

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 22**

[Docket No. 99-19]

RIN 1557-AB74

FEDERAL RESERVE SYSTEM**12 CFR Part 208**

[Regulation H; Docket No. 10-52]

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 339**

RIN 3064-AC24

FARM CREDIT ADMINISTRATION**12 CFR Part 614**

RIN 3052-AB89

NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 760****Loans in Areas Having Special Flood Hazards**

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and National Credit Union Administration (NCUA) (collectively, the Agencies).

ACTION: Joint final rule.

SUMMARY: The Agencies jointly are making technical amendments to their regulations on loans in areas having special flood hazards. This action removes an outdated cross-reference to Federal Emergency Management Agency (FEMA) regulations that had contained the text of the Standard Flood Hazard Determination Form (Form). This action is intended to update and make accurate the Agencies' regulations regarding loans in areas having special flood hazards.

EFFECTIVE DATE: December 21, 1999.

FOR FURTHER INFORMATION CONTACT:

OCC: Carol Workman, Compliance Specialist, Community and Consumer Policy, (202) 874-4858; Margaret Hesse, Senior Attorney, Community and Consumer Law Division, (202) 874-5750; or Jacqueline L. Lussier, Senior Attorney, Legislative and Regulatory Activities Division, Office of Chief Counsel, (202) 874-5090, Office of the

Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Kathleen C. Ryan, Attorney, Division of Consumer & Community Affairs (202) 452-3667; Michael O'Rourke, Counsel, Legal Division, (202) 452-3288, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

FDIC: Ken Baebel, Senior Review Examiner, Division of Compliance and Consumer Affairs, (202) 942-3086; Mark Mellon, Counsel, Regulation and Legislation Section, Legal Division, (202) 942-3090; or Nancy Schucker Recchia, Counsel, Regulation and Legislation Section, Legal Division, (202) 898-8885, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

FCA: Tong-Ching Chang, Policy Analyst, Office of Policy and Analysis, (703) 883-4498; or Wendy R. Laguarda, Senior Counsel, Office of General Counsel, (703) 883-4020, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. TDD (703) 883-4444.

NCUA: Kimberly Iverson, Program Officer, (703) 518-6375; or Chrisanthy J. Loizos, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518-6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

SUPPLEMENTARY INFORMATION:**I. Background and Discussion of Final Rule**

As required by federal law, FEMA established the Form for determining whether a building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area, whether flood insurance is required, and whether federal flood insurance is available. 42 U.S.C. 4104b. On July 6, 1995, FEMA published a final rule that included the text of the Form at 44 CFR part 65 (Appendix A). 60 FR 35276. The Agencies published a joint final rule on the same date requiring lending institutions supervised by the Agencies (regulated lenders) to use the Form. 60 FR 35286. On August 29, 1996, the Agencies published a joint final rule that revised their respective flood insurance regulations. 61 FR 45684. This joint final rule also required regulated lenders to use the Form. The Agencies' regulations cross-referenced 44 CFR part 65 (Appendix A).

On May 21, 1998, FEMA published a final rule that removed 44 CFR part 65 (Appendix A). 63 FR 27856. FEMA removed Appendix A to enhance its ability to incorporate changes to the Form outside of the rulemaking process,

while continuing to provide full notice of the availability of the Form to the public and to affected parties. *Id.*

Because FEMA removed 44 CFR part 65 (Appendix A), it is necessary for the Agencies to make conforming changes to their regulations.¹ This joint final rule removes the cross-reference in the Agencies' respective flood insurance regulations to 44 CFR part 65 (Appendix A) and replaces it with a statement that the Form is available from FEMA. The Agencies are making substantively similar technical clarifying changes to their regulations.

Regulated lenders still must use the Form for determining whether a building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area, whether flood insurance is required, and whether federal flood insurance is available. Regulated lenders may obtain the Form from FEMA through the mail by writing to FEMA Distribution Facility, P.O. Box 2012, Jessup, MD 20794-2012; by telephone at (800) 480-2520; or from FEMA's Internet website at <<http://www.fema.gov/library/sfldfrm.pdf>>.

II. Notice and Comment

This joint final rule makes only technical amendments removing an outdated cross-reference to another agency's regulations and, in some instances, adding information on the Form's availability. It makes no substantive changes to the Agencies' regulations. The Agencies therefore for good cause find that notice and public comment are unnecessary under section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)).

III. Effective Date

Subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a federal banking agency that impose additional reporting, disclosures, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. This joint final rule is not subject to this delayed effective date requirement because it imposes no new requirements. It simply makes technical amendments. The Form is available from FEMA and regulated lenders will not need any additional time to adjust

¹ The Office of Thrift Supervision published this change separately. See 64 FR 69183, 69185 (December 10, 1999).

their policies or practices in order to comply with this joint final rule.

