

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### 7 CFR Part 1530

#### Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Foreign Agricultural Service (FAS) is withdrawing the proposed rule published at 70 FR 3150 on January 21, 2005, to implement Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), Additional U.S. Note 6, which authorizes entry of raw cane sugar under subheading 1701.11.20 of the HTS for the production of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or to be refined and re-exported in refined form or in sugar-containing products, or to be substituted for domestically produced raw cane sugar that has been or will be exported. The proposed rule would have revised the current regulation at 7 CFR part 1530.

**DATES:** Effective date: May 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ronald C. Lord, Chief, Sugar and Dairy Branch, Import Programs and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture or by phone (202) 720-2916; or by fax (202) 720-0876; or by e-mail: [Ronald.Lord@fas.usda.gov](mailto:Ronald.Lord@fas.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. and Mexican sugar markets have become increasingly integrated since duty-free, quota-free trade in sugar was fully implemented on January 1, 2008 under the North American Free Trade Agreement (NAFTA). FAS is withdrawing this proposed rule because

market conditions have changed. FAS intends to publish an advance notice of proposed rulemaking concerning trade under the Sugar Re-Export Program with Mexico, requesting comments on revisions to the regulation, in particular with respect to issues not fully addressed in previous comments on the proposed rule that is being withdrawn by this action.

Signed at Washington, DC on the 26th of April, 2010.

**John D. Brewer,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 2010-10425 Filed 5-3-10; 8:45 am]

**BILLING CODE P**

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 956

#### FEDERAL HOUSING FINANCE AGENCY

#### 12 CFR Part 1267

#### RIN 2590-AA32

#### Federal Home Loan Bank Investments

**AGENCY:** Federal Housing Finance Agency, Federal Housing Finance Board.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is proposing to re-organize and re-adopt existing investment regulations that apply to the Federal Home Loan Banks (Banks) and that were previously adopted by the Federal Housing Finance Board (Finance Board) as new part 1267 of the FHFA's regulations. FHFA is also proposing to incorporate into the new part 1267 limits on the Banks' investment in mortgage-backed securities (MBS) and certain asset-backed securities (ABS) that are now set forth in the Financial Management Policy (FMP) that had been issued by the Finance Board. If the proposed rule is adopted in its current form, FHFA expects to terminate the FMP as of the effective date of the new rule.

**DATES:** Comments on the proposed rule must be received on or before July 6, 2010. For additional information, see

#### SUPPLEMENTARY INFORMATION.

**ADDRESSES:** You may submit your comments on the proposed rule,

identified by regulatory information number (RIN) 2590-AA32 by any of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to [RegComments@FHFA.gov](mailto:RegComments@FHFA.gov). Please include "RIN 2590-AA32" in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comments to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at [RegComments@FHFA.gov](mailto:RegComments@FHFA.gov) to ensure timely receipt by the agency. Please include "RIN 2590-AA32" in the subject line of the message.

- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA32, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA32, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:** Louis Scalza, Associate Director, 202-408-2953, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; or Thomas E. Joseph, Senior Attorney-Advisor, 202-414-3095, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Comments

FHFA invites comments on all aspects of the proposed rule, and will adopt a final regulation with appropriate changes after taking all comments into consideration. Copies of all comments will be posted on the Internet Web site at <https://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal

Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-6924.

## II. Background

### A. Creation of the Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, created FHFA as a new independent agency of the Federal Government, and transferred to FHFA the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), the oversight responsibilities of the Finance Board over the Banks and the Office of Finance (OF) (which acts as the Banks' fiscal agent) and certain functions of the Department of Housing and Urban Development. *See id.* at section 1101, 122 Stat. 2661-62. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See id.* at section 1102, 122 Stat. 2663-64. OFHEO and the Finance Board were abolished July 30, 2009, one year after the enactment of HERA, however, the Enterprises, the Banks, and the OF continue to operate under regulations promulgated by OFHEO and the Finance Board until such regulations are superseded by regulations issued by FHFA. *See id.* at sections 1301, 1302, 1311, 1312, 122 Stat. 2794-95, 2797-98.

