93; 8:45 am]

BILLING CODE 6725–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–22; Amendment 39–8530; AD 93–06–05]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines, that requires initial and repetitive inspections of installed third and fourth stage low pressure turbine (LPT) blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. This amendment is prompted by reports of 19 uncontained LPT blade fracture events. The actions specified by this AD are intended to prevent inflight engine shutdown, engine cowl release, or uncontained engine debris penetrating the aircraft.

DATES: Effective on July 7, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, Connecticut 06108. This information may be examined at the Federal Aviation Administration (FAA), Office of Assistant Chief Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Aerospace Engineer, Engine Certification Office, ANE–140, FAA, New England Region, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 273–7121; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and 17R turbofan engines was published in the Federal Register on August 26, 1992 (57 FR 38627). That action proposed to require repetitive inspections for excessive low pressure turbine (LPT) blade shroud crossnotch wear, and replacement as necessary.

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

One commenter proposes to increase the initial inspection interval of 6,000 cycles in service (CIS) or hours time in service (TIS) to 10,000 CIS or hours TIS for PW JT8D–7, –7A, and –7B engines. The FAA does not concur. The FAA has determined that sufficient technical substantiation or service experience does not exist to support the increase in CIS or hours TIS for these engine models. However, if new information becomes available at a later date that would justify a revision of this action, the FAA may consider further rulemaking at that time.

One commenter notes that the proposed rule requires an hourly TIS limit along with a CIS limit, and states that the hourly limit imposes a hardship due to the resulting increase in manpower requirements to perform the inspections and aircraft scheduling to a maintenance station. The operator requests to remain with the CIS limit defined in Revision 3 and previous revisions of PW Alert Service Bulletin (ASB) No. 5913. The FAA does not concur. Service history and technical evaluation indicate that the wear rate can be influenced by both hours TIS and CIS.

One commenter recommends the fourth stage LPT containment hardware described in PW Service Bulletin (SB) No. 5697 and PW SB No. 5928 be installed as an option to the fourth stage LPT containment hardware described in PW ASB No. 6039. The FAA does not concur. Service history has shown that there have been uncontained events as a result of a third or fourth stage LPT blade failure on engines incorporating either PW SB No. 5697 or PW SB No. 5928 fourth stage LPT containment hardware. The current program, as defined in PW ASB No. 6039, allows the installation of fourth stage LPT containment hardware as described in PW SB No. 5928 with certain modifications that increase the containment capability.

One commenter states that the Applicability paragraph of the AD should include third stage turbine blades installed in accordance with PW SB No. 5331. The commenter states that this addition would help avoid potential confusion relative to the inspection requirements, and would be consistent with subsequent paragraphs of the AD. The FAA concurs and the Applicability paragraph has been changed.

One commenter states that the AD should exempt engines incorporating the third stage LPT containment hardware described in the Applicability paragraph from the third stage turbine blade inspections required by paragraph (a)(1) of the Compliance paragraph of this AD. The FAA does not concur. Only third stage turbine blade sets installed in accordance with PW SB No. 5331 are exempt from third stage turbine blade inspections. These blade sets have experienced no failures due to crossnotch wear. Installation of third stage LPT containment hardware without installing third stage blade sets in accordance with PW SB 5331 are not exempt from the third stage LPT blade inspections on engines that do not incorporate the fourth stage LPT containment hardware.

One commenter does not agree with imposing a requirement to install LPT containment hardware. The FAA is not requiring installation of LPT containment hardware in this AD. This AD addresses third and fourth stage LPT blade set inspections. However, the FAA is currently reviewing the need to require the installation of LPT containment hardware and may consider further rulemaking.