

supervisory agency, then the OTS does not administer and enforce the Interlocks Act with respect to that affiliate.

**§ 563f.9 Interlocking relationships permitted pursuant to Federal Deposit Insurance Act.**

A management official or prospective management official of a depository organization may enter into an otherwise prohibited interlocking relationship with another depository organization for a period of up to 10 years if such relationship is approved by the Federal Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(k)(1)(A)(v)).

Dated: July 1, 1996.

Jonathan L. Fiechter,  
Acting Director.

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6720-01-P

**FEDERAL HOUSING FINANCE BOARD**

**12 CFR Part 931**

[No. 96-48]

**Modification of Definition of Deposits in Banks or Trust Companies**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Board of Directors of the Federal Housing Finance Board (Finance Board) has adopted a final rule to modify the definition of "deposits in banks or trust companies" in the Finance Board's regulations. The final rule will: Make clear that the term "banks" includes savings associations; and expressly include federal funds transactions as eligible to fulfill the liquidity requirement imposed on the Federal Home Loan Banks (FHLBanks) by section 11(g) of the Federal Home Loan Bank Act (Bank Act).

**EFFECTIVE DATE:** September 3, 1996.

**FOR FURTHER INFORMATION CONTACT:** Janice A. Kaye, Attorney-Advisor, Office of General Counsel, (202) 408-2505, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory and Regulatory Background**

Under section 11(e)(1) of the Bank Act, the FHLBanks have the power to accept deposits from their members, other FHLBanks, or instrumentalities of the United States. See 12 U.S.C.

1431(e)(1). To ensure that each FHLBank has sufficient liquid assets to meet deposit withdrawal demands, section 11(g) of the Bank Act imposes a liquidity requirement. See *id.* section 1431(g). The liquidity requirement provides that each FHLBank must invest, upon such terms and conditions as the Board of Directors of the Finance Board may prescribe, an amount equal to the current deposits the FHLBank holds in specified types of assets. *Id.* Among the specified assets are "deposits in banks or trust companies." *Id.* section 1431(g)(2).

The phrase "deposits in banks or trust companies" appeared in, and has not been changed since enactment of, the Bank Act in 1932. See ch. 522, sec. 11, 47 Stat. 733 (July 22, 1932). The legislative history of section 11(g) of the Bank Act does not discuss use of the phrase, but suggests only that the purpose of the liquidity requirement is to ensure that the FHLBanks have sufficient liquid assets to meet their advance and deposit withdrawal demands. See *Bank Act: Hearings on S. 2959 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 72d Cong., 1st Sess. 36 (Jan. 14, 1932) (statement of John O'Brien, Assistant Legislative Counsel). Although the legislative history of section 11(g) is limited, a legal opinion issued several years after enactment of the Bank Act by the General Counsel of the Federal Home Loan Bank Board (Bank Board), the Finance Board's predecessor agency, stated that "Congress, in using the phrase 'deposits in banks or trust companies' \* \* \* intended to refer to those financial institutions which accept deposits in their regular course of business."<sup>1</sup> The Bank Board General Counsel based his determination on the plain meaning of the term "banks" at that time. *Id.* at 2-3. To decide if a financial institution is a "bank" for purposes of section 11(g)(2), "the principal test or criterion \* \* \* is whether the financial institution accepts deposits as one of the primary purposes for which it was created." *Id.* at 2. Since savings associations did not accept deposits at that time,<sup>2</sup> the Bank Board

<sup>1</sup> See Bank Board General Counsel opinion 015 (Dec. 7, 1936) at 1-2. The Bank Board General Counsel concluded that "Congress \* \* \* intended to limit the trust companies authorized to receive [FHLBank] deposits to those which actually receive deposits as part of their regular course of business." *Id.* at 4.

<sup>2</sup> See e.g., Home Owners' Loan Act of 1933 (HOLA), ch. 64, sec. 5(b), 48 Stat. 132 (June 13, 1933) (savings and loan associations "shall raise their capital only in the form of payments on such shares as are authorized in their charter \* \* \* no deposits shall be accepted"); Horace Russell, *Savings and Loan Associations* 166-67, n.21 (1956)

General Counsel concluded that "savings associations did not fall within the strict meaning of 'banks.'" Bank Board General Counsel opinion at 3.