### B. The Bank System Generally

The twelve Banks are instrumentalities of the United States organized under the Federal Home Loan Bank Act (Bank Act).<sup>1</sup> *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives; only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by

a Bank. *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430b. Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions. *See* 12 U.S.C. 1427. Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. *See* 12 U.S.C. 1424; 12 CFR part 1263.

As government-sponsored enterprises (GSEs), the Banks are granted certain privileges under federal law. In light of those privileges and their status as GSEs, the Banks typically can borrow funds at spreads over the rates on U.S. Treasury securities of comparable maturity lower than most other entities. The Banks pass along a portion of their GSE funding advantage to their members—and ultimately to consumers—by providing advances and other financial services at rates that would not otherwise be available to their members.

### C. Investment Requirements and the FMP

Under sections 11(g), 11(h) and 16(a) of the Bank Act, 12 U.S.C. 1431(g), 1431(h), 1436(a), a Bank is specifically authorized, subject to the rules of FHFA, to invest in: (1) Obligations of the United States; (2) deposits in banks and trust companies; (3) obligations, participations or other instruments of, or issued by, Fannie Mae or Government National Mortgage Association (Ginnie Mae); (4) mortgages, obligations or other securities that are or ever have been sold by Freddie Mac; (5) stock of Fannie Mae; (6) stock, obligations or other securities of any small business investment company (SBIC) formed pursuant to 15 U.S.C. 681, to the extent the investment is made for purposes of aiding a Bank member; and (7) instruments that a Bank has determined are permissible investments for fiduciary and trust funds under the laws of the state in which the Bank is located. Part 956 of the Finance Board regulations authorizes the Banks to invest in all the instruments specifically identified in the statute, except for stock in Fannie Mae, subject to certain safety and soundness limitations that are also set forth in the regulation. *See* 12 CFR 956.2, 956.3. The part 956 regulations also allow the Banks to enter into derivative transactions, standby letters of credit which conform to other regulations, and commitments to make advances or commitments to make or

purchase other loans. *See* 12 CFR 956.5. The Banks may, however, enter into derivative contracts only for hedging or other documented, non-speculative purposes, such as intermediating derivative transactions for members, and the Banks are subject to prudential and safety and soundness requirements with regard to derivative transactions. *See* 12 CFR 956.6.

The FMP evolved from a series of policies and guidelines initially adopted by the former Federal Home Loan Bank Board, predecessor agency to the Finance Board, in the 1970s and revised a number of times thereafter. The Finance Board adopted the FMP in 1991, consolidating into one document the previously separate policies on funds management, hedging and interest-rate swaps, and adding new guidelines on the management of unsecured credit and interest-rate risks.<sup>2</sup> Prior to the adoption of the part 956 regulations in 2000, the FMP governed how the Banks implemented their financial management strategies by specifying the types of investments the Banks could purchase. *See* Proposed Rule: *Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances*, 65 FR 25676, 25686 (May 3, 2000). The FMP also established mandatory guidelines relating to the funding and hedging practices of the Banks, the management of their credit, interest-rate, and liquidity risks, and the liquidity requirements for the Banks in addition to those required by statute.

Beginning in 2000, many of the provisions contained in the FMP were superseded by regulations adopted by the Finance Board including regulations that implemented the new capital structure for the Banks that had been mandated by the Gramm-Leach-Bliley Act of 1999, Public Law 106-102, 113 Stat. 1338 (Nov. 12, 1999) (GLB Act). Among other things, the new capital structure incorporated risk-based capital requirements to support the risks in the Banks' activities, and therefore eliminated the need for most of the FMP restrictions on investments. *See* 12 CFR part 932. In approving the capital plans that each Bank was required to adopt under provisions of the GLB Act, the Finance Board issued separate orders providing that upon a Bank's implementation of its capital plan and its full coverage by the capital regime in part 932 of the regulations, the Bank would be exempted from future

<sup>1</sup> The twelve Banks are located in: Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle.

