FEDERAL HOUSING FINANCE BOARD

12 CFR Part 925

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1263

RIN 2590–AA18

Federal Home Loan Bank Membership for Community Development Financial Institutions

AGENCY: Federal Housing Finance Board and Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: Pursuant to the requirements of the Federal Home Loan Bank Act (Bank Act), as amended by section 1206 of the Housing and Economic Recovery Act of 2008 (HERA), the Federal Housing Finance Agency (FHFA) proposes to amend its membership regulations to authorize non-federally insured, CDFI Fund-certified community development financial institutions (CDFIs) to become members of a Federal Home Loan Bank (Bank). The newly eligible CDFIs include community development loan funds, venture capital funds and state-chartered credit unions without federal insurance. This notice of proposed rulemaking sets out the eligibility and procedural requirements for CDFIs that wish to become members of a Bank.

DATES: FHFA will accept written comments on this proposed rule on or before July 14, 2009.

ADDRESSES: You may submit your comments on the proposed regulation identified by regulatory information number (RIN) 2590–AA18, by any *one* of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA18, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA18, 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.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail to *RegComments@fhfa.gov.* Please include ''RIN 2590–AA18'' in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Federal Housing Finance Agency, Proposed Rule: Federal Home Loan Bank Membership for Community Development Financial Institutions, RIN 2590–AA18.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: Sylvia Martinez, Senior Policy Analyst/Adviser, 202–408–2825, *sylvia.martinez@fhfa.gov;* Amy Bogdon, Senior Advisor, 202–408–2546, *amy.bogdon@fhfa.gov,* Division of Federal Home Loan Bank Regulation; Deattra Perkins, Community Development Specialist, 202–408–2527, *deattra.perkins@fhfa.gov,* Division of Housing Mission and Goals. For legal questions contact Sharon B. Like, Associate General Counsel, 202–414–8950, *sharon.like@fhfa.gov.* You can send regular mail to the 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. Background

A. Statutory and Regulatory Background

Effective July 30, 2008, Division A of HERA, Public Law No. 110–289, 122 Stat. 2654 (2008), titled the Federal Housing Finance Regulatory Reform Act of 2008, created FHFA as an independent agency of the Federal Government. HERA transferred supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (collectively, Regulated Entities) from the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) to FHFA. The Regulated Entities continue to operate under regulations promulgated by OFHEO and FHFB until such time as the existing regulations are supplanted by regulations promulgated by FHFA.

Each Bank is a cooperative institution that is owned by its members, all of which must comply with certain statutory requirements in order to become members. To be eligible for Bank membership, an applicant must be one of the several types of financial institutions listed in section 4(a)(1) of the Bank Act, must meet certain other eligibility criteria, and must purchase stock of the Bank, as set forth in sections 4 and 6 of the Bank Act. *See* 12 U.S.C. 1424, 1426. The existing FHFB regulation implementing the membership eligibility and minimum stock purchase provisions of the Bank Act (Membership Regulation) is codified at 12 CFR part 925. The proposed rule would relocate part 925 in its entirety to part 1263, and would amend certain provisions of the existing Membership Regulation to accommodate the addition of CDFIs to the institutions that may become Bank members.

As a threshold matter, in order to be eligible for Bank membership, an applicant must be authorized under federal or state law to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank to which the applicant has applied for membership. Prior to amendment by HERA, section 4(a)(1) provided that any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or federally insured depository institution (including credit unions) was eligible to become a Bank member. Thus, until HERA was enacted a CDFI could not become a member of a Bank unless it also was a federally insured depository institution, such as a community development bank, thrift or credit union. As of September 30, 2008, 125 such depository institution CDFIs had become members of the Bank System. Section 1206 of HERA amended section 4(a)(1) to make all CDFIs that are certified by the CDFI Fund of the US Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994 (CDFI Act) eligible to become members of a Bank. *See* 12 U.S.C. 1424(a)(1) (as amended). Thus, loan funds, venture capital funds and state-chartered credit unions without federal deposit insurance are now eligible for Bank membership provided they are certified by the CDFI Fund and have the authority under state law to do those things necessary to become a member, *i.e.,* to buy Bank stock, borrow and pledge collateral. The proposed rule would apply only to those newly eligible institutions. CDFIs that also are eligible for membership because they are federally insured depository

institutions would continue to follow the existing rules relating to membership for depository institutions.

All institutions that are eligible for membership under section 4(a)(1) also must comply with certain additional criteria specified in section 4(a)(1) and (2) in order to be approved for membership. Specifically, under section 4(a)(1), as amended by HERA, an applicant must demonstrate that it: (a) Is duly organized under state or federal law; (b) either is subject to inspection and regulation under banking or similar laws or is certified as a CDFI under the CDFI Act; and (c) makes such home mortgage loans as are long-term loans. In addition, under section 4(a)(2), an insured depository institution applicant must: (a) Have at least 10 percent of its total assets in residential mortgage loans (unless it qualifies as a ''community financial institution'') [1]; (b) be in sound financial condition such that a Bank may safely make advances to it; (c) have a character of management that is consistent with sound and economical home financing; and (d) have a home-financing policy that is consistent with sound and economical home financing. 12 U.S.C. 1424(a)(1), (2).

The existing Membership Regulation expands on those statutory requirements and further establishes a review and approval process for applications for membership in a Bank. *See* 12 CFR 925.2, 925.3. Any institution seeking membership in a Bank is required to submit an application to the Bank for approval.[2] The Membership Regulation also includes separate provisions governing the admission of depository institutions and insurance companies, respectively, recognizing that each type of institution operates under a different business model and a different regulatory structure. The proposed rule would follow a similar approach for CDFIs, and would establish separate provisions for CDFI applicants, recognizing that they too operate in a different environment and under a different regulatory structure. The proposed rule would delineate the documentation and other information that a CDFI applicant must submit to a Bank as part of a membership application, as well as the standards that a CDFI applicant must meet in order to be deemed to have satisfied the various statutory and regulatory requirements for membership.[3]

Once a Bank has approved a CDFI for membership, the CDFI must purchase the required amount of Bank stock in order to complete the process of becoming a member of the Bank. *See* 12 U.S.C. 1426. The specific amount of stock that any new member, including a CDFI, must purchase is set out in each Bank's capital structure plan, and will vary from Bank to Bank.[4] Typically, an institution must purchase a certain amount of stock in order to become a member, and may be required to purchase additional stock in order to borrow from the Bank or to obtain other services from the Bank. In addition to purchasing stock, any member, including a CDFI, that wishes to borrow from its Bank must pledge certain types of collateral to secure its repayment obligation, and must otherwise demonstrate to the Bank that it is creditworthy. Under the Bank Act, a member may pledge only the following types of collateral for an advance: (a) Fully disbursed, whole first mortgages on improved residential property not more than 90 days delinquent, or securities representing a whole interest in such mortgages; (b) securities issued, insured or guaranteed by the U.S. Government or any agency thereof; (c) cash or deposits of a Bank; (d) other real estate-related collateral acceptable to the Bank, provided its value is readily ascertainable and the Bank can perfect its interest; and (e) for institutions that qualify as ''community financial institutions,'' secured loans for small business, agriculture or community development activities, or securities representing a whole interest in such secured loans. *See* 12 U.S.C. 1430(a)(3) (as amended). Each Bank sets its own lending and collateral policies, which may vary from Bank to Bank and which will apply to all borrowing members of that Bank.

Under the Bank Act and FHFA regulations, all members also must comply with certain community investment and first-time homebuyer lending standards in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(2); 12 CFR part 944. As discussed below, FHFA believes that any CDFI that becomes a member of a Bank should be able to satisfy the current community support requirements and therefore is not proposing to establish community support requirements unique to CDFIs, but welcomes comment on whether certain CDFIs may have difficulties in complying with the current requirements that would warrant establishing separate community support standards for CDFIs.

B. CDFIs

CDFIs are private nonprofit and for-profit financial institutions providing financial services dedicated to economic development and community revitalization in underserved markets. The CDFIs comprise diverse institutional structures and business lines. The four categories of institutions eligible for CDFI certification and CDFI Fund financial support are: (1) Federally regulated insured depository institutions and holding companies (bank CDFIs); (2) credit unions, whether federally or state chartered; (3) community development loan funds, which are unregulated institutions specializing in financing of housing, businesses or community facilities that provide health care, childcare, educational, cultural or social services; and (4) community development venture capital funds, which are unregulated institutions that provide equity and debt-with-equity-features to small and medium-sized businesses in distressed communities.

The CDFIs serve as intermediary financial institutions that promote economic growth and stability in low-and-moderate-income communities. A large number are not-for-profit community development organizations with a long history of providing lending and services to low-and-moderate-income communities. They provide a unique range of financial products and services, such as mortgage financing for low-income and first-time homebuyers; homeowner or homebuyer counseling; financing for not-for-profit affordable housing developers; flexible underwriting and risk capital for needed community facilities; financial literacy training; technical assistance; and commercial loans and investments to assist small start-up businesses in low-income areas. Some CDFIs provide

[1] A ''community financial institution'' is a depository institution that is insured by the Federal Deposit Insurance Corporation and has average total assets of $1 billion or less. 12 U.S.C. 1422(10) (as amended). This proposed rulemaking does not affect the terms under which a ''community financial institution'' may become a member of a Bank.

[2] *See* 12 CFR 925.2(a). Generally speaking, an institution is eligible to become a member only of the Bank of the district in which its principal place of business is located. An institution is deemed to be located in the state in which it maintains its home office, established as such in conformity with the laws under which the institution is organized. *See* 12 CFR 925.18.

[3] Although the proposed rule includes provisions relating to the financial condition of a CDFI applicant, those provisions are threshold requirements for admission to membership. As is the case with respect to all other members, a Bank will typically conduct a more thorough analysis of a CDFI's financial condition and the adequacy of its collateral when determining whether to make advances to such members.

[4] Because the Chicago Bank has not yet implemented its capital structure plan, any CDFI that becomes a member of that Bank must purchase stock in the amount specified by 12 CFR 1263.20 of the proposed rule, which carries over the provisions from 12 CFR 925.20 of the existing rules.

community facilities such as child care centers alongside affordable housing.

Frequently, CDFIs serve communities that are underserved by conventional financial institutions and may offer products and services that are not available from conventional financial institutions. Their lending and community support activities are thus consistent with the Banks' housing mission. By stabilizing the communities in a Bank's District, CDFIs can provide added value to that Bank as well as its members.

There is no single source of information covering all CDFIs, but reports from the CDFI Fund and other organizations provide a picture of the industry. A 2007 study by Abt Associates,[5] which included both certified and uncertified CDFIs, estimated that there were as many as 1,122 CDFIs throughout the country in 2005. The CDFI Fund reported that there were 804 certified CDFIs as of March 1, 2008.[6] Loan funds, most of which are nonprofit organizations, accounted for 68 percent of the certified CDFIs. Eighteen percent of certified CDFIs were credit unions, 10 percent were banks or holding companies, and 3.5 percent were community venture funds.

CDFIs are generally small in asset size. The CDFI Fund reported that the average asset size for certified CDFIs was $32 million for depository institutions and $22.5 million for non-depository institutions.[7] Despite the typical CDFI's relatively small asset size, studies demonstrate meaningful impact to low-and-moderate income communities by these intermediaries. The CDFIs provide diverse financial services and other benefits to urban, rural and Native communities. A 2003–2005 trend analysis by the CDFI Fund [8] reported that its sample of CDFIs financed over 90,000 units of housing, 80,000 of which were affordable housing units. This group of CDFIs also provided financing and counseling for over 12,000 first-time homebuyers over this period. The Opportunity Finance Network, a trade association of 160 CDFI members, reports that over the past 20 years, its members financed over 533,394 housing units.[9] Given the credit conditions across the country, demand for CDFI products and services is expected to increase. In a recent survey conducted by the Opportunity Finance Network, CDFI respondents reported an increase in demand for their products as a result of the declining availability of bank credit.[10] However, one common problem facing non-depository CDFIs is that they do not have access to long-term funding, limiting their ability to provide housing finance to their communities.