In 1978, the Bank Board defined by regulation the phrase "deposits in banks or trust companies" to include a deposit in another FHLBank, a demand account with a Federal Reserve Bank, or a deposit in a depository designated by a FHLBank's board of directors that is a member of the Federal Reserve System (FRS) or the Federal Deposit Insurance Corporation (FDIC). See 43 FR 46835, 46836 (Oct. 11, 1978), codified at 12 CFR 521.5 (superseded). When the Bank Board adopted this definition, deposits in federal and some state savings associations were insured by the former Federal Savings and Loan Insurance Corporation (FSLIC), and deposits in banks (and some savings banks) were insured by the FDIC. The Bank Board's regulation provided that only deposits in FDIC-insured institutions were eligible investments for purposes of the "deposits in banks or trust companies" provision of section 11(g) of the Bank Act. Since, generally speaking, only banks were members of (or, more precisely, insured by) the FDIC, deposits in FSLIC-insured savings associations could not be counted toward the liquidity requirement under the regulation. When Congress abolished the Bank Board and FSLIC in 1989, see Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101-73, sec. 401, 103 Stat. 183 (Aug. 9, 1989), the Finance Board transferred the definition of "deposits in banks or trust companies," without any change in substantive or technical matters, to § 931.5 of its regulations. See 54 FR 36757 (Aug. 28, 1989), codified at 12 CFR 931.5.

On September 22, 1993, the Board of Directors of the Finance Board approved for publication a proposed rule to modify the definition of "deposits in banks or trust companies" in § 931.5 of its regulations. The notice of proposed rulemaking (Notice) was published in the Federal Register on September 29, 1993, with a 60-day public comment period that closed on November 29, 1993. See 58 FR 50867 (Sept. 29, 1993). The Notice proposed to make two changes to the definition of "deposits in banks or trust companies." First, it

("savings and loan associations \* \* \* issue savings accounts, sometimes called share accounts and sometimes share savings accounts \* \* \* by federal law, the use of the word 'deposit' by savings and loan associations is prohibited"); *Indep Bankers Ass'n of Am. v. Clarke*, 917 F.2d 1126, 1128 (8th Cir. 1990) ("traditionally, of course, and originally, savings and loan associations \* \* \* did not accept demand deposits").

proposed to replace the reference to depositories that are FRS or FDIC members with a reference to banks, as defined in section 3 of the Federal Deposit Insurance Act (FDI Act), see 12 U.S.C. 1813(a), and trust companies that are members of the FRS or insured by the FDIC. The intent of this modification was to make clear that deposits in savings associations would continue to be ineligible investments for purposes of section 11(g) of the Bank Act. Second, the Notice proposed to expand the definition to specifically include as deposits the sale of federal funds.

## II. Analysis of the Final Rule

### A. Meaning of the Term "Banks"

In the Notice, the Board of Directors of the Finance Board proposed to limit the meaning of "banks" to those institutions included in the technical definition of the term "banks" under the FDI Act. Under that definition, the term "banks" does not include savings associations. See *id.* section 1813 (a), (b). As a result of reviewing the comments received by the Finance Board, one from a FHLBank and the other from an industry trade association, and the factors discussed below, the Board of Directors of the Finance Board has determined that deposits in savings associations should be eligible investments for purposes of the liquidity requirement in section 11(g) of the Bank Act. The Board of Directors of the Finance Board has modified the proposed rule to make clear that the term "banks" will include savings associations for purposes of section 11(g)(2) of the Bank Act. The public comments support this interpretation.

Neither the legislative history of the Bank Act nor the Bank Board in adopting its regulatory definition, articulated any policy reasons to support the exclusion of deposits in FSLIC-insured savings associations. See *supra* section I. One commenter suggested that the rationale for the exclusion of savings associations might have been to avoid any conflict of interest that might arise as a result of placing deposits in FHLBank member institutions. If this was the concern when Congress enacted the Bank Act in 1932, or when the Bank Board promulgated its regulatory definition in 1978, it was obviated in 1989, when banks for the first time became eligible as FHLBank members. See FIRREA, sec. 704(a), codified at 12 U.S.C. 1424(a)(1). The commenter urged the Finance Board to treat bank and savings association FHLBank members equally.