<sup>2</sup> *See* Fin. Bd. Res. No. 96-45 (July 3, 1996), as amended by Fin. Bd. Res. No. 96-90 (Dec. 6, 1996), Fin. Bd. Res. No. 97-05 (Jan. 14, 1997), and Fin. Bd. Res. No. 97-86 (Dec. 17, 1997). *See also* 62 FR 13146 (Mar. 19, 1997).

compliance with all provisions of the FMP except for a few specific restrictions related to the Bank's investment in mortgage-backed and certain asset-backed securities along with some related restrictions on entering into some derivative transactions.<sup>3</sup> See, e.g., Fin. Bd. Res. No. 2002-11 (Mar. 13, 2002). Currently, all the Banks but the Federal Home Loan Bank of Chicago (Chicago Bank) have implemented their capital plans and are fully subject to the part 932 capital provisions. Thus, only a few of the provisions of the FMP remain applicable to all the Banks.

In addition to the FMP provisions already discussed and applicable to all the Banks, the Chicago Bank remains subject to FMP provisions related to prudential limits on investments (other than MBS or ABS)<sup>4</sup> and interest rate risk guidelines. The latter have been subsumed into the risk management and hedging guidelines that the Chicago Bank was required to submit for review and approval (and update as necessary) under Article III of the *Consent Order To Cease and Desist* entered into with the Finance Board on October 10, 2007 and which remains in effect. See 2007-SUP-01.

#### *D. Considerations of Differences Between the Banks and the Enterprises*

Section 1201 of HERA requires the Director, when promulgating regulations relating to the Banks, to consider the following differences between the Banks

<sup>3</sup> The restrictions in question are found in sections II.C.2., 3., 4. and 5. and Section V.C.5. of the FMP. These limits, among other things, prohibit investment in residual interest and interest accrual classes of securities and in interest-only and principal-only stripped securities, and limit a Bank's investment in MBS and ABS to 300 percent of a Bank's total capital. The provisions also limit an increase in a Bank's holdings of MBS and ABS to no more than 50 percent of its total capital in any calendar quarter. The restrictions also prohibit the Bank from entering into swap transactions that would amortize similar to residual interest or interest accrual classes of securities or to interest-only and principal-only stripped securities.

In March 2008, the Finance Board temporarily expanded the Banks' authority to invest in MBS guaranteed by the Enterprises by an additional three times total capital, subject to certain conditions. See Fin. Bd. Res. No. 2008-08 (Mar. 24, 2008). The temporary authority expired on March 31, 2010. The Finance Board believed that the temporary increase in the Banks' investment authority would help address severe liquidity and other constraints that were affecting the housing finance markets in early 2008.

<sup>4</sup> Even if the FMP were terminated so that these FMP prudential limits were no longer applicable to the Chicago Bank, the Bank would be subject to the new business activity requirements under part 980 of current regulations. Therefore, the Bank would require FHFA's approval before it could make investments beyond what it is currently allowed, and FHFA could impose any prudent limits, as appropriate, as part of the approval process. See 12 CFR part 980.

and the Enterprises: Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. See section 1201 Public Law 110-289, 122 Stat. 2782-83 (*amending* 12 U.S.C. 4513). The Director also may consider any other differences that are deemed appropriate. In preparing this proposed rule, FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors. FHFA requests comments from the public about whether differences related to these factors should result in any revisions to the proposal. FHFA also requests comment on whether differences related to these factors are relevant to the issues and questions raised in section III.B. below.

### **III. The Proposed Rule**

The proposed rule would re-organize current part 956 of the Finance Board's regulations and re-adopt it as part 1267 of the FHFA's regulations. More significantly, it would also incorporate into the regulation restrictions that are now applicable to the Banks and are contained in the FMP. Adopting these restrictions in a regulation would consolidate all the investment requirements in one place and allow FHFA to terminate the FMP. In addition, the proposed rule would make other conforming changes to the part 956 regulations related to the transfer of the regulations to chapter XII, 12 CFR part 1267 and to the incorporation of the FMP restrictions into the rule.

#### *A. Highlights of the Proposed Rule*

The proposed rule would re-organize the current 956 rules by combining § 956.2 and § 956.5, which respectively provide a list of authorized investments and authorization for derivative and other transactions, into new § 1267.2. This would consolidate all authority for investments and other transactions into a single section but does not otherwise substantially alter the part 956 provisions. The proposed rule would carry over current § 956.3, which sets forth a list of prohibited investments and other prudential requirements as new § 1267.3. The proposed rule would incorporate as new § 1267.3(a)(5) through (7) restrictions found in section II.C.3. through C.5. of the FMP related to investment in MBS and ABS, including the prohibition on investment in residual interest and interest accrual classes of securities and interest-only and principal-only stripped MBS and ABS.