The CDFI Fund of the U.S. Treasury was created to promote economic revitalization and community development through investment in and financial and technical assistance to CDFIs. *See* 12 U.S.C. 4701(b). The CDFI Fund promotes these purposes through several programs, including the CDFI Program, the New Markets Tax Credit Program, the Bank Enterprise Award Program and Native Initiatives. *See* 12 U.S.C. 4701 *et seq.*; 12 CFR part 1805; *http://www.cdfifund.gov.*

An institution must apply to the CDFI Fund in order to receive awards under its programs. *See* 12 U.S.C. 4704; 12 CFR 1805.200. To receive a CDFI award, an institution must be certified by the CDFI Fund as a qualifying CDFI under the CDFI Act. An institution may apply for CDFI certification at any time. If an organization is already certified as a CDFI, the CDFI Fund may require as a condition for receiving an award, that a CDFI submit a Certification of Material Events form attesting that there has been no occurrence that affects the organization's strategic direction, mission or business operation and, thereby, its status as a CDFI. An applicant for CDFI certification must meet each of the following general requirements in order to be certified as a CDFI:

(i) Is a legal entity at the time of certification application;

(ii) Has a primary mission of promoting community development;

(iii) Is a financing entity;

(iv) Principally serves an economically distressed area, low-income population, or other population that lacks access to financing (known as an eligible ''target market'');

(v) Provides technical assistance, training or other development services in conjunction with its financing activities;

(vi) Is accountable to its target market through representation on its board or other means; and

(vii) Is a non-governmental entity that is not controlled by one or more governmental entities (Tribal governments excluded).

See 12 U.S.C. 4702(5); 12 CFR 1805.201.

The CDFI certification eligibility requirements are more fully elaborated in the CDFI program regulations. *See* 12 CFR 1805.201. The CDFI Fund is not a regulator of CDFIs, and does not evaluate their safety and soundness during either the certification or awards application processes at the level that would be conducted by a financial safety and soundness regulator. The CDFI Fund regulations further state that a CDFI certification does not constitute an opinion by the CDFI Fund as to the financial viability of the certified CDFI or that the CDFI will be selected to receive an award from the CDFI Fund. *See* 12 CFR 1805.201(a). Thus, receipt of a certification or award alone does not indicate that a CDFI is financially sound, but only that it meets the certification or award eligibility criteria.

C. HERA Section 1201

Section 1201 of HERA requires the FHFA Director to consider the differences between the Banks and the Enterprises in rulemakings that affect the Banks with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure and joint and several liability. *See* 12 U.S.C. 4513(f). In preparing the proposed rule, the Director considered these factors and determined that the rule is appropriate, particularly because the proposed amendments would implement statutory provisions of the Bank Act that apply only to the Banks. *See* 12 U.S.C. 1424(a). Nonetheless, FHFA requests comments about whether these factors should result in a revision of the proposed amendment as it relates to the Banks.

[5] *See* Abt Associates, *Assessment of Community Development Financial Institutions Fund (CDFI) Training Program, Training Program & CDFI Certification,* August 17, 2007 (p.2). This estimate is based on a list of CDFIs that either were included in one of the CDFI Fund's databases or had received a CDFI Data Project (CDP) survey in the past three years.

[6] Community Development Financial Institutions Fund, ''*Overview. CDFI Fund Director's presentation before the National Interagency Community Reinvestment Conference.''* San Francisco: Federal Reserve Bank of San Francisco, April 1, 2008.

[7] Community Development Financial Institutions Fund, ''*Overview.''* Presented April 1, 2008.

[8] Community Development Financial Institutions Fund, *Three Year Trend Analysis of Community Investment Impact System Institutional Level Report Data FY 2003–2005.* US Department of the Treasury. December 2007. The report includes data for 2003 from 223 CDFIs, for 2004 from 236 CDFIs and for 2005 from 173 CDFIs.

[9] Opportunity Finance Network, *Overview: About Opportunity Finance Network. See http://www.opportunityfinance.net/about/about.aspx.* Accessed on December 15, 2008.

[10] Opportunity Finance Network, *Findings from the Third Quarter 2008 CDFI Market Conditions Survey,* October 2008.

II. Analysis of Proposed Rule

A. Relocation of Membership Regulation to Part 1263

The proposed rule would relocate the Membership Regulation in its entirety from part 925 of the FHFB regulations to part 1263 of the FHFA regulations. The proposed rule also would amend certain provisions of the relocated Membership Regulation to allow CDFIs to become Bank members. Although those amendments are not evident from the regulatory text of the proposed rule because the provisions are being relocated in their entirety, any material revisions to the regulatory text are discussed in this preamble.

B. Scope of the Proposed Regulation

As noted previously, approximately 125 depository institutions that also are CDFIs have already become members of a Bank by virtue of their status as federally insured depository institutions. Under the terms of this proposed rule, any such institutions that seek to become members of a Bank in the future would be required to follow the existing membership regulations and procedures applicable for insured depository institutions. The amendments embodied in this proposed rule are intended to apply only to those types of CDFIs that were not eligible for membership prior to the passage of HERA, such as loan funds, venture capital funds and credit unions with state or private insurance.

C. Definitions

Consistent with the scope of the proposed regulation, FHFA is proposing to amend the definitions section of the Membership Regulation by revising existing definitions and adding new definitions to reflect the statutory changes related to CDFI members. Thus, section 1263.1 of the proposed rule defines ''community development financial institution'' and ''CDFI'' to include any institution that is certified as a CDFI by the CDFI Fund of the U.S. Department of the Treasury, other than a bank or savings association that is insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) or a credit union that is insured under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*). Because federally insured depository institutions and credit unions already are eligible for membership under the pre-HERA law, the definition of CDFI excludes those institutions. The proposal also defines ''CDFI credit union'' as a state chartered credit union that has been certified by the CDFI Fund and does not have federal deposit insurance. The CDFI credit unions are the only types of depository institution that are affected by the HERA CDFI amendments and, for reasons stated below, those entities will be evaluated for financial condition under the same provisions that currently apply to state chartered credit unions that are currently eligible for membership because they are insured by the National Credit Union Administration (NCUA).

The proposed rule also adds or revises several other definitions in order to accommodate the admission of CDFIs to Bank membership. Those defined terms are ''appropriate regulator,'' ''CDFI Fund,'' ''gross revenues,'' ''operating expenses,'' ''restricted assets,'' ''total assets,'' and ''unrestricted cash and cash equivalents.'' The proposal would revise the existing definition of ''appropriate regulator'' to add CDFI credit unions to the list of financial institutions included within the current rule. As noted previously, FHFA is proposing to subject CDFI credit unions to the same financial condition provisions that apply to state chartered credit unions that are insured by the NCUA, and these definitions are consistent with that approach. Most of the other new definitions relate to terms that are used elsewhere in the proposal to measure the financial condition and performance of those CDFIs that are not subject to state or federal regulation. Generally speaking, these financial definitions are intended to reflect the terms used in the financial performance standards employed by the CDFI Fund or by third-party auditors experienced in assessing the financial performance of the CDFIs. FHFA requests comments on whether the proposed definitions are appropriate in the context of assessing the financial condition of CDFI applicants.

Apart from those new or revised definitions, the proposed rule carries over into part 1263 all of the existing definitions from the Membership Regulation, some of which include minor clarifying or technical changes.

D. Application Process

Subpart B of the current Membership Regulation includes several provisions—§§ 925.2 to 925.5—relating to the process for the submission and consideration of applications for membership. The proposed rule would relocate all of those provisions without substantive change to proposed §§ 1263.2, 1263.3, 1263.4, and 1263.5, respectively. The proposed rule would make minor changes to certain of those provisions, none of which are intended to change the substance of those provisions.

E. Eligibility Requirements

Subpart C of the current Membership Regulation includes 13 provisions relating principally to the eligibility requirements for membership and how they are to be applied to the various types of institutions that may become members of a Bank. Some of these regulatory provisions are readily applicable to CDFIs in the same manner as other financial institutions, but others require some adaptation to reflect the unique characteristics of CDFIs. The proposed rule would amend certain of these provisions to address the statutory changes that have allowed CDFIs to become members. In proposing these amendments, FHFA has sought to develop regulatory standards that recognize the unique characteristics of CDFIs and the valuable contribution they make to their communities, while remaining sufficiently rigorous to comply with the statutory requirements.

General eligibility requirements. Section 4(a)(1) of the Bank Act requires that all applicants for Bank membership meet certain requirements for membership. These requirements are currently listed in § 925.6(a) of the Membership Regulation and are being retained in the proposed rule at proposed § 1263.6(a). With respect to proposed § 1263.6(a), the only change to the existing regulatory text would be to add ''community development financial institution'' to the list of entities eligible for membership. As discussed above, that term has been defined to exclude federally insured depository institutions and credit unions, because such institutions are already authorized to become Bank members.

Section 4(a)(2) of the Bank Act further requires any ''insured depository institution'' applicant to have at least 10 percent of its assets in residential mortgage loans, be in sound financial condition, and have sound management and home financing policy. 12 U.S.C. 1424(a)(2). The term ''insured depository institution'' is defined in the Bank Act to include any federally-insured bank, savings association or credit union, and thus does not include the newly-eligible CDFIs or insurance companies. *See* 12 U.S.C. 1422(9). Nonetheless, the Bank Act does not preclude FHFA from applying these concepts to other types of applicants, based on its authority to ensure that the Banks operate in a safe and sound manner and carry out their public policy missions. Indeed, FHFA's predecessor agency, FHFB, exercised that authority to require all applicants without federal deposit insurance, *i.e.,* insurance companies, to have mortgage-

related assets that reflect a commitment to housing finance. 12 CFR 925.6(c); *See* 58 FR 43522 (Aug. 17, 1993). FHFB reasoned that such an approach treated all applicants in an equitable and consistent manner, and was consistent with the housing finance mission of the Banks. *See id.* at 43531–43533. FHFA believes that rationale can apply as well to the newly eligible CDFI applicants, and thus is proposing to require such CDFI applicants to have mortgage related assets that reflect a commitment to housing finance. FHFA expects that the Banks will assess the commitment to housing finance requirements in light of the unique community development focus of the business of CDFIs. Because the language of the current regulation already applies to any applicant that is not an insured depository institution, no amendment to proposed § 1263.6(c) is necessary to affect this change.

In a similar manner, the proposed rule would require the newly eligible CDFI applicants to satisfy requirements relating to financial condition, character of management and home financing policy. When FHFB extended those provisions to insurance companies, it reasoned that they were sufficiently important to concepts of safety and soundness and the housing finance mission to warrant doing so. *See* 58 FR at 43533. FHFA believes that the same rationale should apply to the newly eligible category of CDFI applicants. Thus, the proposed rule would retain the provisions within Subpart C, which would be amended as necessary to implement the CDFI provisions of HERA. The amendments to particular provisions within Subpart C are discussed separately below.

Duly organized requirement. Section 4(a)(1)(A) of the Bank Act requires that an applicant for membership be duly organized under the laws of any state or of the United States. 12 U.S.C. 1424(a)(1)(A). Section 1263.7 of the proposed rule would amend the current language of § 925.7, which implements this provision, to provide that a newly eligible CDFI applicant shall be deemed to be duly organized if it is incorporated under state law. The current regulation allows an applicant to satisfy this provision if it is chartered as one of several types of depository institutions or as an insurance company. Because most CDFIs will not have such a charter, FHFA believes that being incorporated under state law is sufficient to demonstrate that a CDFI meets this requirement of the statute.