The other commenter offered that the reason for disparate treatment of banks and savings associations might have been to ensure that FHLBank liquidity deposits be transacted only with "low-risk" counterparties, implying that FDIC-insured deposits were less risky than FSLIC-insured savings accounts. Because Congress dissolved FSLIC in 1989 and transferred responsibility for administering the insurance funds for both savings associations and banks to the FDIC, see FIRREA, sections 401(a)(1), 205, the commenter argued that, if there ever were such differences, there are now no material differences in overall credit risk between deposits in FDIC-insured banks and deposits in FDIC-insured savings associations. The commenter pointed out also that sound financial management and the dictates of the Finance Board's Financial Management Policy, see Board of Directors Res. 93-133 (Dec. 15, 1993), Board of Directors Dec. Mem. 94-DM-48 (Nov. 10, 1994), require the FHLBanks to select only the most creditworthy counterparties.

Permitting the FHLBanks to count deposits in savings associations towards the statutory liquidity requirement also is sound as a matter of statutory construction. Congress enacted the Bank Act a year before it created the FDIC. See ch. 89, sec. 8, 48 Stat. 168 (June 16, 1933). Thus, the technical definition of the term "bank" provided for purposes of deposit insurance coverage could not have been the contemplated meaning of the word as used in section 11(g)(2) of the Bank Act. See *supra* section I. It appears that Congress' intent in using the phrase "deposits in banks or trust companies" was to permit the FHLBanks to make deposits only in financial institutions that accepted deposits in the ordinary course of their business. *Id.* Clearly, the plain meaning of the term "bank" at the time Congress enacted the Bank Act was a financial institution that accepts deposits. *Id.* This also is the ordinary dictionary definition of the term "bank" today.<sup>3</sup>

Although there continue to be differences between banks and savings associations, even the courts have acknowledged that "the clear, bright-line distinctions between commercial banks and savings and loans have, over the years, gradually become blurred." *Indep. Bankers*, 917 F.2d at 1128. Indeed, for purposes of other statutes,

<sup>3</sup> "A bank is an institution \* \* \* whose business it is to receive money on deposit \* \* \*." 131 Black's Law Dictionary (5th ed. 1979). The word "bank" means "an institution for receiving, lending, exchanging, and safeguarding money." 106 The Random House College Dictionary (rev. ed. 1980) (emphasis added).

the term "banks" has been defined to include savings associations, and vice versa. For example, under HOLA, the Office of Thrift Supervision considers certain types of banks to be savings associations for purposes of the qualified thrift lender test. See 12 U.S.C. 1467a(1)(A), (l); 12 CFR 583.21. Further, under the Internal Revenue Code, the meaning of the term "bank" includes savings associations for purposes of assessing taxes on certain situations common to both types of financial institutions. See 26 U.S.C. 581; Horace Russell, *Savings and Loan Associations* 307 (2d ed. 1960) ("'black,' therefore, is 'white'"). And, for purposes of the McFadden Act, 12 U.S.C. 36, which authorizes national banks to establish branches only to the extent that state banks within the same state may branch under state law, the Comptroller of the Currency has determined that savings associations are state banks. Several courts have upheld as reasonable the Comptroller of the Currency's determination.

For all of the above reasons, including the fact that savings associations now have statutory authority to accept deposits,<sup>4</sup> it is reasonable for the Board of Directors of the Finance Board to conclude that deposits in savings associations should be eligible investments for purposes of section 11(g) of the Bank Act.

### B. Federal Funds Transactions

The Board of Directors of the Finance Board has adopted the provisions of the Notice that concern federal funds transactions as proposed. The Board of Directors of the Finance Board has decided that federal funds transactions, which are highly liquid investments essentially equivalent to deposits, constitute investments that are "deposits" within the meaning of section 11(g)(2) of the Bank Act. Therefore, the final rule amends § 931.5 to include expressly the sale of federal funds to banks and trust companies as a deposit the FHLBanks may use to fulfill the liquidity requirement in section 11(g) of the Bank Act. Since the Board of Directors of the Finance Board has concluded that the term "banks" includes savings associations, savings associations, as well as banks and trust companies, are eligible counterparties

<sup>4</sup> In 1968, Congress amended section 5(b) of HOLA. See Pub. L. 90-448, Title XVII, sec. 1716(a), 82 Stat. 608 (Aug. 1, 1968); *supra* n.2. The amendment eliminated provisions that permitted savings associations to raise their capital only in the form of payments on shares and prohibited acceptance of deposits, and inserted provisions permitting savings associations to raise capital in the form of savings deposits, shares, or other accounts. *Id.*, codified at 12 U.S.C. 1464.

for federal funds transactions. The public comments received by the Finance Board support this interpretation.