The Agencies also find good cause to dispense with the 30-day delayed effective date requirement under section 553(d) of the APA (5 U.S.C. 553(d)). Section 553(d) of the APA provides, subject to certain exceptions, that publication of a final rule must be made not less than 30 days before its effective date (5 U.S.C. 553(d)). A rulemaking is excepted from this requirement where an agency finds good cause for an earlier effective date and publishes such finding with rule (5 U.S.C. 553(d)(3)). As noted previously this joint final rule makes only technical amendments to remove an outdated cross-reference to another agency's regulations and, in some instances, adds information on the Form's availability. It makes no substantive changes to the Agencies' regulations. Accordingly, the Agencies find good cause to dispense with the delayed effective date requirements and to make this joint final rule effective upon publication in the **Federal Register**.

IV. Paperwork Reduction Act

The Agencies have determined that this joint final rulemaking does not contain or modify a collection of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is not necessary to publish a notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis are not applicable. Moreover, since this joint final rule imposes no new requirements and makes only technical amendments, this joint final rule will not have a significant economic impact on a substantial number of small entities.

VI. Small Business Regulatory Enforcement Fairness Act

The Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801–808) provide generally for agencies to report final rules to Congress and the General Accounting Office (GAO) for review before the rules may take effect. The reporting requirement is triggered when a federal agency issues a final rule. The

Agencies will submit the appropriate reports to Congress and the GAO as required by SBREFA.

The Office of Management and Budget has found that this joint final rule does not constitute a "major rule" as defined by SBREFA.

VII. Executive Order 12866

OCC: The OCC has determined that its portion of this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

VIII. Unfunded Mandates Act of 1995

OCC: The Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48 (UMA), applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which the agency published a general notice of proposed rulemaking (2 U.S.C. 1532). As noted previously, the Agencies have determined, for good cause, that notice and comment is unnecessary. Accordingly, the UMA does not require a budgetary impact analysis.

Nevertheless, the OCC has determined that its portion of this joint final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

IX. Executive Order 13132 Statement

OCC: The OCC has determined that its portion of this joint final rule does not constitute a policy that has federalism implications for purposes of Executive Order 13132.

NCUA: Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. NCUA's portion of this joint final rule will apply to all federally insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that its portion of this joint final rule does not constitute a policy that has federalism implications for purposes of the executive order.

X. Assessment of Impact of Federal Regulation on Families

The Agencies have determined that this joint final rule will not affect family well-being within the meaning of section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681.

List of Subjects

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 339

Flood insurance, Reporting and recordkeeping requirements.

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 760

Credit unions, Mortgages, Flood insurance, Reporting and recordkeeping requirements.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, the OCC amends part 22 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

1. The authority citation for part 22 continues to read as follows:

Authority: 12 U.S.C. 93a; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 22.6, paragraph (a) is revised to read as follows:

§ 22.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A bank shall use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will

be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A bank may obtain the standard flood hazard determination form from FEMA, P.O. Box 2012, Jessup, MD 20794-2012.

* * * * *

Dated: December 9, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board amends part 208 of chapter II of title 12 of the Code of Federal Regulations as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: (12 U.S.C. 24, 36, 92(a), 93(a), 248(a), 248(c) 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909, 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o-4(c)(5), 78q, 78q-1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 208.25, paragraph (f)(1) is revised to read as follows:

§ 208.25 Loans in areas having special flood hazards.

* * * * *

(f) Required use of standard flood hazard determination form. (1) use of form. A member bank shall use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A member bank may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794-2012.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 10, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends part 339 of chapter III of title 12 of the Code of Federal Regulations as set forth below:

PART 339—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

1. The authority citation for part 339 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 339.6, paragraph (a) is revised to read as follows:

§ 339.6 Required use of standard flood hazard determination form.

(a) Use of form. A bank shall use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A non-member bank may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794-2012.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of December 1999.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

Farm Credit Administration

12 CFR Chapter VI

Authority and Issuance

For the reasons stated in the joint preamble, the Board amends part 614 of chapter VI of title 12 of the Code of Federal Regulations as set forth below.

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.3A, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A,

4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5, 8.9 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2154a, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5, 2279aa-9); sec. 413 of Pub. L. 100-233, 101 Stat. 1568, 1639.

2. In § 614.4940, paragraph (a) is revised to read as follows:

§ 614.4940 Required use of standard flood hazard determination form.

(a) Use of form. System institutions must use the standard flood hazard determination form developed by the Director of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the 1968 Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A System institution may obtain the standard flood hazard determination form by written request to FEMA, P.O. Box 2012, Jessup, MD 20794-2012.

* * * * *

Dated: December 8, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

National Credit Union Administration

12 CFR CHAPTER VII

Authority and Issuance

For the reasons set forth in the joint preamble, the NCUA amends part 760 of chapter VII of title 12 of the Code of Federal Regulations as set forth below.

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

1. The authority citation for part 760 continues to read as follows:

Authority: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 760.6, paragraph (a) is revised to read as follows:

§ 760.6 Required use of standard flood hazard determination form.