Inspection and regulation requirement. Section 4(a)(1)(B) of the Bank Act generally requires an applicant for membership to be subject to inspection and regulation under state or federal banking or similar laws. In the case of a CDFI, the statute imposes an alternative requirement, which is that the applicant be certified by the CDFI Fund. *See* 12 U.S.C. 1424(a)(1)(B). Accordingly, newly-eligible CDFI applicants are not required to meet the inspection and regulation requirement and, therefore, there is no need to amend the existing regulatory language, which would be carried over into proposed § 1263.8. As discussed earlier, the requirement that a CDFI applicant be certified by the CDFI Fund in order to be eligible for membership is addressed by the definition of ''CDFI'' in proposed § 1263.1. The proposed rule, however, does make certain clarifying revisions to the existing regulation text of proposed § 1263.8, which are not intended to alter the substance of the provision.

Long-term mortgage loans requirement. Section 4(a)(1)(C) of the Bank Act requires that an applicant for membership make long-term home mortgage loans. 12 U.S.C. 1424(a)(1)(C). ''Long-term'' is defined in § 925.1 to include loans with a term to maturity of five years or greater. 12 CFR 925.1. ''Home mortgage loan'' is defined in § 925.1 to include, among other things, first mortgages on one-to-four family or multifamily property, and mortgage pass-through securities backed by such mortgages. *See id.* Section 925.9 of the Membership Regulation, which implements these provisions, provides that an applicant is deemed to meet this requirement if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant originates or purchases long-term home mortgage loans. 12 CFR 925.9. Some newly-eligible CDFI applicants, such as loan funds and venture capital funds, do not file regulatory financial reports. Accordingly, proposed § 1263.9 would amend the existing language to provide that a Bank shall determine whether a CDFI applicant meets the ''makes long-term home mortgage loans'' requirement based on other documentation provided to the Bank, and contemplates that a Bank can decide what level of documentation can best allow it to determine whether a particular type of CDFI satisfies this requirement.

Financial condition requirements. The current Membership Regulation includes two separate provisions relating to the financial condition of applicants for membership. Section 925.11 relates to depository institutions (which includes federally insured state chartered credit unions), while § 925.16 relates to insurance companies. The proposed rule would relocate those provisions to proposed §§ 1263.11 and 1263.16, respectively, and would amend both of them to incorporate language relating to CDFI applicants.

In proposed § 1263.11, FHFA would require CDFI credit unions to comply with the same financial condition requirements that currently apply to state chartered credit unions that are insured by the NCUA.[11] All credit unions chartered by a particular state operate under the same state laws and regulations. All are subject to oversight by the same state regulatory agency and would have the same financial reporting and examination requirements at the state level. Thus, for this category of CDFI, FHFA believes that it is most appropriate for the Banks to evaluate financial condition under the same regulatory provisions that apply to all other credit union and depository institution applicants. Those provisions are set out in proposed § 1263.11(a) and (b) and require the Banks to evaluate the financial condition of the applicants based on information in the regulatory financial reports they file with their applicable regulators, their audited financial statements, and the examination reports prepared by their regulators. The key distinction for CDFI credit unions is that they are not subject to oversight by the NCUA and consequently do not file financial regulatory reports with the NCUA. Nonetheless, the CDFI credit unions should file comparable reports with their appropriate state regulator, and FHFA believes that those documents can be used by the Banks to assess the financial condition of the CDFI credit unions, applying the same criteria as in the existing regulations. To the extent that any state chartered credit unions without NCUA insurance may not in fact file regulatory financial reports with their state regulator that are comparable to those filed by NCUA-regulated credit unions, or are not required to have audited financial statements or submit to regulatory examinations, FHFA requests comments on what other documentation such entities would prepare that would provide the Banks with comparable information about their financial condition.

To bring the CDFI credit unions within the scope of the current financial condition requirements for depository institutions, the proposed rule would amend the existing regulatory text in two locations. The first amendment

[11] As of December 31, 2008, 955 credit unions were members of the Bank System. Of that number, 476 are state chartered and 479 are federal credit unions.

would revise proposed § 1263.11(a) to list the types of depository institutions that are subject to its provisions and to include CDFI credit unions within that list. The second amendment would add a new provision, proposed § 1263.11(b)(3)(iii), which would require all CDFI credit unions to meet certain performance trend criteria. Under the current regulation, the only depository institutions that must satisfy those criteria are institutions with a composite examination rating of ''2'' or ''3''. Because the CDFI credit unions are not subject to oversight by the NCUA and because the Banks may be less familiar with state examination ratings, FHFA believes that it is prudent to require all such CDFI credit unions to demonstrate that their earnings, nonperforming assets, and allowance for loan and lease losses are consistent with the existing performance criteria. Apart from those amendments, proposed § 1263.11 would retain all of the language from the existing § 925.11. FHFA requests comments on whether the application of these standards is appropriate for CDFI credit unions and whether the nature or extent of oversight and examination by a state regulator differs in any manner that would require any of the provisions in this section to be modified. For example, the current rule requires the submission of quarterly regulatory financial reports and information from a regulatory examination report. To the extent that any state chartered CDFI credit unions might not have quarterly reports, financial statements audited by a certified public accountant or regulatory examination reports, FHFA seeks information on the types of financial condition statements and regulatory reports that such entities do submit and what types of examination and rating are provided by the state regulators.

For all other CDFIs, such as CDFI loan funds and venture capital funds, FHFA is proposing new financial condition requirements. These requirements would be incorporated into the existing provisions relating to insurance companies, set out in proposed § 1263.16(b). Institutions in this category of CDFIs are not subject to the same degree of state or federal oversight as are depository institutions and insurance companies. Thus, they may not be able to provide the Banks with documentation similar to examination reports or periodic regulatory financial reports to aid the Banks in assessing their financial condition. Although these CDFIs will have been certified by the CDFI Fund, that process does not include an assessment of the CDFI's financial condition. Moreover, the type and extent of available financial documentation will differ for the various categories of CDFIs. Although some CDFI loan funds and venture capital funds may be able to obtain private ratings that would be analogous to those relating to depository institutions, those are not routinely generated. Because of those differences, FHFA is proposing to establish separate financial documentation requirements and approval standards for assessing the financial condition of this category of CDFIs, which are intended to be analogous to those applicable to other applicants, while taking into account the unique characteristics of CDFIs.

The structure of proposed § 1263.16(b) would generally parallel that used for depository institutions, *i.e.,* the regulation would identify the types of financial documents that a Bank must review in assessing a CDFI's financial condition and would establish standards for determining whether an applicant's financial condition is sufficiently sound to admit it to Bank membership. Those amendments are described below.

Section 1263.16(b)(1) of the proposed rule would specify two categories of financial documents that a Bank must obtain and review when assessing a CDFI's financial condition, and would authorize a Bank to request any additional documents that it deems necessary to assessing the financial condition of the CDFI applicant. The first category of documentation relates to financial statements, and requires the submission of an independent audit that has been conducted within the prior year by a certified public accounting firm, in accordance with generally accepted auditing standards (GAAS), as well as more recent quarterly financial statements, if those are available. An applicant also must submit financial statements for the two years prior to the most recent audited financial statement. At a minimum, all such financial statements must include income and expense statements, statements of activities, statements of financial position, and statements of cash flows. The financial statements for the most recent year also must include detailed disclosures or schedules relating to the affiliates of the CDFI applicant regarding the financial position of each affiliate, their lines of business, and the relationship between the affiliates and the applicant CDFI.

FHFA believes that the use of a GAAS-consistent audited financial statement is a uniform and reliable means by which an applicant can demonstrate to a Bank that it is in sound financial condition, particularly in the absence of the regulatory financial and examination reports that the Banks typically consider in evaluating other depository institutions and insurance companies for membership. Nonetheless, FHFA requests comments on whether there might be alternatives to GAAS-compliant audited financial statements that would allow a Bank to assess accurately the financial condition of a CDFI applicant. If certain CDFIs do not typically obtain audited financial statements, FHFA might consider allowing the Banks to use alternative financial statements, but asks that any persons recommending such alternatives provide detailed information about the quality of such alternatives and the frequency at which they would be prepared. Examples of such alternatives might include financial statements that, while not prepared by a certified public accounting firm, would be substantially similar to audited financial statements, or financial statements prepared by a CDFI that have some other means of assuring that they accurately present its financial condition. FHFA will consider allowing the use of such alternative financial statements in the final rule if it can be reasonably assured that the Banks can rely on them to determine that the CDFI applicant is in sound financial condition.

Section 1263.16(b)(1)(ii) and (iii) of the proposed rule further requires a CDFI applicant to provide the Bank with a copy of the certification it has received from the CDFI Fund, as well as any other financial information concerning its financial condition that is requested by the Bank. With respect to the issue of certification, each CDFI applicant generally must provide a certification issued by the CDFI Fund no more than three years prior to the date of the CDFI's application for Bank membership. If an applicant's CDFI certification does not meet that requirement, the applicant must submit to the Bank a written statement that there have been no material events or occurrences since the date of certification that would adversely affect its strategic direction, mission, or business operations, and thereby its status as a CDFI.

Section 1263.16(b)(2) of the proposed rule sets out minimum financial condition standards that a CDFI must meet in order to become a member of a Bank. Those standards relate to net assets, earnings, loan loss reserves, and liquidity, and are described below.

Net asset ratio. The proposed rule would require that a CDFI applicant have a ratio of net assets to total assets

of at least 20 percent, which is intended to address the capital adequacy of the CDFI. For purposes of this provision, ''net assets'' is to be calculated as the residual value of assets (including restricted assets) over liabilities and is to be based on information derived from the applicant's most recent financial statements.

FHFA is proposing this approach because it understands that the inclusion of restricted assets within net assets is consistent with the approach used by the CDFI Fund and others in the CDFI industry, as well as with the accounting standards for nonprofit entities. Restricted assets typically appear on CDFI balance sheets when donor or government funds are specifically designated as capital, and are thereby ''restricted'' as to their possible uses. When used in this manner, the capital may be classified as restricted, but it is nonetheless available to absorb any losses. For example, the CDFI Fund commonly awards funding for loan loss reserves, which may serve to lower a CDFI's borrowing costs. FHFA requests comment on the inclusion of restricted assets in the net asset ratio, and on the proposed use of a minimum net asset ratio of 20 percent for membership eligibility.

Earnings. The proposed rule would require a CDFI applicant to demonstrate that it has some earnings capacity. Thus, an applicant must show that it has generated a positive net income for any two of the three most recent years. For purposes of this provision, net income would be defined as gross revenues less total expenses, based on information derived from the applicant's most recent financial statements. In the definitions section of the regulation, the proposal defines ''gross revenues'' to mean total revenues received from all sources, including earnings from operations, grants and other donor contributions. This requirement is adapted from the earnings requirement for insured depository institutions in the current regulation, which requires that the applicant's adjusted net income be positive in four of the six most recent calendar quarters. Because CDFIs may not typically file quarterly regulatory reports, and generally obtain an audit of their financial statements only once a year, FHFA proposes to require that earnings be positive in two of the three most recent years, rather than four of the six most recent calendar quarters. FHFA requests comment on the appropriateness of this measure of earnings and on the proposed minimum eligibility standard.