New § 1267.3(c) would incorporate the limits now in section II.C.2. of the FMP that limit a Bank's level of investment in MBS and eligible ABS to 300 percent of its total capital. The proposed provision also states that a Bank's purchase of MBS and ABS in any calendar quarter cannot cause its total holdings of such securities to increase by more than 50 percent of its total capital as of the beginning of such quarter. Both these limits are carried over directly from the Finance Board's FMP without change. The proposed provision also clarifies that a Bank would not be required to divest securities solely to bring the level of its holdings into compliance with the limits in new § 1267.3(c), provided that the original purchase of the securities complied with these limits.

The proposed rule also would re-adopt the limitations and prudential requirement on use of derivative instruments now found in § 956.6 as new § 1267.4. FHFA is also proposing to add to this section new paragraph (b) which would incorporate the remaining applicable limitations on derivative transaction found in section V.C.5. of the FMP. These FMP restrictions are meant to prevent the Banks from using derivatives to create exposures or investments similar to residual interest and interest accrual classes of securities, interest-only and principal-only stripped MBS and ABS, or other investments that are currently prohibited by section II.C. of the FMP (and would continue to be prohibited by new § 1267.3(a)(5) through (7)).

#### *B. Potential Additional Limitations and Specific Requests for Information*

The FMP limits on total investment in MBS and ABS that FHFA is proposing to incorporate into new § 1267.3 address both mission and safety and soundness concerns. FHFA acknowledges that some of the Banks' investments in private-label MBS have resulted in accounting charges for other-than-temporary impairment (OTTI) but is proposing transferring the existing limits on MBS and ABS contained in the FMP as an administrative reorganization. FHFA is specifically requesting comments on whether more restrictive limits or other modifications to the MBS investment requirements are needed.

Some of the Banks' OTTI charges were on private-label MBS that were backed by subprime and nontraditional residential mortgage loans. To address certain issues associated with subprime and nontraditional loans, the Finance Board's Office of Supervision issued two advisory bulletins that remain

applicable to the Banks and contain guidance designed to promote better risk management of private-label MBS with these types of underlying loans. On April 12, 2007, the Office of Supervision issued Advisory Bulletin 2007-AB-01 that established expectations for the Banks' pre-purchase analysis and periodic reviews of MBS investments. The Bulletin also advised the Banks' boards of directors to establish: (1) Limits on the level of MBS with underlying nontraditional or subprime mortgage collateral; (2) requirements for the level of credit protection for particular credit tranches when purchased at the time of original issuance of the security, and (3) limits on concentrations by geographic area, issuer, servicer, and size. On July 1, 2008, the Office of Supervision issued Advisory Bulletin 2008-AB-02 that expressed the expectation that the Banks' purchases of private-label MBS will be limited to securities in which the underlying mortgage loans comply with all aspects of the federal banking agencies' *Interagency Guidance on Nontraditional Mortgage Product Risks*, issued on October 4, 2006 (71 FR 58609), and *Statement on Subprime Mortgage Lending*, issued on July 10, 2007 (72 FR 37569), (collectively "interagency guidance"). The interagency guidance emphasizes underwriting standards intended to ensure a borrower's ability to repay a mortgage loan at the fully indexed rate and assuming an amortizing repayment schedule. FHFA believes that future investments in private-label MBS backed by mortgage loans that conform to the interagency guidance and are purchased in line with the guidelines set forth in the April 2007 Advisory Bulletin may offer some protection against OTTI losses.

The Banks' OTTI charges are problematic. In the third quarter of 2009, the Banks' OTTI charges on private-label MBS totaled \$2.2 billion. Cumulative OTTI on such investments through the third quarter of 2009 was \$12.4 billion. These charges raise questions as to the Banks' ability to: (1) Properly manage the risks associated with investments in private-label MBS, and (2) adopt and implement prudent private-label MBS investment and credit risk policies.