(a) Use of form. A credit union shall use the standard flood hazard determination form developed by the Director when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used

in a printed, computerized, or electronic manner. A credit union may obtain the standard flood hazard determination form from FEMA, P.O. Box 2012, Jessup, MD 20794-2012.

* * * * *

By the National Credit Union Administration Board on November 30, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99-32687 Filed 12-20-99; 8:45 am]

BILLING CODE 4810-33-M; 6210-01-M; 6714-01-M; 6705-01-M; 7535-01-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932, 934, 935

[No. 99-62]

RIN 3069-AA89

Devolution of Corporate Governance Responsibilities

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to devolve certain corporate governance responsibilities from the Finance Board to the Federal Home Loan Banks (Banks), pursuant to the requirements of the Federal Home Loan Bank System Modernization Act of 1999.

DATES: This interim final rule shall be effective on December 21, 1999. The Finance Board will accept written comments on the interim final rule on or before January 20, 2000.

ADDRESSES: Mail comments to: Elaine L. Baker, Secretary to the Board, 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, Director, (202) 408-2821, or Scott L. Smith, Deputy Director, (202) 408-2991, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, or Eric M. Raudenbush, Senior Attorney-Advisor, (202) 408-2932, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Bank System and Finance Board Roles and Responsibilities

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks. *See* 12 U.S.C. 1422a(a)(3), 1422b(a)(1) (1994). Specifically, the Finance Board's

primary duty is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that primary duty, the Finance Board also is responsible for ensuring that the Banks carry out their housing finance and community lending mission, and that they remain adequately capitalized and able to raise funds in the capital markets. *See id.* 1422a(a)(3).

Historically, the Bank Act has required the Finance Board to be involved in varying degrees in the corporate governance of the Banks, typically by requiring Finance Board approval for a host of Bank practices. However, the recently enacted Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act)¹ repealed most of those requirements, thereby removing most of the last vestiges of governance responsibilities from the Finance Board. *See* Pub. L. No. 106-102, 604(a)(6); 606(d), (f), (g) (1999). Accordingly, the Finance Board is amending its regulations to remove the corresponding Finance Board approval requirements for such corporate governance functions, consistent with the Modernization Act.

II. Analysis of Interim Final Rule

A. Part 932—Directors, Officers and Employees of the Banks

1. Amendment of Bank Directors' Meeting and Compensation and Expenses Regulations—§§ 932.16, 932.17

Section 7(i) of the Bank Act formerly permitted each Bank, with the approval of the Finance Board, to pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by such directors. *See* 12 U.S.C. 1427(i) (1994). Section 932.17 of the Finance Board's regulations permits each Bank, within certain standards of reasonableness set forth in the regulation, to implement its own policy on director compensation and allows each Bank to pay its directors for such expenses as are payable by the Bank to its senior officers. *See* 12 CFR 932.17 (1999). Payments made in compliance with the regulation are deemed to be approved by the Finance Board, as required by section 7(i).

The Modernization Act amended section 7(i) of the Bank Act by imposing specific limits on annual compensation for the Chairperson, Vice Chairperson and other members of the Bank's board

of directors. *See* Modernization Act, 606(b). These statutory limits on annual directors' compensation are implemented by revised § 932.17(c)(1) of this interim final rule. Payments made in compliance with the limits and standards are deemed to be approved by the Finance Board for purposes of section 7(i).

The Finance Board understands that the new statutory limits generally would result in most directors receiving less compensation than that currently allowed pursuant to existing § 932.17. Nevertheless, that appears to be precisely what Congress intended. Moreover, based on the Finance Board's consultations with Congress, it is clear that Congress intended that no diminution in workload would result as a consequence of the reduced directors' compensation. Accordingly, for safety and soundness reasons, § 932.16 is revised to require that each Bank's board of directors continue to maintain its level of oversight of the management of the Bank. Consistent with this maintenance of effort standard, § 932.16 requires each Bank's board of directors to hold no fewer in-person meetings in any year than it has held on average over the immediately preceding three years, but a Bank may apply to the Finance Board for approval, upon a showing of good cause, to hold in any year fewer than the required number of in-person board meetings.

In addition, and consistent with Congressional intent, the Finance Board believes that directors should be compensated only for the performance of official Bank business and not simply for holding office. Accordingly, § 932.17 is revised to provide that, starting in 2000, a Bank may not pay fees to a director, such as retainer fees, that do not necessarily reflect actual performance by the director of official Bank business. Thus, a director who regularly fails to attend board or committee meetings may not be paid at all, and the Finance Board would consider such failure a dereliction of the director's fiduciary duties that would constitute cause for removal of the director, pursuant to section 2B(a)(2) of the Bank Act. *See* 12 U.S.C. 1422b(a)(2) (1994).

2. Removal of Selection and Compensation of Bank Officers and Employees Regulations—§§ 932.18 and 932.19

Section 12(a) of the Bank Act formerly made the selection and compensation of Bank officers and employees subject to Finance Board approval. *See* 12 U.S.C.

¹The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338, enacted into law on November 12, 1999.