Loan loss reserves. The proposed rule would require that an applicant's ratio of loan loss reserves to loans and leases 90 or more days delinquent, including loans sold with full recourse, be not less than 30 percent. The information to determine compliance with this provision should be derived from the applicant's most recent financial statements. Loan loss reserves, which help the CDFIs self-insure against losses, are defined within this provision to mean a specified balance sheet account that reflects the amount reserved for loans expected to be uncollectible. The proposed rule is intended to provide a flexible and relative standard, to acknowledge the CDFIs' mission and loan origination practices while also requiring a buffer to protect the organization's continued solvency and ongoing operation. The 30 percent threshold is half of the requirement that would apply to depository institution applicants. FHFA is proposing to allow the lower ratio in recognition of a historically lower delinquency rate among CDFI-originated loans, which have performed equal to or better than prime loans. As noted, the CDFIs' fundamental mission is to stabilize communities. Most CDFIs hold the loans they make and, consequently, the risk in portfolio. These two conditions prompt the use of careful underwriting, intensive homeowner and financial counseling, and subsidies to assure borrower affordability. CDFIs have the ability to modify a loan in response to a borrower's adverse life event, thus preventing a foreclosure. Given these unique circumstances, lower loan loss reserves would permit more capital to go to borrowers. However, given current housing market conditions, FHFA requests comment on the appropriateness of the proposed loan loss reserve measure, the rationale for the different standard for CDFIs, or whether there are any alternative standards that might also serve this purpose.

Liquidity ratio. The proposed rule would require that an applicant's operating liquidity ratio be no less than 1.0 for the current year, *i.e.,* the year during which a CDFI applies for membership, as well as in at least one of the two years preceding the current year. The operating liquidity ratio is to include in the numerator unrestricted cash and cash equivalents and in the denominator the average quarterly operating expense for the four most recent quarters. FHFA believes that this operating liquidity ratio provides a measure of funds available to pay expenses and creditors by requiring a CDFI to have sufficient liquidity to cover average operating expenses for one quarter. FHFA requests comment on the appropriateness of the proposed requirement for operating liquidity.

Self-Sufficiency or Sustainability Ratio. The self-sufficiency or sustainability ratio is a measure used to evaluate the extent to which a CDFI can cover its expenses from earned revenue and, by inference, the CDFI's independence from grants and loans. The ratio is computed as earned revenue divided by total expenses. Full self-sufficiency is achieved when a CDFI achieves a ratio of 1.0 (100 percent) or greater. However, self-sufficiency ratios are affected by the type of services and grant programs operated by the CDFI. In some cases, the self-sufficiency ratio may not adequately portray the financial condition of the CDFI, and too stringent a ratio could countermand the service delivery requirements for certification by the CDFI Fund. *See* 12 U.S.C. 4701(b). The proposed rule does not include a requirement for the self-sufficiency ratio, but FHFA seeks comment on whether to include a standard for the self-sufficiency ratio as part of the minimum financial condition standards for CDFI members and, if so, what the threshold standard should be.[12]

CDFI Bank Holding Companies. FHFA understands that there are some bank holding companies that are certified as CDFIs, but it is not including that category of institution in the proposed rule. Any bank holding company would, by definition, control a federally insured commercial bank, which is eligible for Bank membership in its own right. Given that authority, FHFA believes that the appropriate vehicle for Bank membership for such enterprises is through the existing process for insured depository institutions. Nonetheless, FHFA requests comment on whether it should include in the final rule additional provisions relating to bank holding company membership based on CDFI status. To the extent that any commenters address this issue, FHFA also asks that they provide information about specific holding companies that operate as CDFIs, their relationships to their depository institution subsidiaries, and how membership via the CDFI

[12] By way of reference, between 2003 and 2005, the sustainability ratio for CDFI loan funds averaged around 65 percent; the median was 63 percent. Venture capital funds, which have a different business line, had a sustainability ratio of 68 percent. Credit unions principally dedicated to lending would be expected to consistently have ratios in excess of 100 percent. *See Approaches to CDFI Sustainability: Report prepared by the Aspen Institute Economic Opportunities Program, for the Department of the Treasury, Community Development Financial Institutions Fund,* July 2008.

provisions would provide benefits not available as a result of the depository institution becoming a member.

Character of Management. The current § 925.12 requires that an applicant's character of management be consistent with sound and economical home financing. To meet the existing requirement, an applicant must provide the Bank with a certification that it has not, since the applicant's most recent regulatory examination report, been subject to any enforcement actions, criminal, civil or administrative proceedings, or criminal, civil or administrative monetary liabilities, lawsuits or judgments.

The proposed rule would amend the existing provision by replacing the reference to ''applicant'' with a listing of the types of entities to which proposed § 1263.12(a) would apply. The list would include the institutions currently covered by this provision, *i.e.,* depository institutions and insurance companies, and also would add CDFI credit unions to that category. As noted previously, because state chartered credit unions that are insured by NCUA must comply with this provision, FHFA believes that those provisions should apply as well to state chartered credit unions that qualify as CDFI credit union applicants.

Because certain of the newly-eligible CDFIs, such as loan funds and venture capital funds, are not regulated and, therefore, do not undergo regulatory examinations and are not subject to enforcement actions, the proposed rule would amend proposed § 1263.12(b) to require such applicants to provide to the Bank the same certification, except for enforcement actions, with respect to the past three years. In light of the fact that these CDFIs are not subject to CAMELS-type ratings produced by the banking regulators, which evaluate an institution's management, FHFA requests comment on whether there are any other means by which a Bank can assess the character of a CDFI applicant's management.

Home Financing Policy. Under the current Membership Regulation, applicants with a ''Satisfactory'' or better Community Reinvestment Act (CRA) rating are deemed to meet the requirement that their home financing policy is consistent with sound and economical home financing. Section 1263.13(b) of the proposed rule would retain the existing requirement that applicants not subject to the CRA—such as CDFI applicants—must provide a written justification, acceptable to the Bank, explaining how and why their home financing policy is consistent with the Bank System's housing finance mission.

Rebuttable Presumptions. Section 925.17 of the Membership Regulation allows presumptions of compliance or noncompliance with certain membership eligibility requirements to be rebutted, upon meeting certain requirements set forth in that regulation. The proposed rule would amend the regulatory language to enable newly-eligible CDFI applicants to rebut presumptive noncompliance with such membership eligibility requirements, in the same manner as other applicants may do under the current regulations.

Accordingly, the proposed rule would extend the existing rebuttal provisions relating to presumptive noncompliance with the financial condition and character of management requirements to CDFI applicants. Such applicants could rebut those presumptions by submitting a written justification providing substantial evidence, acceptable to the Bank, demonstrating that their financial condition and character of management are both consistent with the standards for approval as members.

Proposed § 1263.17(e)(2) would provide that if a CDFI applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude in the past three years, the applicant must provide a written analysis indicating that the proceedings will not likely have a significantly deleterious effect on the applicant's operations. The written analysis must address the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

Proposed § 1263.17(e)(3) would provide that if there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the CDFI applicant or any of its directors or senior officers in the past three years that are significant to the applicant's operations, the applicant must provide a written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable net asset ratio set forth in proposed § 1263.16(b)(2)(i). The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

F. Subpart D—Stock Purchase Requirements

The proposed rule would make various technical changes to the stock purchase requirements currently set forth in various provisions of Subpart D. At present, the minimum stock purchase requirements specified in § 925.20(a) are based on statutory provisions that cease to apply to a Bank once it has converted its capital structure to the form required by the Gramm-Leach-Bliley Act (GLB Act). Because all but one of the Banks has completed its capital conversion, proposed § 1263.20 is being amended to add language to indicate that the minimum stock purchase requirement for a member shall be the minimums specified in each Bank's capital structure plan. For members of the Bank that has not converted, the stock purchase requirement shall continue to be as specified in the Membership Regulation. The proposed rule also makes some conforming changes to proposed §§ 1263.21 and 1263.22, both of which relate to distinctions based on conversion to the GLB Act capital structure.

G. Other Subparts

The proposed rule makes no substantive changes in any of the remaining subparts of the Membership Regulation. In Subpart H, relating to the reacquisition of membership, the proposed rule would delete language from the current § 925.30(b) relating to institutions that withdrew from membership prior to December 31, 1997, as the passage of time has rendered that language moot.

H. Community Support Amendment—Part 944

Section 10(g)(1) of the Bank Act requires FHFA to establish standards of community investment or service for members of the Banks to maintain continued access to long-term Bank advances, taking into account factors such as a member's performance under the CRA and the member's record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(1), (2). The FHFB regulation setting forth such ''community support'' standards is at 12 CFR part 944. Under these provisions, a Bank member that is subject to the CRA is deemed to meet the CRA standard if its most recent CRA evaluation is ''outstanding'' or ''satisfactory.'' *See* 12 CFR 944.3(b)(1). A member also is presumed to meet the first-time homebuyer lending standard if its CRA evaluation is ''outstanding'' and there are no public comments or other

information to the contrary. 12 CFR 944.3(c). Members that are not subject to the CRA, such as credit unions and insurance companies, are only required to meet the first-time homebuyer lending standard. *Id.* Because the newly eligible CDFIs are not subject to the CRA, they would only be subject to the first-time homebuyer lending standard. Section 944.3(c)(1) includes a non-exclusive list of eligible activities that meet the first-time homebuyer lending standard, such as: having an established record of lending to first-time homebuyers; providing homeownership counseling programs for first-time homebuyers; providing or participating in marketing plans and related outreach programs targeted to first-time homebuyers; and providing technical assistance or financial support to organizations that assist first-time homebuyers. *See id.* at 944.3(c)(1).

FHFA believes that a CDFI should be able to comply with these requirements, even if it is not subject to the CRA and may have limited experience in lending to first-time homebuyers. Nonetheless, FHFA requests comments on whether it is appropriate to apply the current requirements to CDFIs or whether it would be appropriate to adopt an alternative community support standard for CDFIs that recognizes their unique mission and business practices while still complying with this statutory requirement.

I. Community Financial Institution Amendments

Apart from the amendments authorizing certified CDFIs to become Bank members, HERA included certain other amendments relating to ''community development activities.'' Section 1211 of HERA amended the Bank Act to broaden the circumstances under which ''community financial institutions'' (CFI), which are FDIC-insured members with average total assets of $1 billion or less, may obtain advances. Specifically, HERA allowed CFIs to obtain long-term advances for the purpose of funding ''community development activities'' and further allowed CFIs to pledge secured loans for ''community development activities'' as collateral for their advances. Because a CFI must be an institution with FDIC insurance, it does not appear that any of the newly eligible CDFIs, all of which would lack FDIC insurance, would be eligible to take advantage of these amendments to the advances and collateral provisions of the Bank Act. Nonetheless, the Finance Agency requests comments on whether there is any basis in the legislative history to HERA or otherwise on which it could reasonably rely to construe the new CFI provisions as applying to CDFIs as well as CFIs.

III. Paperwork Reduction Act

The information collection contained in the current Membership Regulation, entitled ''Members of the Banks,'' has been assigned control number 2590–0003 by the Office of Management and Budget (OMB). The proposed rule, if adopted as a final rule, would not substantively or materially modify the approved information collection. Consequently, FHFA has not submitted any information to OMB for review under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501, *et seq.*

IV. Regulatory Flexibility Act

The proposed rule, if adopted as a final rule, will apply 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, 5 U.S.C. 605(b), the General Counsel of FHFA hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Parts 925 and 1263

Federal home loan banks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FHFA proposes to amend chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 925—MEMBERS OF THE BANKS

1. Transfer 12 CFR part 925 from chapter IX, subchapter D, to chapter XII, subchapter D and redesignate as 12 CFR part 1263.