In particular, in the FHFA's 2008 Annual Report to Congress, the agency expressed concern regarding the financial condition of some Banks and the negative performance of their private-label MBS. FHFA examination comments were that, to varying degrees, the Banks' investment policies and risk mitigation measures were deficient in

terms of post-purchase monitoring, overreliance on NRSRO ratings, and limited risk reporting. Considering these factors, several Banks were found to have significant weaknesses in their private-label MBS credit risk management systems.

Thus, FHFA is considering whether it should adopt additional restrictions, or lower the overall limit, on the Banks' investment in MBS generally, and in private-label MBS, in particular, as part of the final rule. In this regard, FHFA is seeking specific comments and information on the following:

1. Although the proposed rule would retain the FMP provision limiting MBS holdings to 300 percent of a Bank's capital, FHFA also requests comment on what other measures might offer a prudent limit on MBS holdings that also would mitigate potential future losses from the Banks' MBS portfolios. Comments on this issue may address both the magnitude of the limit (*i.e.*, 300 percent of capital) and its basis (*i.e.*, capital). For example, because retained earnings can absorb losses without compromising the par value of Bank capital stock, a limit based on a Bank's retained earnings may offer a more prudent basis for limiting private-label MBS investments.

2. In addition to the overall limit on MBS investments, FHFA requests comments on whether there should be a separate limit or additional restrictions on the purchase of private-label MBS (*e.g.*, a limit of one or two times capital, or a separate limit linked to retained earnings or some other basis). If such provisions are appropriate, FHFA seeks comments on the appropriate magnitude of the limit and its basis, as well as whether the rule should prohibit the purchase of private-label MBS.

3. In addition to the types of limits contemplated by the questions immediately above, FHFA seeks comments on whether it should restrict purchases of private-label MBS based on collateral characteristics (*e.g.*, restrictions based on whether the underlying mortgages are commercial or residential real estate loans, adjustable-rate loans, interest-only loans, or credit scores below certain levels). If such limits are appropriate, FHFA also would request comments on the types of characteristics and restrictions that should be implemented. For example, FHFA has considered proposing a limit on a Bank's private-label MBS purchases that decreases as the amount of relatively risky collateral in the Bank's mortgage pools and portfolio increases. Such restrictions could serve to limit the Bank's exposure to credit

losses by reducing purchases of private-label MBS with relatively risky collateral.

4. At one time, the FMP limited the purchase of private-label MBS to only those instruments rated in the highest investment grade category.<sup>5</sup> FHFA requests comments on whether it should re-introduce that type of limit as a means to limit the potential risks to the Banks from their MBS portfolios, and whether it would suffice to adopt a ratings requirement only for private-label MBS backed by certain types of collateral (*e.g.*, subprime or Alt-A loans).

If the proposed rule is adopted in its current form, FHFA anticipates that it would rescind the FMP as of the effective date of the new rule.

#### IV. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

#### V. Regulatory Flexibility Act

The proposed rule applies 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). Therefore in accordance with section 605(b) of the RFA, FHFA certifies that this proposed rule, if promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

#### List of Subjects in 12 CFR Parts 956 and 1267

Community development, Credit, Federal home loan bank, Housing, Reporting and recordkeeping requirements.

Accordingly, for reasons stated in the preamble and under the authority of 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526, FHFA proposes to amend subchapter G of chapter IX and subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

#### CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

#### SUBCHAPTER G—FEDERAL HOME LOAN BANK ASSETS AND OFF-BALANCE SHEET ITEMS

#### PART 956—[REMOVED]

1. Remove part 956.

<sup>5</sup> This provision was in section II.B. of the FMP, and no longer applies to the Banks that have converted to the GLB Act capital structure.

**CHAPTER XII—FEDERAL HOUSING  
FINANCE AGENCY**

**SUBCHAPTER D—FEDERAL HOME LOAN  
BANKS**

2. Add part 1267 to subchapter D to read as follows:

**PART 1267—FEDERAL HOME LOAN  
BANK INVESTMENTS**

Sec.

1267.1 Definitions.

1267.2 Authorized investments and transactions.

1267.3 Prohibited investments and prudential rules.

1267.4 Limitations and prudential requirements on use of derivative instruments.

1267.5 Risk-based capital requirements for investments.

**Authority:** 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526.

**§ 1267.1 Definitions.**

As used in this part:

*Asset-backed security or ABS* means a debt instrument backed by loans, but does not include debt instruments that meet the definition of a mortgage-backed security.

*Bank*, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act, as amended (12 U.S.C. 1432).

*Bank Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

*Consolidated obligation* means any bond, debenture or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and in accordance with any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

*Deposits in banks or trust companies* means:

- (1) A deposit in another Bank;
- (2) A demand account in a Federal Reserve Bank;
- (3) A deposit in or sale of federal funds to:

(i) An insured depository institution, as defined in section 2(9) of the Bank Act, that is designated by the Bank's board of directors;

(ii) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation and is designated by the Bank's board of directors; or

(iii) A U.S. branch or agency of a foreign Bank as defined in the International Banking Act of 1978, as amended, (12 U.S.C. 3101 *et seq.*) that is subject to supervision of the Board of

Governors of the Federal Reserve System and is designated by the Bank's board of directors.

*Derivative contract* means generally a financial contract the value of which is derived from the values of one or more referenced assets, rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate derivative contracts, foreign exchange rate derivative contracts, equity derivative contracts, precious metals derivative contracts, commodity derivative contracts and credit derivatives, and any other instruments that pose similar risks.

*GAAP* means the United States generally accepted accounting principles.

*Indexed principal swap* means an interest rate swap agreement in which the notional principal balance amortizes based upon the prepayment experience of a specified group of MBS or ABS or the behavior of an interest rate index.

*Interest-only stripped security or IO* means a class of mortgage-backed or asset-backed security that is allocated only the interest payments made on the underlying mortgages or loans and receives no principal payments.

*Investment grade* means:

- (1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest credit rating category by any NRSRO; or
- (2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or similar standards.

*Mortgage-backed security or MBS* means a security or instrument, including collateralized mortgage obligations (CMOs), and Real Estate Mortgage Investment Trusts (REMICs), that represents an interest in, or is secured by, one or more pools of mortgages loans.

*NRSRO* means a credit rating organization registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization.

*Principal-only stripped security or PO* means a class of mortgage-backed or asset-backed security that is allocated only the principal payments made on the underlying mortgages, or loans and receives no interest payments.

*Total capital* shall have the meaning set forth in § 1229.1 of this title.

**§ 1267.2 Authorized investments and transactions.**

(a) In addition to assets enumerated in parts 950 and 955 of this title and

subject to the applicable limitations set forth in this part, and in part 980 of this title, each Bank may invest in:

- (1) Obligations of the United States;
- (2) Deposits in banks or trust companies;
- (3) Obligations, participations or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

(4) Mortgages, obligations, or other securities that are, or ever have been, sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454 or 1455);

(5) Stock, obligations, or other securities of any small business investment company formed pursuant to 15 U.S.C. 681, to the extent such investment is made for purposes of aiding members of the Bank; and

(6) Instruments that the Bank has determined are permissible investments for fiduciary or trust funds under the laws of the state in which the Bank is located.

(b) Subject to any applicable limitations set forth in this part and in part 980 of this title, a Bank also may enter into the following types of transactions:

- (1) Derivative contracts;
- (2) Standby letters of credit, pursuant to the requirements of part 1269 of this title;
- (3) Forward asset purchases and sales;
- (4) Commitments to make advances; and
- (5) Commitments to make or purchase other loans.

**§ 1267.3 Prohibited investments and prudential rules.**

(a) *Prohibited investments.* A Bank may not invest in:

(1) Instruments that provide an ownership interest in an entity, except for investments described in § 1265.3(e) and (f) of this title;

(2) Instruments issued by non-United States entities, except United States branches and agency offices of foreign commercial banks;

(3) Debt instruments that are not rated as investment grade, except:

- (i) Investments described in § 1265.3(e) of this title; and
- (ii) Debt instruments that were downgraded to a below investment grade rating after acquisition by the Bank;

(4) Whole mortgages or other whole loans, or interests in mortgages or loans, except:

- (i) Acquired member assets;
- (ii) Investments described in § 1265.3(e) of this title;

(iii) Marketable direct obligations of state, local, or tribal government units or agencies, having at least the second highest credit rating from an NRSRO, where the purchase of such obligations by the Bank provides to the issuer the customized terms, necessary liquidity, or favorable pricing required to generate needed funding for housing or community lending;

(iv) Mortgage-backed securities, or asset-backed securities collateralized by manufactured housing loans or home equity loans, that meet the definition of the term "securities" under 15 U.S.C. 77b(a)(1) and are not otherwise prohibited under paragraphs (a)(5) through (a)(7) of this section; and

(v) Loans held or acquired pursuant to section 12(b) of the Bank Act (12 U.S.C. 1432(b)).