For purposes of the final rule, a sale of federal funds means either a conventional federal funds transaction or a correspondent-respondent federal funds transaction. A conventional sale of federal funds involves the unsecured sale of funds held by a FHLBank in an account maintained at its district Federal Reserve Bank to a bank in need of additional funds to meet its statutory reserve requirement.<sup>5</sup> A correspondent-respondent federal funds sale involves the sale of unsecured funds directly from a FHLBank (the respondent) to a correspondent bank in need of funds to meet its statutory reserve requirement.

### III. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, the FHLBanks are not "small entities." *Id.* section 601(6). Since this final rule applies only to the FHLBanks, it does not impose any additional regulatory requirements on small entities. Thus, in accordance with section 605(b) of the RFA, *Id.* section 605(b), the Board of Directors of the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 12 CFR Part 931

Banks, banking, Federal home loan banks.

Accordingly, the Board of Directors of the Federal Housing Finance Board hereby amends chapter IX, title 12, part 931, Code of Federal Regulations, as follows:

### PART 931—DEFINITIONS

1. The authority citation for part 931 is revised to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1427, and 1431(g).

2. Section 931.5 is revised to read as follows:

#### **§ 931.5 Deposits in banks or trust companies.**

Include:

(a) A deposit in another Bank;

(b) A demand account in a Federal Reserve Bank; and

(c) A deposit in, or a sale of federal funds to:

(1) An insured depository institution, as defined in section 2(12)(A) of the Act (12 U.S.C. 1422(12)(A)), that is designated by the Bank's board of directors; or

(2) 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.

Dated: July 3, 1996.

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

Bruce A. Morrison,  
*Chairperson.*

[FR Doc. 96-19525 Filed 8-1-96; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 96-ANE-04; Amendment 39-9705, AD 96-08-01 R1]

#### **Airworthiness Directives; Hamilton Standard Model 14RF-9 Propellers**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment revises airworthiness directive (AD) 96-08-01, that is applicable to Hamilton Standard Model 14RF-9 propellers. The current AD superseded priority letter AD 95-24-09, and requires an ultrasonic shear wave inspection, adds a one-time visual and fluorescent penetrant inspection, and repair of the propeller blade shank. This revision will add a new shank eddy current inspection and will allow repair of certain blade shanks removed from service under the current AD. The actions specified by this AD are intended to prevent propeller blade separation due to propeller blade shank cracking that can result in loss of control of the aircraft.

**DATES:** Effective August 2, 1996.

The incorporation by reference of Hamilton Standard Service Bulletins (SB) Nos. 14RF-9-61-86, Revision 4, dated November 9, 1995, Alert Service Bulletin No. 14RF-9-61-A90, Original, dated November 9, 1995, and Alert Service Bulletin No. 14RF-9-61-A92, Revision 2, dated March 6, 1996, and listed in the regulations was approved

by the Director of the Federal Register as of May 1, 1996 (61 FR 16618, 4/16/96). The incorporation by reference of Hamilton Standard Service Bulletin No. 14RF-9-61-105, Original, dated July 24, 1996, is approved by the Director of the Federal Register as of August 2, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 16, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-04, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "epd-adcomments@mail.hq.faa.gov". All comments must contain the Docket No. in the subject line of the comment. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m.

The service information referenced in this AD may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096-1010; telephone (203) 654-6876. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7158, fax (617) 238-7199.

**SUPPLEMENTARY INFORMATION:** On April 1, 1996, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 96-08-01, applicable to Hamilton Standard Model 14RF-9 propellers, which superseded priority letter AD 95-24-09, and requires an ultrasonic shear wave inspection for cracks or surface indications, a one-time visual and fluorescent penetrant inspection for mechanical damage, and repair of the propeller blade shank. That action was prompted by a report of an inflight loss of a Hamilton Standard Model 14RF-9 propeller blade installed on an Embraer EMB-120 aircraft. The loss of the propeller blade resulted in the subsequent loss of the propeller and portions of the gearbox. The propeller blade separated due to a crack approximately 9 inches from the butt end of the blade. The FAA determined that the crack initiated on the outer

<sup>5</sup> Section 19(b)(2)(A) of the Federal Reserve Act requires each depository institution to maintain reserves against its transaction accounts, as the FRS Board of Governors may prescribe, for the purpose of implementing monetary policy. See 12 U.S.C. 461(b)(2)(A). These reserves are commonly referred to as "federal funds." A depository institution meets the reserve requirement by maintaining accounts at its direct Federal Reserve Bank or by holding cash in its vaults. A depository institution may sell excess reserves to another depository institution in need of additional funds to meet its reserve requirement.