2. Newly redesignated part 1263 is revised to read as follows:

PART 1263—MEMBERS OF THE BANKS

Subpart A—Definitions

Sec.

Subpart B—Membership Application Process

Subpart C—Eligibility Requirements

Subpart D—Stock Requirements

Subpart E—Consolidations Involving Members

Subpart F—Withdrawal and Removal From Membership

Subpart G—Orderly Liquidation of Advances and Redemption of Stock

Subpart H—Reacquisition of Membership

Subpart I—Bank Access to Information

Subpart J—Membership Insignia

Authority: 12 U.S.C. 1422, 1423, 1424, 1426, 1430, 1442, 4511, 4513.

Subpart A—Definitions

§ 1263.1 Definitions.

For purposes of this part:

Adjusted net income means net income, excluding extraordinary items such as income received from, or expense incurred in, sales of securities or fixed assets, reported on a regulatory financial report.

Aggregate unpaid loan principal means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts and similar obligations.

Allowance for loan and lease losses means a specified balance-sheet account

held to fund potential losses on loans or leases, that is reported on a regulatory financial report.

Appropriate regulator means:

(1) In the case of an insured depository institution or CDFI credit union, the Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, or appropriate state regulator that has regulatory authority over, or is empowered to institute enforcement action against, the institution, as applicable, and

(2) In the case of an insurance company, an appropriate state regulator accredited by the National Association of Insurance Commissioners.

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

CDFI credit union means a state chartered credit union that has been certified as a CDFI by the CDFI Fund and that does not have federal share insurance.

CDFI Fund means the Community Development Financial Institutions Fund established under section 104(a) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*).

CFI asset cap means $1 billion, as adjusted annually by FHFA, beginning in 2009, to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(i) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(i)) and applicable FHFA regulations.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(ii) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(ii)) and applicable FHFA regulations.

Combination business or farm property means real property for which the total appraised value is attributable to residential, and business or farm uses.

Community development financial institution or CDFI means an institution that is certified as a community development financial institution by the CDFI Fund under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*), other than a bank or savings association insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) or a credit union insured under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*).

Community financial institution or CFI means an institution:

(1) The deposits of which are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(2) The total assets of which, as of the date of a particular transaction, are less than the CFI asset cap, with total assets being calculated as an average of total assets over three years, with such average being based on the institution's regulatory financial reports filed with its appropriate regulator for the most recent calendar quarter and the immediately preceding 11 calendar quarters.

Composite regulatory examination rating means a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Rating System (issued by the Federal Financial Institutions Examination Council), including a CAMELS rating or other similar rating, contained in a written regulatory examination report.

Consolidation includes a consolidation, a merger, or a purchase of all of the assets and assumption of all of the liabilities of an entity by another entity.

Director means the Director of FHFA or his or her designee.

Dwelling unit means a single room or a unified combination of rooms designed for residential use.

Enforcement action means any written notice, directive, order or agreement initiated by an applicant for Bank membership or by its appropriate regulator to address any operational, financial, managerial or other deficiencies of the applicant identified by such regulator, but does not include a board of directors resolution adopted by the applicant in response to examination weaknesses identified by such regulator.

Funded residential construction loan means the portion of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property disbursed to the borrower.

Gross revenues means, in the case of a CDFI applicant, total revenues received from all sources, including grants and other donor contributions and earnings from operations.

Home mortgage loan means:

(1) A loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust, or other security agreement that creates a first lien on one of the following interests in property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years that is renewable, or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property or, in the case of any community financial institution, combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property; or

(2) A mortgage pass-through security that represents an undivided ownership interest in:

(i) Long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (1) of this definition; or

(ii) A security that represents an undivided ownership interest in long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (1) of this definition.

Insured depository institution means an insured depository institution as defined in section 2(9) of the Bank Act, as amended (12 U.S.C. 1422(9)).

Long-term means a term to maturity of five years or greater.

Manufactured housing means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Multifamily property means:

(1) Real property that is solely residential and includes five or more dwelling units;

(2) Real property that includes five or more dwelling units combined with commercial units, provided that the property is primarily residential; or

(3) Nursing homes, dormitories, or homes for the elderly.

Nonperforming loans and leases means the sum of the following, reported on a regulatory financial report:

(1) Loans and leases that have been past due for 90 days (60 days in the case of credit union applicants) or longer but are still accruing;

(2) Loans and leases on a nonaccrual basis; and

(3) Restructured loans and leases (not already reported as nonperforming).

Nonresidential real property means real property that is not used for

residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institution buildings or facilities, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property.

One-to-four family property means:

(1) Real property that is solely residential, including one-to-four family dwelling units or more than four family dwelling units if each dwelling unit is separated from the other dwelling units by dividing walls that extend from ground to roof, such as row houses, townhouses or similar types of property;

(2) Manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four family dwelling units combined with commercial units, provided the property is primarily residential.

Operating expenses means, in the case of a CDFI applicant, expenses for business operations, including, but not limited to, staff salaries and benefits, professional fees, interest, loan loss provision, and depreciation, contained in the applicant's audited financial statements.

Other real estate owned means all other real estate owned (*i.e.,* foreclosed and repossessed real estate), reported on a regulatory financial report, and does not include direct and indirect investments in real estate ventures.

Regulatory examination report means a written report of examination prepared by the applicant's appropriate regulator, containing, in the case of insured depository institution applicants, a composite rating assigned to the institution following the guidelines of the Uniform Financial Institutions Rating System, including a CAMELS rating or other similar rating.

Regulatory financial report means a financial report that an applicant is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks, thrift financial report for savings associations, quarterly or semi-annual call report for credit unions, the National Association of Insurance Commissioners' annual or quarterly report for insurance companies, or other similar report, including such report maintained by the appropriate regulator on a computer on-line database.

Residential mortgage loan means any one of the following types of loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Loans secured by manufactured housing whether or not defined by state law as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family property or multifamily property;

(5) Mortgage pass-through securities representing an undivided ownership interest in:

(i) Loans that meet the requirements of paragraphs (1) through (4) of this definition at the time of issuance of the security;

(ii) Securities representing an undivided ownership interest in loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraphs (1) through (4) of this definition; or

(iii) Mortgage debt securities as defined in paragraph (6) of this definition;

(6) Mortgage debt securities secured by:

(i) Loans, provided that, at the time of issuance of the security, substantially all of the loans meet the requirements of paragraphs (1) through (4) of this definition;

(ii) Securities that meet the requirements of paragraph (5) of this definition; or

(iii) Securities secured by assets, provided that, at the time of issuance of the security, all of the assets meet the requirements of paragraphs (1) through (5) of this definition;

(7) Home mortgage loans secured by a leasehold interest, as defined in paragraph (1)(ii) of the definition of ''home mortgage loan,'' except that the period of the lease term may be for any duration; or

(8) Loans that finance properties or activities that, if made by a member, would satisfy the statutory requirements for the CIP established under section 10(i) of the Bank Act (12 U.S.C. 1430(i)), or the regulatory requirements established for any CICA program.

Restricted assets means both permanently restricted assets and temporarily restricted assets, as those terms are used in Financial Accounting Standard No. 117, or any successor publication.

Total assets means the total assets reported on a regulatory financial report or, in the case of a CDFI applicant, the total assets contained in the applicant's audited financial statements.

Unrestricted cash and cash equivalents means, in the case of a CDFI applicant, cash and highly liquid assets that can be easily converted into cash that are not restricted in a manner that prevents their use in paying expenses, as contained in the applicant's audited financial statements.

Subpart B—Membership Application Process

§ 1263.2 Membership application requirements.

(a) *Application.* An applicant for membership in a Bank shall submit to that Bank an application that satisfies the requirements of this part. The application shall include a written resolution or certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, of the following:

(1) *Applicant review.* Applicant has reviewed the requirements of this part and, as required by this part, has provided to the best of applicant's knowledge the most recent, accurate and complete information available; and

(2) *Duty to supplement.* Applicant will promptly supplement the application with any relevant information that comes to applicant's attention prior to the Bank's decision on whether to approve or deny the application, and if the Bank's decision is appealed pursuant to § 1263.5, prior to resolution of any appeal by FHFA.

(b) *Digest.* The Bank shall prepare a written digest for each applicant stating whether or not the applicant meets each of the requirements in §§ 1263.6 to 1263.18, the Bank's findings and the reasons therefor.

(c) *File.* The Bank shall maintain a membership file for each applicant for at least three years after the Bank decides whether to approve or deny membership or, in the case of an appeal to FHFA, for three years after the resolution of the appeal. The membership file shall contain at a minimum:

(1) *Digest.* The digest required by paragraph (b) of this section.

(2) *Required documents.* All documents required by §§ 1263.6 to 1263.18, including those documents required to establish or rebut a presumption under this part, shall be described in and attached to the digest. The Bank may retain in the file only the relevant portions of the regulatory financial reports required by this part. If an applicant's appropriate regulator

requires return or destruction of a regulatory examination report, the date that the report is returned or destroyed shall be noted in the file.

(3) *Additional documents.* Any additional document submitted by the applicant, or otherwise obtained or generated by the Bank, concerning the applicant.

(4) *Decision resolution.* The decision resolution described in § 1263.3(b).

§ 1263.3 Decision on application.

(a) *Authority.* FHFA hereby authorizes the Banks to approve or deny all applications for membership, subject to the requirements of this part. The authority to approve membership applications may be exercised only by a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president, other than an officer with responsibility for business development.

(b) *Decision resolution.* For each applicant, the Bank shall prepare a written resolution duly adopted by the Bank's board of directors, by a committee of the board of directors, or by an officer with delegated authority to approve membership applications. The decision resolution shall state:

(1) That the statements in the digest are accurate to the best of the Bank's knowledge, and are based on a diligent and comprehensive review of all available information identified in the digest; and

(2) The Bank's decision and the reasons therefor. Decisions to approve an application should state specifically that: the applicant is authorized under the laws of the United States and the laws of the appropriate state to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank to which the applicant has applied; and the applicant meets all of the membership eligibility criteria of the Bank Act and this part.

(c) *Action on applications.* The Bank shall act on an application within 60 calendar days of the date the Bank deems the application to be complete. An application is ''complete'' when a Bank has obtained all the information required by this part, and any other information the Bank deems necessary, to process the application. If an application that was deemed complete subsequently is deemed incomplete because the Bank determines during the review process that additional information is necessary to process the application, the Bank may stop the 60-day clock until the application again is deemed complete, and then resume the clock where it left off. The Bank shall notify an applicant in writing when its application is deemed by the Bank to be complete, and shall maintain a copy of such letter in the applicant's membership file. The Bank shall notify an applicant if the 60-day clock is stopped, and when the clock is resumed, and shall maintain a written record of such notifications in the applicant's membership file. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and FHFA with a copy of the Bank's decision resolution.

§ 1263.4 Automatic membership.

(a) *Automatic membership for certain charter conversions.* An insured depository institution member that converts from one charter type to another automatically shall become a member of the Bank of which the converting institution was a member on the effective date of such conversion, provided that the converting institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are not materially different. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue.

(b) *Automatic membership for transfers.* Any member whose membership is transferred pursuant to § 1263.18(d) automatically shall become a member of the Bank to which it transfers.

(c) *Automatic membership, in the Bank's discretion, for certain consolidations.* (1) If a member institution (or institutions) and a nonmember institution are consolidated and the consolidated institution has its principal place of business in a state in the same Bank district as the disappearing institution (or institutions), and the consolidated institution will operate under the charter of the nonmember institution, on the effective date of the consolidation, the consolidated institution may, in the discretion of the Bank of which the disappearing institution (or institutions) was a member immediately prior to the effective date of the consolidation, automatically become a member of such Bank upon the purchase of the minimum amount of Bank stock required for membership in that Bank as required by § 1263.20, provided that:

(i) 90 percent or more of the total assets of the consolidated institution are derived from the total assets of the disappearing member institution (or institutions); and

(ii) The consolidated institution provides written notice to such Bank, within 60 calendar days after the effective date of the consolidation, that it desires to be a member of the Bank.