(5) Residual interest and interest accrual classes of securities;

(6) Interest-only and principal-only stripped securities; and

(7) Fixed rate mortgage-backed securities or eligible asset-backed securities or floating rate mortgage-backed securities or eligible asset-backed securities that on the trade date are at rates equal to their contractual cap, with average lives that vary more than six years under an assumed instantaneous interest rate change of 300 basis points, unless the instrument qualifies as an acquired member asset under part 955 of this title.

(b) *Foreign currency or commodity positions prohibited.* A Bank may not take a position in any commodity or foreign currency. The Banks may issue consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, provided that the Banks meet the requirements of § 966.8(d) of this title, and all other applicable requirements related to issuing consolidated obligations.

(c) *Limits on certain investments.* (1) A purchase, otherwise authorized under this part, of mortgage-backed securities or asset-backed securities, may not cause the aggregate book value of all such securities held by the Bank to exceed 300 percent of the Bank's total capital. A Bank will not be required to divest securities solely to bring the level of its holdings into compliance with the limits of this paragraph, provided that the original purchase of the securities complied with the limits in this paragraph.

(2) A Bank's purchase of any mortgage-backed or asset-backed security may not cause its total holdings of mortgage-backed and asset-backed securities to increase in any calendar quarter by more than 50 percent of its

total capital as of the beginning of such quarter.

#### § 1267.4 Limitations and prudential requirements on use of derivative instruments.

(a) *Non-speculative use.* Derivative instruments that do not qualify as hedging instruments pursuant to GAAP may be used only if a non-speculative use is documented by the Bank.

(b) *Additional prohibitions.* (1) A Bank may not enter into interest rate swaps that amortize according to behavior of instruments described in § 1267.3(a)(5) or (a)(6) of this part.

(2) A Bank may not enter into indexed principal swaps that have lives that vary by more than six years under an assumed instantaneous change in interest rates of 300 basis points, unless they are entered into in conjunction with the issuance of consolidated obligations or the purchase of permissible investments or entry into a permissible transaction in which all interest rate risk is passed through to the investor or counterparty.

(c) *Documentation requirements.* (1) Derivative transactions with a single counterparty shall be governed by a single master agreement when practicable.

(2) A Bank's agreement with the counterparty for over-the-counter derivative contracts shall include:

(i) A requirement that market value determinations and subsequent adjustments of collateral be made at least on a monthly basis;

(ii) A statement that failure of a counterparty to meet a collateral call will result in an early termination event;

(iii) A description of early termination pricing and methodology, with the methodology reflecting a reasonable estimate of the market value of the over-the-counter derivative contract at termination (standard International Swaps and Derivatives Association, Inc. language relative to early termination pricing and methodology may be used to satisfy this requirement); and

(iv) A requirement that the Bank's consent be obtained prior to the transfer of an agreement or contract by a counterparty.

#### § 1267.5 Risk-based capital requirements for investments.

Any Bank which is not subject to the capital requirements set forth in part 932 of this title shall hold retained earnings plus general allowance for losses as support for the credit risk of all investments that are not rated by an NRSRO, or are rated or have a putative rating below the second highest credit rating, in an amount equal to or greater

than the outstanding balance of the investments multiplied by:

(a) A factor associated with the credit rating of the investments as determined by FHFA on a case-by-case basis for rated assets to be sufficient to raise the credit quality of the asset to the second highest credit rating category; and

(b) 0.08 for assets having neither a putative nor actual rating.

Dated: April 28, 2010.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2010-0403; Airspace Docket No. 10-ACE-4]

#### Proposed Amendment of Class E Airspace; Perryville, MO

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Perryville, MO. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Perryville Municipal Airport, Perryville, MO. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** 0901 UTC. Comments must be received on or before June 18, 2010.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2010-0403/Airspace Docket No. 10-ACE-4, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.