(2) The provisions of § 1263.24(b)(4)(i) shall apply, and upon approval of automatic membership by the Bank, the provisions of § 1263.24(c) and (d) shall apply.

§ 1263.5 Appeals.

(a) *Appeals by applicants*—(1) *Filing procedure.* Within 90 calendar days of the date of a Bank's decision to deny an application for membership, the applicant may file a written appeal of the decision with FHFA.

(2) *Documents.* The applicant's appeal shall be addressed to the Deputy Director for Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006, with a copy to the Bank, and shall include the following documents:

(i) *Bank's decision resolution.* A copy of the Bank's decision resolution; and

(ii) *Basis for appeal.* A statement of the basis for the appeal by the applicant with sufficient facts, information, analysis and explanation to rebut any applicable presumptions and otherwise support the applicant's position.

(b) *Record for appeal*—(1) *Copy of membership file.* Upon receiving a copy of an appeal, the Bank whose action has been appealed (appellee Bank) shall provide FHFA with a copy of the applicant's complete membership file. Until FHFA resolves the appeal, the appellee Bank shall supplement the materials provided to FHFA as any new materials are received.

(2) *Additional information.* FHFA may request additional information or further supporting arguments from the appellant, the appellee Bank or any other party that FHFA deems appropriate.

(c) *Deciding appeals.* FHFA shall consider the record for appeal described in paragraph (b) of this section and shall resolve the appeal based on the requirements of the Bank Act and this part within 90 calendar days of the date the appeal is filed with FHFA. In deciding the appeal, FHFA shall apply the presumptions in this part, unless the appellant or appellee Bank presents evidence to rebut a presumption as provided in § 1263.17.

Subpart C—Eligibility Requirements

§ 1263.6 General eligibility requirements.

(a) *Requirements.* Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, community

development financial institution, or insured depository institution, upon application satisfying all of the requirements of the Bank Act and this part, shall be eligible to become a member of a Bank if:

(1) It is duly organized under the laws of any State or of the United States;

(2) It is subject to inspection and regulation under the banking laws, or under similar laws, of any State or of the United States;

(3) It makes long-term home mortgage loans;

(4) Its financial condition is such that advances may be safely made to it;

(5) The character of its management is consistent with sound and economical home financing; and

(6) Its home financing policy is consistent with sound and economical home financing.

(b) *Additional eligibility requirement for insured depository institutions other than community financial institutions.* In order to be eligible to become a member of a Bank, an insured depository institution applicant other than a community financial institution also must have at least 10 percent of its total assets in residential mortgage loans.

(c) *Additional eligibility requirement for applicants that are not insured depository institutions.* In order to be eligible to become a member of a Bank, an applicant that is not an insured depository institution also must have mortgage-related assets that reflect a commitment to housing finance, as determined by the Bank in its discretion.

(d) *Ineligibility.* Except as otherwise provided in this part, if an applicant does not satisfy the requirements of this part, the applicant is ineligible for membership.

§ 1263.7 Duly organized requirement.

An applicant shall be deemed to be duly organized, as required by section 4(a)(1)(A) of the Bank Act (12 U.S.C. 1424(a)(1)(A)) and § 1263.6(a)(1) of this part, if it is chartered by a state or federal agency as a building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution, or in the case of a CDFI applicant, is incorporated under state law.

§ 1263.8 Subject to inspection and regulation requirement.

An applicant shall be deemed to be subject to inspection and regulation, as required by section 4(a)(1)(B) of the Bank Act (12 U.S.C. 1424 (a)(1)(B)) and § 1263.6(a)(2) of this part, if, in the case of an insured depository institution or insurance company applicant, it is subject to inspection and regulation by its appropriate regulator.

§ 1263.9 Makes long-term home mortgage loans requirement.

An applicant shall be deemed to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act (12 U.S.C. 1424(a)(1)(C)) and § 1263.6(a)(3) of this part if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, or other documentation provided to the Bank in the case of a CDFI applicant that does not file such reports, the applicant originates or purchases long-term home mortgage loans.

§ 1263.10 Ten percent requirement for certain insured depository institution applicants.

An insured depository institution applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) of this part shall be deemed to be in compliance with such requirement if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans, except that any assets used to secure mortgage debt securities as described in paragraph (6) of the definition of ''residential mortgage loan'' set forth in § 1263.1 shall not be used to meet this requirement.

§ 1263.11 Financial condition requirement for depository institutions and CDFI credit unions.

(a) *Review requirement.* In determining whether a building and loan association, savings and loan association, cooperative bank, homestead association, savings bank, insured depository institution, or CDFI credit union has complied with the financial condition requirement of section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4) of this part, the Bank shall obtain as a part of the membership application and review each of the following documents:

(1) *Regulatory financial reports.* The regulatory financial reports filed by the applicant with its appropriate regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application;

(2) *Financial statement.* In order of preference: the most recent independent audit of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the applicant; the most recent independent audit of the applicant's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company but not on the applicant separately; the most recent directors' examination of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm; the most recent directors' examination of the applicant performed by other external auditors; the most recent review of the applicant's financial statements by external auditors; the most recent compilation of the applicant's financial statements by external auditors; or the most recent audit of other procedures of the applicant;

(3) *Regulatory examination report.* The applicant's most recent available regulatory examination report prepared by its appropriate regulator, a summary prepared by the Bank of the applicant's strengths and weaknesses as cited in the regulatory examination report, and a summary prepared by the Bank or applicant of actions taken by the applicant to respond to examination weaknesses;

(4) *Enforcement actions.* A description prepared by the Bank or applicant of any outstanding enforcement actions against the applicant, responses by the applicant, reports as required by the enforcement action, and verbal or written indications, if available, from the appropriate regulator of how the applicant is complying with the terms of the enforcement action; and

(5) *Additional information.* Any other relevant document or information concerning the applicant that comes to the Bank's attention in reviewing the applicant's financial condition.

(b) *Standards.* An applicant of the type described in paragraph (a) of this section shall be deemed to be in compliance with the financial condition requirement of section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4) of this part, if:

(1) *Recent composite regulatory examination rating.* The applicant has received a composite regulatory examination rating from its appropriate regulator within two years preceding the date the Bank receives the application;

(2) *Capital requirement.* The applicant meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end

regulatory financial report filed with its appropriate regulator; and

(3) *Minimum performance standard.* (i) Except as provided in paragraph (b)(3)(iii) of this section, the applicant's most recent composite regulatory examination rating from its appropriate regulator within the past two years was ''1;'' or was ''2'' or ''3'' and, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant satisfied all of the following performance trend criteria:

(A) *Earnings.* The applicant's adjusted net income was positive in four of the six most recent calendar quarters;

(B) *Nonperforming assets.* The applicant's nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter; and

(C) *Allowance for loan and lease losses.* The applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during four of the six most recent calendar quarters.

(ii) For applicants that are not required to report financial data to their appropriate regulator on a quarterly basis, the information required in paragraph (b)(3)(i) of this section may be reported on a semiannual basis.

(iii) a CDFI credit union applicant must meet the performance trend criteria in paragraph (b)(3)(i) of this section irrespective of its composite regulatory examination rating.

(c) *Eligible collateral not considered.* The availability of sufficient eligible collateral to secure advances to the applicant is presumed and shall not be considered in determining whether an applicant is in the financial condition required by section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4) of this part.

§ 1263.12 Character of management requirement.

(a) *General.* A building and loan association, savings and loan association, cooperative bank, homestead association, savings bank, insured depository institution, insurance company, and CDFI credit union shall be deemed to be in compliance with the character of management requirement of § 1263.6(a)(5), if the applicant provides to the Bank an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(1) *Enforcement actions.* Neither the applicant nor any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator;

(2) *Criminal, civil or administrative proceedings.* Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report; and

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations.

(b) *CDFIs other than CDFI credit unions.* A CDFI applicant other than a CDFI credit union shall be deemed to be in compliance with the character of management requirement of § 1263.6(a)(5), if the applicant provides an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(1) Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude in the past three years; and

(2) There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers arising within the past three years that are significant to the applicant's operations.

§ 1263.13 Home financing policy requirement.

(a) *Standard.* An applicant shall be deemed to be in compliance with the home financing policy requirement of § 1263.6(a)(6) if the applicant has received a Community Reinvestment Act (CRA) rating of ''Satisfactory'' or better on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(b) *Written justification required.* An applicant that is not subject to the CRA shall file as part of its application for membership a written justification acceptable to the Bank of how and why the applicant's home financing policy is consistent with the Bank System's housing finance mission.

§ 1263.14 De novo insured depository institution applicants.

(a) *Duly organized, subject to inspection and regulation, financial condition and character of management requirements.* An insured depository institution applicant whose date of charter approval is within three years prior to the date the Bank receives the applicant's application for membership in the Bank (de novo applicant) is deemed to meet the requirements of §§ 1263.7, 1263.8, 1263.11 and 1263.12.

(b) *Makes long-term home mortgage loans requirement.* A de novo applicant shall be deemed to make long-term home mortgage loans as required by § 1263.9 if it has filed as part of its application for membership a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

(c) *10 percent requirement*—(1) *One-year requirement.* A de novo applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) of this part shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 1263.10.

(2) *Conditional approval.* A de novo applicant shall be conditionally deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) of this part. A de novo applicant that receives such conditional membership approval is subject to the stock purchase requirements established by FHFA regulation or the Bank's capital plan, as applicable, as well as the FHFA regulations governing advances to members.

(3) *Approval.* A de novo applicant shall be deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) of this part upon receipt by the Bank from the applicant, within one year after commencement of the applicant's initial business operations, of evidence acceptable to the Bank that the applicant satisfies the 10 percent requirement.

(4) *Conditional approval deemed null and void.* If the requirements of paragraph (c)(3) of this section are not satisfied, a de novo applicant shall be deemed to be in noncompliance with the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) of this

part, and its conditional membership approval is deemed null and void.

(5) *Treatment of outstanding advances and Bank stock.* If a de novo applicant's conditional membership approval is deemed null and void pursuant to paragraph (c)(4) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 1263.29.

(d) *Home financing policy requirement*—(1) *Conditional approval.* A de novo applicant that has not received its first formal, or, if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, shall be conditionally deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6) of this part, if the applicant has filed as part of its application for membership a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community. An applicant that receives such conditional membership approval is subject to the stock purchase requirements established by FHFA regulation or the Bank's capital plan, as applicable, as well as the FHFA regulations governing advances to members.

(2) *Approval.* A de novo applicant that has been granted conditional approval under paragraph (d)(1) of this section shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6) of this part upon receipt by the Bank of evidence from the applicant that it received a CRA rating of ''Satisfactory'' or better on its first formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(3) *Conditional approval deemed null and void.* If the de novo applicant's first such CRA rating is ''Needs to Improve'' or ''Substantial Non-Compliance,'' the applicant shall be deemed to be in noncompliance with the home financing policy requirement of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6) of this part, subject to rebuttal by the applicant under § 1263.17(f), and its conditional membership approval is deemed null and void.

(4) *Treatment of outstanding advances and Bank stock.* If the applicant's conditional membership approval is deemed null and void pursuant to paragraph (d)(3) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 1263.29.

§ 1263.15 Recent merger or acquisition applicants.

An applicant that merged with or acquired another institution prior to the date the Bank receives its application for membership is subject to the requirements of §§ 1263.7 to 1263.13 except as provided in this section.

(a) *Financial condition requirement*—(1) *Regulatory financial reports.* For purposes of § 1263.11(a)(1), an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed regulatory financial reports with its appropriate regulator for the last six calendar quarters and three year-ends preceding such date, shall provide any regulatory financial reports that the applicant has filed with its appropriate regulator.

(2) *Performance trend criteria.* For purposes of § 1263.11(b)(3)(i)(A) to (C), an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed combined regulatory financial reports with its appropriate regulator for the last six calendar quarters preceding such date, shall provide pro forma combined financial statements for those calendar quarters in which actual combined regulatory financial reports are unavailable.

(b) *Home financing policy requirement.* For purposes of § 1263.13, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not received its first formal, or if unavailable, informal or preliminary, Community Reinvestment Act performance evaluation, shall file as part of its application a written justification acceptable to the Bank of how and why the applicant's home financing credit policy and lending practices will meet the credit needs of its community.

(c) *Makes long-term home mortgage loans requirement; 10 percent requirement.* For purposes of determining compliance with §§ 1263.9 and 1263.10, a Bank may, in its discretion, permit an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed a consolidated regulatory financial report as a combined entity with its appropriate regulator, to provide the combined pro forma financial statement for the combined entity filed with the regulator that approved the merger or acquisition.

§ 1263.16 Financial condition requirement for insurance company and certain CDFI applicants.

(a) *Insurance companies.* An insurance company applicant shall be deemed to meet the financial condition requirement of § 1263.6(a)(4) if, based on the information contained in the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the National Association of Insurance Commissioners.

(b) *CDFIs other than CDFI credit unions*—(1) *Review requirement.* In determining whether a CDFI applicant, other than a CDFI credit union, has complied with the financial condition requirement of § 1263.6(a)(4), the Bank shall obtain as a part of the membership application and review each of the following documents:

(i) *Financial statements.* An independent audit conducted within the prior year in accordance with generally accepted auditing standards by a certified public accounting firm, plus more recent quarterly statements, if available, and financial statements for the two years prior to the most recent audited financial statement. At a minimum, all such financial statements must include income and expense statements, statements of activities, statements of financial position, and statements of cash flows. The financial statement for the most recent year must include separate schedules or disclosures of the financial position of each of the applicant's affiliates, descriptions of their lines of business, detailed financial disclosures of the relationship between the applicant and its affiliates (such as indebtedness or subordinate debt obligations), disclosures of interlocking directorships with each affiliate, and identification of temporary and permanently restricted funds and the requirements of these restrictions.

(ii) *CDFI Fund certification.* The certification that the applicant has received from the CDFI Fund. If the certification is more than three years old, the applicant must also submit a written statement certifying that there have been no material events or occurrences since the date of certification that would adversely affect its strategic direction, mission, or business operations.

(iii) *Additional information.* Any other relevant document or information concerning the financial condition of the applicant requested by the Bank and that is not contained in the applicant's financial statements.

(2) *Standards.* A CDFI applicant, other than a CDFI credit union, shall be deemed to be in compliance with the financial condition requirement of § 1263.6(a)(4) if it meets all of the following minimum financial standards:

(i) *Net asset ratio.* The applicant's ratio of net assets to total assets is at least 20 percent, with net and total assets including restricted assets, where net assets is calculated as the residual value of assets over liabilities and is based on information derived from the applicant's most recent financial statements;

(ii) *Earnings.* The applicant has shown a positive net income for two of the three most recent years, where net income is calculated as gross revenues less total expenses and is based on information derived from the applicant's most recent financial statements;

(iii) *Loan loss reserves.* The applicant's ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) is at least 30 percent, where loan loss reserves are a specified balance sheet account that reflects the amount reserved for loans expected to be uncollectible and are based on information derived from the applicant's most recent financial statements;

(iv) *Liquidity.* The applicant has an operating liquidity ratio of at least 1.0 for the current year, and for one or both of the two preceding years, where the numerator of the ratio includes unrestricted cash and cash equivalents and the denominator of the ratio is the average quarterly operating expense for the four most recent quarters.

§ 1263.17 Rebuttable presumptions.

(a) *Rebutting presumptive compliance.* The presumption that an applicant meeting the requirements of §§ 1263.7 to 1263.16 is in compliance with section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and § 1263.6(a) and (b) of this part, may be rebutted, and the Bank may deny membership to the applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

(b) *Rebutting presumptive noncompliance.* The presumption that an applicant not meeting a particular requirement of §§ 1263.8, 1263.11, 1263.12, 1263.13, or 1263.16 is in noncompliance with section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and § 1263.6(a)(2), (4), (5), or (6) of this part, may be rebutted, and the applicant shall be deemed to meet such requirement, if the applicable requirements in this section are satisfied.

(c) *Presumptive noncompliance by insurance company applicant with ''subject to inspection and regulation'' requirement of § 1263.8.* If an insurance company applicant is not subject to inspection and regulation by an appropriate state regulator accredited by the National Association of Insurance Commissioners (NAIC), as required by § 1263.8, the applicant or the Bank shall prepare a written justification that provides substantial evidence acceptable to the Bank that the applicant is subject to inspection and regulation as required by § 1263.6(a)(2), notwithstanding the lack of NAIC accreditation.

(d) *Presumptive noncompliance with financial condition requirements of §§ 1263.11 and 1263.16*—(1) *Applicants subject to § 1263.11.* For applicants subject to § 1263.11, in the case of an applicant's lack of a composite regulatory examination rating within the two-year period required by § 1263.11(b)(1), a variance from the rating required by § 1263.11(b)(3)(i), or a variance from a performance trend criterion required by § 1263.11(b)(3)(i), the applicant or the Bank shall prepare a written justification pertaining to such requirement that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 1263.6(a)(4), notwithstanding the lack of rating or variance.

(2) *Applicants subject to § 1263.16.* For applicants subject to § 1263.16, in the case of an insurance company applicant's variance from a capital requirement or standard of § 1263.16(a) or in the case of a CDFI applicant's variance from the standards of § 1263.16(b), the applicant or the Bank shall prepare a written justification pertaining to such requirement or standard that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 1263.6(a)(4), notwithstanding the variance.

(e) *Presumptive noncompliance with character of management requirement of § 1263.12*—(1) *Enforcement actions.* If an applicant or any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action. The written analysis shall state each action the applicant or its directors or senior officers are required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance with all aspects of the enforcement action.

(2) *Criminal, civil or administrative proceedings.* If an applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report, or in the case of a CDFI applicant, during the past three years, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the proceedings will not likely result in enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the proceedings will not likely result in enforcement action, or in the case of a CDFI applicant, that the proceedings will not likely have a significantly deleterious effect on the applicant's operations. The written analysis shall state the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* If there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, or in the case of a CDFI applicant, occurring within the past three years, that are significant to the applicant's operations, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its

applicable capital requirements set forth in §§ 1263.11(b)(2) and 1263.16(a); or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in § 1263.11(b)(2) or § 1263.16(a), or the net asset ratio set forth in § 1263.16(b)(2)(i). The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

(f) *Presumptive noncompliance with home financing policy requirements of §§ 1263.13 and 1263.14(d).* If an applicant received a ''Substantial Non-Compliance'' rating on its most recent formal, or if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, or a ''Needs to Improve'' CRA rating on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation and a CRA rating of ''Needs to Improve'' or better on any immediately preceding CRA performance evaluation, the applicant shall provide or the Bank shall obtain:

(1) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator of the applicant's recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in the most recent CRA performance evaluation(s); or

(2) *Written analysis.* A written analysis acceptable to the Bank demonstrating that the CRA rating is unrelated to home financing, and providing substantial evidence of how and why the applicant's home financing credit policy and lending practices meet the credit needs of its community.

§ 1263.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) An institution eligible to become a member of a Bank under the Bank Act and this part may become a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section. A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another state and the Bank shall inform FHFA in writing of any such relocation.

(2) An institution eligible to become a member of a Bank under the Bank Act and this part may become a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of FHFA.

(b) *Principal place of business.* Except as otherwise designated in accordance with this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

(c) *Designation of principal place of business.* (1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a state other than the state in which it maintains its home office be designated as its principal place of business. Within 90 calendar days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following criteria are satisfied:

(i) At least 80 percent of the institution's accounting books, records and ledgers are maintained, located or held in such designated state;

(ii) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated state; and

(iii) A majority of the institution's five highest paid officers have their place of employment located in such designated state.

(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated state, FHFA and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the state designated as the principal place of business and the resulting Bank to which membership will be transferred.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that FHFA make the designation.

(d) *Transfer of membership.* (1) No transfer of membership from one Bank to another Bank shall take effect until the Banks involved reach agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, the FHFA shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the year of the transfer and shall not be subject to the provisions on termination of membership set forth in section 6 of the Bank Act (12 U.S.C. 1426) or §§ 1263.26 and 1263.27, nor the restriction on reacquiring Bank membership set forth in § 1263.30.

Subpart D—Stock Requirements

§ 1263.19 Par value and price of stock.

The capital stock of each Bank shall be sold at par, unless the Director has fixed a higher price.

§ 1263.20 Stock purchase.

(a) *Minimum stock purchase.* Each member shall purchase stock in the Bank of which it is a member in an amount specified by the Bank's capital plan, except that each member of a Bank that has not converted to the capital structure authorized by the GLB Act shall purchase stock in the Bank in an amount equal to the greater of:

(1) $500;

(2) 1 percent of the member's aggregate unpaid loan principal; or

(3) 5 percent of the member's aggregate amount of outstanding advances.

(b) *Timing of minimum stock purchase.* (1) Within 60 calendar days after an institution is approved for membership in a Bank, the institution shall purchase its minimum stock requirement as set forth in paragraph (a) of this section.

(2) In the case of a Bank that has not converted to the capital structure authorized by the GLB Act, an institution that has been approved for membership may elect to purchase its minimum stock requirement in installments, provided that not less than one-fourth of the total amount shall be purchased within 60 calendar days of the date of approval of membership, and that a further sum of not less than one-fourth of such total shall be purchased at the end of each succeeding period of four months from the date of approval of membership.

(c) *Commencement of membership.* An institution that has been approved for membership shall become a member at the time it purchases its minimum stock requirement or the first installment thereof pursuant to this section.

(d) *Failure to purchase minimum stock requirement.* If an institution that

has submitted an application and been approved for membership fails to purchase its minimum stock requirement or its first installment within 60 calendar days of the date of its approval for membership, such approval shall be null and void and the institution, if it wants to become a member, shall be required to submit a new application for membership.

(e) *Reports.* The Bank shall make reports to FHFA setting forth purchases by institutions approved for membership of their minimum stock requirement pursuant to this section in accordance with the instructions provided in the Data Reporting Manual issued by FHFA, as amended from time to time.

§ 1263.21 Issuance and form of stock.

(a) A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of stock purchased and paid for in full.

(b) If the member purchases stock in installments, the stock shall be issued in installments with the appropriate number of shares issued after each payment is made.

(c) A Bank that has not converted to the capital structure authorized by the GLB Act may issue stock in certificated or uncertificated form at the discretion of the Bank.

(d) A Bank that has not converted to the capital structure authorized by the GLB Act may convert all outstanding certificated stock to uncertificated form at its discretion.

§ 1263.22 Adjustments in stock holdings.

(a) *Adjustment in general.* A Bank may from time to time increase or decrease the amount of stock any member is required to hold.

(b)(1) *Annual adjustment.* A Bank shall calculate annually, in the manner set forth in § 1263.20(a), each member's required minimum holdings of stock in the Bank in which it is a member using calendar year-end financial data provided by the member to the Bank, pursuant to § 1263.31(d), and shall notify each member of the adjustment. The notice shall clearly state that the Bank's calculation of each member's minimum stock holdings is to be used to determine the number of votes that the member may cast in that year's election of directors and shall identify the state within the district in which the member will vote. A member that does not agree with the Bank's calculation of the minimum stock requirement or with the identification of its voting state may request FHFA to review the Bank's determination. FHFA shall promptly determine the member's minimum required holdings and its proper voting state, which determination shall be final.

(2) *Redemption of excess shares.* If, in the case of a Bank that has not converted to the capital structure authorized by the GLB Act and after the annual adjustment required by paragraph (b)(1) of this section is made, the amount of stock that a member is required to hold is decreased, the Bank may, in its discretion and upon proper application of the member, retire such excess stock, and the Bank shall pay for each share upon surrender of the stock an amount equal to the par value thereof (except that if at any time FHFA finds that the paid-in capital of a Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Bank shall on the order of FHFA withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by FHFA) or, at its election, the Bank may credit any part of such payment against the member's debt to the Bank. The Bank's authority to retire such excess stock shall be further subject to the limitations of section 6(f) of the Bank Act (12 U.S.C. 1426(f)).

(c) A member's stock holdings shall not be reduced under this section to an amount less than required by sections 6(b) and 10(c) of the Bank Act (12 U.S.C. 1426(b), 1430(c)).

§ 1263.23 Excess stock.

(a) *Sale of excess stock.* Subject to the restriction in paragraph (b) of this section, a member may purchase excess stock as long as the purchase is approved by the member's Bank and is permitted by the laws under which the member operates.

(b) *Restriction.* Any Bank with excess stock greater than 1 percent of its total assets shall not declare or pay any dividends in the form of additional shares of Bank stock or otherwise issue any excess stock. A Bank shall not issue excess stock, as a dividend or otherwise, if after the issuance, the outstanding excess stock at the Bank would be greater than 1 percent of its total assets.

Subpart E—Consolidations Involving Members

§ 1263.24 Consolidations involving members.

(a) *Consolidation of members.* Upon the consolidation of two or more institutions that are members of the same Bank into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate on the cancellation of its charter. Upon the consolidation of two or more institutions, at least two of which are members of different Banks, into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate upon cancellation of its charter, provided, however, that if more than 80 percent of the assets of the consolidated institution are derived from the assets of a disappearing institution, then the consolidated institution shall continue to be a member of the Bank of which that disappearing institution was a member prior to the consolidation, and the membership of the other institutions shall terminate upon the effective date of the consolidation.

(b) *Consolidation into nonmember*—(1) *In general.* Upon the consolidation of a member into an institution that is not a member of a Bank, where the consolidated institution operates under the charter of the nonmember institution, the membership of the disappearing institution shall terminate upon the cancellation of its charter.

(2) *Notification.* If a member has consolidated into a nonmember that has its principal place of business in a state in the same Bank district as the former member, the consolidated institution shall have 60 calendar days after the cancellation of the charter of the former member within which to notify the Bank of the former member that the consolidated institution intends to apply for membership in such Bank. If the consolidated institution does not so notify the Bank by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(3) *Application.* If such a consolidated institution has notified the appropriate Bank of its intent to apply for membership, the consolidated institution shall submit an application for membership within 60 calendar days of so notifying the Bank. If the consolidated institution does not submit an application for membership by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former

member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(4) *Outstanding indebtedness.* If a member has consolidated into a nonmember institution, the Bank need not require the former member or its successor to liquidate any outstanding indebtedness owed to the Bank or to redeem its Bank stock, as otherwise may be required under § 1263.29, during:

(i) The initial 60 calendar-day notification period;

(ii) The 60 calendar-day period following receipt of a notification that the consolidated institution intends to apply for membership; and

(iii) The period of time during which the Bank processes the application for membership.

(5) *Approval of membership.* If the application of such a consolidated institution is approved, the consolidated institution shall become a member of that Bank upon the purchase of the amount of Bank stock required by section 6 of the Bank Act (12 U.S.C. 1426). If a Bank's capital plan has not taken effect, the amount of stock that the consolidated institution is required to own shall be as provided in §§ 1263.20 and 1263.22. If the capital plan for the Bank has taken effect, the amount of stock that the consolidated institution is required to own shall be equal to the minimum investment established by the capital plan for that Bank.

(6) *Disapproval of membership.* If the Bank disapproves the application for membership of the consolidated institution, the Bank shall require the liquidation of any outstanding indebtedness owed by, and the settlement of all other outstanding business transactions with, the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(c) *Dividends on acquired Bank stock.* A consolidated institution shall be entitled to receive dividends on the Bank stock that it acquires as a result of a consolidation with a member in accordance with applicable FHFA regulations.

(d) *Stock transfers.* With regard to any transfer of Bank stock from a disappearing member to the surviving or consolidated member, as appropriate, for which the approval of FHFA is required pursuant to section 6(f) of the Bank Act (12 U.S.C. 1426(f)), as in effect prior to November 12, 1999, such transfer shall be deemed to be approved by FHFA by compliance in all applicable respects with the requirements of this section.

Subpart F—Withdrawal and Removal From Membership

§ 1263.26 Voluntary withdrawal from membership.

(a) *In general.* (1) Any institution may withdraw from membership by providing to the Bank written notice of its intent to withdraw from membership. A member that has so notified its Bank shall be entitled to have continued access to the benefits of membership until the effective date of its withdrawal, but the Bank need not commit to providing any further services, including advances, to a withdrawing member that would mature or otherwise terminate subsequent to the effective date of the withdrawal. A member may cancel its notice of withdrawal at any time prior to its effective date by providing a written cancellation notice to the Bank. A Bank may impose a fee on a member that cancels a notice of withdrawal, provided that the fee or the manner of its calculation is specified in the Bank's capital plan.

(2) A Bank shall notify FHFA within 10 calendar days of receipt of any notice of withdrawal or notice of cancellation of withdrawal from membership.

(b) *Effective date of withdrawal.* The membership of an institution that has submitted a notice of withdrawal shall terminate as of the date on which the last of the applicable stock redemption periods ends for the stock that the member is required to hold, as of the date that the notice of withdrawal is submitted, under the terms of a Bank's capital plan as a condition of membership, unless the institution has cancelled its notice of withdrawal prior to the effective date of the termination of its membership.

(c) *Stock redemption periods.* The receipt by a Bank of a notice of withdrawal shall commence the applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock held by that member that is not already subject to a pending request for redemption. In the case of an institution the membership of which has been terminated as a result of a merger or other consolidation into a nonmember or into a member of another Bank, the applicable stock redemption periods for any stock that is not subject to a pending notice of redemption shall be deemed to commence on the date on which the charter of the former member is cancelled.

(d) *Certification.* No institution may withdraw from membership unless, on the date that the membership is to terminate, there is in effect a certification from FHFA that the withdrawal of a member will not cause the Bank System to fail to satisfy its requirements under section 21B(f)(2)(C) of the Bank Act (12 U.S.C. 1441b(f)(2)(C)) to contribute toward the interest payments owed on obligations issued by the Resolution Funding Corporation.

§ 1263.27 Involuntary termination of membership.

(a) *Grounds.* The board of directors of a Bank may terminate the membership of any institution that:

(1) Fails to comply with any requirement of the Bank Act, any regulation adopted by FHFA, or any requirement of the Bank's capital plan;

(2) Becomes insolvent or otherwise subject to the appointment of a conservator, receiver, or other legal custodian under federal or state law; or

(3) Would jeopardize the safety or soundness of the Bank if it were to remain a member.

(b) *Stock redemption periods.* The applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock owned by a member and not already subject to a pending request for redemption, shall commence on the date that the Bank terminates the institution's membership.

(c) *Membership rights.* An institution whose membership is terminated involuntarily under this section shall cease being a member as of the date on which the board of directors of the Bank acts to terminate the membership, and the institution shall have no right to obtain any of the benefits of membership after that date, but shall be entitled to receive any dividends declared on its stock until the stock is redeemed or repurchased by the Bank.

Subpart G—Orderly Liquidation of Advances and Redemption of Stock

§ 1263.29 Disposition of claims.

(a) *In general.* If an institution withdraws from membership or its membership is otherwise terminated, the Bank shall determine an orderly manner for liquidating all outstanding indebtedness owed by that member to the Bank and for settling all other claims against the member. After all such obligations and claims have been extinguished or settled, the Bank shall return to the member all collateral pledged by the member to the Bank to secure its obligations to the Bank.

(b) *Bank stock.* If an institution that has withdrawn from membership or that otherwise has had its membership terminated remains indebted to the Bank or has outstanding any business

transactions with the Bank after the effective date of its termination of membership, the Bank shall not redeem or repurchase any Bank stock that is required to support the indebtedness or the business transactions until after all such indebtedness and business transactions have been extinguished or settled.

Subpart H—Reacquisition of Membership

§ 1263.30 Readmission to membership.

(a) *In general.* An institution that has withdrawn from membership or otherwise has had its membership terminated and which has divested all of its shares of Bank stock, may not be readmitted to membership in any Bank, or acquire any capital stock of any Bank, for a period of 5 years from the date on which its membership terminated and it divested all of its shares of Bank stock.

(b) *Exceptions.* An institution that transfers membership between two Banks without interruption shall not be deemed to have withdrawn from Bank membership or had its membership terminated.

Subpart I—Bank Access to Information

§ 1263.31 Reports and examinations.

As a condition precedent to Bank membership, each member:

(a) Consents to such examinations as the Bank or FHFA may require for purposes of the Bank Act;

(b) Agrees that reports of examinations by local, state or federal agencies or institutions may be furnished by such authorities to the Bank or FHFA upon request;

(c) Agrees to give the Bank or the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members;

(d) Agrees to provide the Bank with calendar year-end financial data each year, for purposes of making the calculation described in § 1263.22(b)(1); and

(e) Agrees to provide the Bank with copies of reports of condition and operations required to be filed with the member's appropriate Federal banking agency, if applicable, within 20 calendar days of filing, as well as copies of any annual report of condition and operations required to be filed.

Subpart J—Membership Insignia

§ 1263.32 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising and quarters, and likewise use the words ''Member Federal Home Loan Bank System.''

Dated: May 7, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–11329 Filed 5–14–09; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[FWS–R7–SM–2009–0001; 70101–1261–0000L6]

RIN 1018–AW30

Subsistence Management Regulations for Public Lands in Alaska—2010–11 and 2011–12 Subsistence Taking of Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2010–11 and 2011–12 regulatory years. The Federal Subsistence Board completes the biennial process of revising subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle. When final, the resulting rulemaking will replace the existing subsistence wildlife taking regulations, which expire on June 30, 2010. This rule would also amend the customary and traditional use determinations of the Federal Subsistence Board and the general regulations on subsistence taking of fish and wildlife.

DATES: *Public meetings:* The Federal Subsistence Regional Advisory Councils will hold public meetings to receive comments and make proposals to change this proposed rule on several dates between August 25 and October 28, 2009, and then hold another round of public meetings to discuss and receive comments on the proposals, and make recommendations on the proposals to the Federal Subsistence Board, on several dates between February and April, 2010. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, on May 4, 2010. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: Comments and proposals to change this proposed rule must be received or postmarked by November 5, 2009.

ADDRESSES: *Public meetings:* The Federal Subsistence Board and the Regional Advisory Councils' public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery to:* USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503–6199.
- Hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Calvin Casipit, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 586–7918.

SUPPLEMENTARY INFORMATION: