

Committees are producers and handlers of Oregon, Washington, and California pears. They are familiar with the Committees' needs and with the pears costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The Winter Pear Control Committee met on May 31, 1996, and unanimously recommended 1996-97 expenditures of \$5,887,084 and an assessment rate of \$0.405 per standard box. In comparison, last year's budgeted expenditures were \$7,384,440, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of winter pears grown in Oregon, Washington, and California. Winter pear shipments for the year are estimated at 12,465,800 standard boxes which should provide \$4,674,675 for paid advertising. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenditures recommended by the Winter Pear Control Committee for the 1996-97 year include \$154,387 for salaries, \$16,893 for health insurance, and \$23,392 for office rent. Budgeted expenses for these items in 1995-96 were \$147,152, \$16,634, and \$17,357, respectively.

The Northwest Fresh Bartlett Marketing Committee met on May 30, 1996, and unanimously recommended 1996-97 expenditures of \$89,774 and an assessment rate of \$0.0375 per western standard pear box. In comparison, last year's budgeted expenditures were \$92,254, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Shipments for the year are estimated at 1,842,000 packed boxes which should provide \$69,075 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenditures recommended by the Northwest Fresh Bartlett Marketing Committee for the 1996-97 year include \$46,306 for salaries, \$4,991 for health insurance, and \$7,016 for office rent.

Budgeted expenses for these items in 1995-96 were \$44,135, \$4,989 and \$5,206, respectively.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates are effective for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Committees' 1996-97 budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1996-97 fiscal periods began on July 1, 1996, and the marketing orders require that the rates of assessment for each fiscal period

apply to all assessable winter pears and fresh Bartlett pears handled during such fiscal period; (3) handlers are aware of the actions which were recommended by the Committees at public meetings and are similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 927

Winter Pears, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 931

Fresh Bartlett Pears, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 927 and 931 are amended as follows:

1. The authority citation for 7 CFR parts 927 and 931 continue to read as follows:

Authority: 7 U.S.C. 601-674.

Note: These sections will appear in the Code of Federal Regulations.

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON AND CALIFORNIA

2. A new center heading—Assessment Rate consisting of a new § 927.236 is added to read as follows:

Assessment Rate

§ 927.236 Assessment Rate.

On and after July 1, 1996, an assessment rate of \$0.405 per standard box is established for the Winter Pear Control Committee.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

3. A new center heading—Assessment Rate consisting of a new § 931.231 is added to read as follows:

Assessment Rate

§ 931.231 Assessment Rate.

On and after July 1, 1996, an assessment rate of \$.0375 per western standard pear box is established for the Northwest Fresh Bartlett Marketing Committee.

Dated: August 9, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-20789 Filed 8-15-96; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD**12 CFR Part 933****[No. 96-43]****Membership Approval****AGENCY:** Federal Housing Finance Board.**ACTION:** Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation on membership in the Federal Home Loan Banks (Banks). The final rule authorizes the 12 Banks, rather than the Finance Board, to approve or deny all applications for Bank membership, subject to certain criteria for determining compliance with the statutory eligibility requirements for Bank membership currently used by the Finance Board in approving applications. The final rule also provides for streamlined application processing for certain types of membership applications. The final rule is part of an effort by the Finance Board and the Banks to transfer as many governance functions as possible from the Finance Board to the Banks. The devolution of authority to the Banks and streamlining of membership application requirements in the final rule are consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

EFFECTIVE DATE: September 16, 1996.**FOR FURTHER INFORMATION CONTACT:**

Amy R. Maxwell, Associate Director, District Banks Secretariat, Office of the Managing Director, (202) 408-2882, or Sharon B. Like, Senior Attorney-Advisor, Office of General Counsel, (202) 408-2930, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:**I. Statutory and Regulatory Background**

In its role as primary regulator of the savings association industry and as overseer of the Banks, the Finance Board's predecessor agency, the former Federal Home Loan Bank Board (FHLBB), reviewed and approved all applications for Bank membership from federally chartered savings associations, and from state chartered savings associations seeking federal deposit insurance, institutions for which Bank membership was required. The FHLBB delegated the authority to approve membership applications from insurance companies and state chartered savings banks insured by the Federal Deposit Insurance Corporation (FDIC), for which Bank membership was voluntary, to the Principal Supervisory

Agents of the FHLBB, which generally were the Bank presidents. See 12 U.S.C. 1437(a) (1989), *repealed by* Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (Aug. 9, 1989) (FIRREA); 12 CFR 523.3-3, 541.18 (1989).

FIRREA amended the Federal Home Loan Bank Act, 12 U.S.C. §§ 1421-1449 (Bank Act), by creating the Finance Board and transferring from the FHLBB to the Finance Board the responsibility for the supervision and regulation of the 12 Banks. See 12 U.S.C. 1422a(a). The FHLBB's authority to charter federal savings associations was transferred to the Office of Thrift Supervision (OTS), and the FHLBB's authority to administer deposit insurance for savings associations was transferred to the FDIC.

FIRREA also made significant changes to the membership eligibility criteria in section 4 of the Bank Act. See 12 U.S.C. 1424. First, FIRREA permitted commercial banks and credit unions to become Bank members for the first time. *Id.* § 1424(a). Second, FIRREA added the requirement that an insured depository institution have at least 10 percent of its total assets in residential mortgage loans in order to be eligible to become a Bank member. *Id.* § 1424(a)(2)(A).

From the enactment of FIRREA in 1989 until July 1993, all Bank membership applications were reviewed and approved by the Board of Directors of the Finance Board. In July 1993, the Managing Director of the Finance Board was delegated the authority to approve all applications for Bank membership from institutions that met all of the statutory eligibility criteria and received a composite rating of "1," "2" or "3" under the regulatory examination rating system known as the Uniform Financial Institutions Rating System. See Chairman's Order No. 93-05 (July 19, 1993); Finance Board Res. No. 90-143 (Dec. 18, 1990). The Board of Directors of the Finance Board has not itself considered or acted upon any membership applications since such authority was delegated to the Managing Director.

In August 1993, the Finance Board amended its membership regulation in response to the changes made by FIRREA to the Bank Act. The revised membership regulation established membership application procedures, general eligibility requirements, criteria for determining the appropriate Bank district for membership, stock requirements for membership, requirements and procedures in connection with termination of membership, and procedures concerning transfer of Bank stock in

consolidations involving member and nonmember institutions. Other than defining certain terms, the membership regulation did not establish specific standards for compliance with the statutory membership eligibility criteria. See 58 FR 43522, 43542 (Aug. 17, 1993), *codified at* 12 CFR part 933. Section 933.3(a) of the membership regulation authorized the Banks' boards of directors to approve only applications that met all criteria set forth in the Bank Act, the membership regulation, and policy guidelines established by the Finance Board. See 12 CFR 933.3(a).

In November 1993, the Finance Board adopted policy guidelines to assist Finance Board staff in processing applications for Bank membership. See Federal Home Loan Bank System Membership Application Guidelines, Finance Board Res. No. 93-88 (Nov. 17, 1993) (Guidelines). The purpose of the Guidelines was to require certain documentation review requirements, and to clarify and amplify the more subjective membership eligibility criteria in the Bank Act, such as the financial condition, character of management, and home financing policy requirements. See 12 U.S.C. 1424(a)(2)(B), (C). The Guidelines also set forth the specific criteria that must be satisfied in order for the Banks to have the authority to approve membership applications, as provided under § 933.3(a) of the membership regulation. See also 59 FR 13485 (March 22, 1994).

The Guidelines contain specific, primarily financial, criteria that must be met in order for an applicant to be deemed in compliance with the statutory eligibility criteria. However, the Guidelines established neither a minimum level of financial performance nor standards for evaluating applicants that do not meet the requirements in the Guidelines. So, for instance, an application from an institution with a composite regulatory examination rating that did not satisfy the criteria for approval by the Banks had to be evaluated by Finance Board staff and approved by the Managing Director. Since December 1993, the Banks have approved approximately 1,000 membership applications, and the Finance Board's Managing Director has approved approximately 1,100 membership applications.

The Finance Board and the Banks have been considering ways to transfer a variety of governance responsibilities from the Finance Board to the Banks since the completion of studies required by the Housing and Community Development Act of 1992, Pub. L. No. 102-550, 106 Stat. 3672 (Oct. 28, 1992),

including the Finance Board's own study completed in April 1993. See Report on the Structure and Role of the Federal Home Loan Bank System, at 153 (Apr. 28, 1993). Finance Board staff and Bank staff have consistently identified membership application approval as one of the governance responsibilities that should be devolved from the Finance Board to the Banks, because the Banks should be allowed broad discretion to manage their affairs as long as the Banks comply with the Bank Act and Finance Board regulations. This final rule transfers authority to approve or deny *all* Bank membership applications from the Finance Board to the Banks. The final rule codifies in large part the criteria for determining compliance with the statutory eligibility requirements contained in the Finance Board's Guidelines, which shall be deemed rescinded upon effectiveness of the final rule.

II. Proposed Rulemaking

In October 1995, the Finance Board published for public comment a notice of proposed rulemaking, which proposed transferring the authority to approve or deny membership applications from the Finance Board to the Banks, subject to certain criteria for determining compliance with the statutory eligibility requirements for Bank membership (proposed rule) (60 FR 54958) (Oct. 27, 1995). The proposed rule provided for a 60-day comment period.

The Finance Board received letters from a total of 14 commenters, including all 12 Banks, one bank trade association, and one insurance company trade association. The commenters generally supported transfer of membership approval authority from the Finance Board to the Banks. Various comments were received on the proposed application procedures, and the specific criteria that should be applied in determining membership eligibility. A discussion of relevant comments is included in the Analysis of the Final Rule. Where no comments were received on a particular regulatory provision, or a provision was not controversial, and the Finance Board has determined to adopt the provision as proposed, the provision generally is not discussed in this preamble.

A few comments also were received on provisions of the current membership regulation that were not the focus of this rulemaking, such as the definition of "state," and "convenience" applications for membership in adjoining Bank districts. See 12 CFR 933.1(s), 933.5(a)(2). These comments are not discussed in this final rule, but

will be examined in connection with any future rulemaking on other provisions of the membership regulation not addressed in this rulemaking.

III. Analysis of the Final Rule

A. Membership Application Process—§§ 933.2 to 933.5

1. Requirements—§ 933.2

Section 933.2 of the final rule sets forth the procedures for submission and review of membership applications. Section 933.2(a) requires an applicant to submit an application which satisfies the requirements of part 933, and to provide a written resolution or certification duly adopted by the applicant's board of directors, or by an individual authorized to act on behalf of the board of directors of the applicant, stating that the applicant satisfies the requirements set forth in § 933.2(a). The proposed rule required that the application include a written certification by a majority of the applicant's directors. A commenter pointed out that state corporate laws may impose different requirements for a corporate board to take valid action and, therefore, that the requirement should be a resolution or certification duly adopted by the applicant's board, rather than majority action of the board. The final rule adopts this recommendation.

Section 933.2(b) of the final rule requires the Bank to prepare a written digest for each applicant stating whether the applicant meets each of the eligibility requirements, the Bank's findings, and the reasons therefor.

Section 933.2(c) requires the Bank to maintain a membership file for each applicant for at least three years, containing certain documents as specified therein.

Section 933.2(d) of the proposed rule required the Bank to use regulatory financial reports and other sources independent of the applicant to evaluate and analyze all conclusions offered by the applicant regarding its membership eligibility. This requirement is not adopted in the final rule, as it is redundant with § 933.11(a) of the final rule, which also requires the use of regulatory financial reports and other documents derived independently of the applicant. Proposed § 933.2(d) also required the Bank to make determinations on membership eligibility independent of any representations made by the applicant. The Finance Board intended this provision to ensure that the Banks evaluate membership applications without relying unduly on simple representations of compliance made by the applicants. However, as several

commenters pointed out, the rule requires reliance, in part, on an applicant's representations by requiring that the Bank's membership determinations be based on review of all available information in the file, which includes information from the applicant. Accordingly, the independent evaluation requirement is not adopted in the final rule.

2. Decision on Application—§ 933.3

Section 933.3(a) of the final rule authorizes the Banks to approve or deny all membership applications, subject to the requirements of the final rule, including the appeal procedure in § 933.5. Eleven commenters expressly supported transfer of membership approval authority to the Banks.

Section 933.3(a) also permits a Bank to delegate the authority to approve applications only to 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. One commenter recommended that the Bank's board of directors be permitted to delegate the authority to deny membership applications. However, because of the consequences of membership denial, the Finance Board believes that such decisions should be made only by the Bank's board of directors.

Section 933.3(b) requires the Bank to prepare for each applicant a written decision resolution duly adopted by the Bank's board of directors, or by a committee of the board of directors or officer with delegated authority to approve membership applications. The proposed rule required that the decision resolution be signed by a majority of the directors, or by an officer with delegated authority. A commenter pointed out that state corporate laws impose different requirements for a corporate board to take valid action and, therefore, that the requirement should be a resolution duly adopted by the Bank's board or committee of the board, rather than majority action of the board or committee of the board. The final rule adopts this recommendation.

Section 933.3(c) of the final rule requires the Bank to act on an application within 60 calendar days of the date the Bank deems the application to be complete. Section 933.3(c) is intended to ensure expeditious action on membership applications. A number of commenters expressed concern that this timeframe may be too restrictive where there is a need to obtain additional information about the applicant in order to make a

membership determination. The final rule clarifies that an application is "complete" when the Bank has obtained all the information required by this part, and any other information the Bank deems necessary, to process the application.

Thus, the 60-day clock will not start running until the Bank has obtained all information necessary to process the application. The final rule also provides that if a "complete" application subsequently becomes "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 final rule requires the Bank to notify an applicant when its application is deemed to be complete. The Bank also is required to notify an applicant if the 60-day clock is stopped, and when the clock is resumed.

3. Automatic Membership—§ 933.4

Section 933.4 provides for automatic Bank membership for institutions seeking Bank membership under certain circumstances. Such institutions need not file an application for membership.

Section 933.4(a) provides for automatic Bank membership for institutions required by law to be Bank members.

Section 933.4(b) provides for automatic Bank membership for insured depository institution members that convert from one charter type to another, 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 response to a commenter's suggestion, the final rule modifies the requirement in the proposed rule that the assets immediately before and after the charter conversion must be identical, since there may be insignificant changes in asset composition after a conversion in order to comply with new charter requirements.

Section 933.4(c) of the final rule provides for automatic membership in the Bank to which a member's membership is transferred pursuant to § 933.18(d).

4. Appeals—§ 933.5

Section 933.5 establishes a process by which applicants may appeal Bank membership denials to the Finance Board. The appeal procedure is intended to ensure that membership standards are applied fairly by the

Banks, and that similarly situated applicants are treated in a consistent manner.

Section 933.5 (a), (b) and (c) establishes the procedures and requirements for appeals by an applicant to the Finance Board.

The current membership regulation does not include the provision in the proposed rule that would allow a Bank to appeal another Bank's determination of the appropriate district for membership made pursuant to § 933.5, but permits applicants or members to appeal such determinations to the Finance Board. See 12 CFR 933.5. Since the applicant or member has the option under § 933.18 of the final rule to appeal the Bank's decision, an appeal by the other Bank is unnecessary. Moreover, like the current membership regulation, § 933.18 sets forth specific, objective criteria for determining an applicant's or member's appropriate district of membership, which should obviate such conflicts in the application process. Accordingly, this proposed amendment has not been adopted in the final rule.

B. Membership Eligibility

Requirements—§§ 933.6 to 933.18

1. Setting Membership Standards

Like the Guidelines, the final rule establishes objective standards for approving applications for Bank membership. For the objective statutory eligibility criteria, failure to comply with the standards established by the final rule will render an applicant ineligible for membership. For the subjective statutory eligibility criteria, including the requirement that an applicant's financial condition be such that advances may be safely made, see 12 U.S.C. 1424(a)(2)(B), and that the character of an applicant's management and its home financing policy be consistent with sound and economical home financing, see *id.* § 1424(a)(2)(C), the final rule, like the Guidelines, establishes objective, yet flexible, standards.

Under § 933.17(a) of the final rule, an applicant that complies with the regulatory requirements is presumed to satisfy the statutory eligibility criteria, but the Bank may rebut the presumption of compliance, and deny membership to the applicant, if the Bank obtains substantial evidence to overcome the presumption. Conversely, under § 933.17 (b) to (f), an applicant that does not comply with the regulatory requirements is presumed not to satisfy the statutory eligibility criteria, but, as under the Guidelines, the applicant may rebut the presumption of noncompliance as provided in § 933.17

(b) to (f), and be deemed to meet the regulatory requirements.

The Finance Board considered establishing rigid, "bright-line" eligibility standards, but believes that the results—*i.e.*, that an applicant not meeting every standard would be ineligible for membership, regardless of any other evidence the applicant could have presented to demonstrate its compliance with the statutory eligibility criteria—would be too harsh. Six commenters expressly supported a presumption framework, rather than "bright-line" tests, for a similar reason.

2. Section 4(a)(1) Criteria In General

Section 4(a)(1) of the Bank Act defines the types of financial institutions eligible to become Bank members as any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution. See 12 U.S.C. 1424(a)(1). The definition of "insured depository institution" in the Bank Act includes commercial banks and credit unions. See *id.* § 1422(12).

The eligibility criteria set forth in section 4(a)(1) of the Bank Act apply to all applicants for Bank membership, including insurance companies (section 4(a)(1) criteria). Under section 4(a)(1) of the Bank Act, an institution is eligible for Bank membership if the institution:

(A) is duly organized under the laws of any State or of the United States; (B) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and

(C) makes such home mortgage loans as, in the judgment of the [Finance] Board, are long-term loans * * *.

See *id.* § 1424(a)(1) (A) to (C). Sections 933.7 to 933.9 of the final rule apply the section 4(a)(1) criteria to all applicants for membership.

3. "Duly Organized" Requirement—§ 933.7

Section 4(a)(1)(A) of the Bank Act requires that, in order to be eligible for Bank membership, an applicant must be duly organized under the laws of any State or of the United States. 12 U.S.C. 1424(a)(1)(A). This general eligibility requirement is implemented by §§ 933.6(a)(1) and 933.7 of the final rule. Noncompliance by an applicant with the "duly organized" requirement is not a rebuttable presumption under § 933.17.

4. "Subject to Inspection and Regulation" Requirement—§ 933.8

Section 4(a)(1)(B) of the Bank Act requires that, in order to be eligible for

Bank membership, an applicant must be subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States. 12 U.S.C. 1424(a)(1)(B). This general eligibility requirement is implemented by §§ 933.6(a)(2) and 933.8 of the final rule. Noncompliance by an applicant with the "subject to inspection and regulation" requirement is not a rebuttable presumption under § 933.17 except for insurance company applicants, as further discussed under § 933.17(c).

5. "Makes Long-Term Home Mortgage Loans" Requirement—§ 933.9

Section 4(a)(1)(C) of the Bank Act requires that, in order to be eligible for Bank membership, an applicant must make long-term home mortgage loans. This general eligibility requirement is implemented by §§ 933.6(a)(3) and 933.9 of the final rule.

a. Definitions of "long-term" and "home mortgage loan."

Section 933.1(n) of the final rule lists the specific types of assets that qualify as "home mortgage loans" for purposes of the "makes long-term home mortgage loans" requirement. Section 933.1(n), as well as the definition of "long-term" in § 933.1(q), do not include the Finance Board's current regulatory discretion to determine that other types of loans not specifically listed in the definitions of "home mortgage loan" and "long-term" meet these definitions. See 12 CFR 933.1(i), (l).

One commenter noted that this discretionary authority would enable a Bank first to seek an interpretation from the Finance Board on whether a particular asset meets the definitions, which may be more efficient than requiring the Bank to deny an application and the applicant to appeal to the Finance Board before the Finance Board may exercise its interpretive discretion. In the event of an appeal of a Bank membership decision to the Finance Board, this approach would enable the Finance Board to exercise its interpretive discretion on a case-by-case basis without having to amend the regulation. However, the Finance Board believes that the list of assets permitted under § 933.1(n) is comprehensive, and there is little likelihood that an applicant will need a non-qualifying asset in order to meet the "makes long-term home mortgage loans" requirement. Should questions arise regarding particular assets, they could be resolved through amendment of the regulation, rather than through Finance Board determinations on a case-by-case basis. Accordingly, the commenter's

recommendation is not adopted in the final rule.

b. *Noncompliance not rebuttable.*

Noncompliance by an applicant with the "makes long-term home mortgage loans" requirement is not a rebuttable presumption under § 933.17.

6. Section 4(a)(2) Criteria In General

Section 4(a)(2) of the Bank Act establishes the following membership eligibility criteria for insured depository institutions that were not Bank members on January 1, 1989 (section 4(a)(2) criteria):

(A) the institution has at least 10 percent of its total assets in residential mortgage loans;

(B) the institution's financial condition is such that advances may be safely made to such institution; and

(C) the character of the institution's management and its home-financing policy are consistent with sound and economical home financing.

See 12 U.S.C. 1424(a)(2)(A) to (C). Although the section 4(a)(2) criteria apply to "insured depository institutions," § 933.6(a)(4) to (6) of the final rule applies the section 4(a)(2)(B) (financial condition) and (C) (character of management and home financing policy) criteria to insurance companies as well as insured depository institutions. This is consistent with current membership regulatory requirements. See 12 CFR 933.4(a)(4), (5). In addition, prior to the enactment of FIRREA in 1989, the financial condition, character of management and home financing policy criteria were applicable to insurance companies. See 47 Stat. 726 (July 22, 1932).

The final rule does not apply the 10 percent requirement in section 4(a)(2)(A) to applicants that are not insured depository institutions, such as insurance companies. The reasons for this approach are discussed more fully below under the 10 Percent Requirement.

7. 10 Percent Requirement—§ 933.10

a. *Insured depository institution applicants.*

Section 4(a)(2)(A) of the Bank Act requires that, in order to be eligible for Bank membership, an insured depository institution must have at least 10 percent of its total assets in residential mortgage loans. See 12 U.S.C. 1424(a)(2)(A). This general eligibility requirement is implemented by § 933.6(b) of the final rule. Under § 933.10 of the final rule, an insured depository institution applicant is deemed to comply with the 10 percent requirement in section 4(a)(2)(A) of the Bank Act if, based on the applicant's

most recent regulatory financial report, the applicant has at least 10 percent of its total assets in "residential mortgage loans," as defined in § 933.1(bb) of the final rule, except that any assets used to secure mortgage debt securities as described in § 933.1(bb)(6) may not be used to meet this requirement.

b. *Applicants that are not insured depository institutions.*

The Finance Board's practice has been not to apply the 10 percent requirement to applicants that are not insured depository institutions, such as insurance companies. See 12 CFR 933.4(b)(1). Section 933.6(c) of the final rule continues the current regulatory requirement that such applicants must meet an alternative requirement that they have mortgage-related assets reflecting a commitment to housing finance, with such determination made by the Bank in its discretion, rather than by the Finance Board. See 12 CFR 933.4(c). Several commenters specifically supported application of this alternative test to applicants that are not insured depository institutions.

In the notice of proposed rulemaking, the Finance Board specifically requested comment on whether the 10 percent requirement should apply to insurance company applicants, or whether a different test, or asset test that would achieve the same objectives as the 10 percent requirement, should be applied to insurance company applicants. The Finance Board questioned whether membership eligibility standards should be applied consistently to all applicants, in order to ensure that all Bank members demonstrate a quantifiable minimum commitment to residential housing finance before they are admitted to membership. See 60 FR 54958, 54962 (Oct. 27, 1995).

Two commenters supported applying the 10 percent requirement to insurance company applicants on the basis that all applicants for membership should be treated equally. A majority of the commenters opposed applying the 10 percent requirement to insurance company applicants for a number of reasons, including: (1) inconsistency with section 4(a)(2)(A) of the Bank Act which, on its face, is applicable only to insured depository institutions; (2) insurance companies that are active in mortgage lending or have significant investments in housing-related assets may not be able to meet the 10 percent requirement because of their asset size; and (3) insurance companies are required by state law, regulators, and prudent investment standards to invest in a wide variety of assets.

The Finance Board agrees that these are valid reasons for not applying the 10

percent requirement to insurance company applicants, consistent with current practice. Accordingly, the final rule applies the alternative mortgage-related assets test, rather than the 10 percent requirement, to institutions that are not insured depository institutions, including insurance company applicants.

c. Definition of "residential mortgage loans."

The term "residential mortgage loans" is not defined in the Bank Act. The definition of "residential mortgage loans" in the proposed rule included the current definition, see 12 CFR 933.1(r), as well as qualified private activity exempt facility bonds where 95 percent or more of the net proceeds are used for qualified residential rental projects, as defined in 26 U.S.C. 142(a)(7)(d). Under the current membership regulation, the Finance Board has interpreted "residential mortgage loans" to include such bonds.

Several commenters supported inclusion of such bonds in the definition of "residential mortgage loans." The Finance Board has determined that such bonds are consistent with other assets that are treated as "residential mortgage loans." Further, treating such bonds as "residential mortgage loans" is consistent with the purpose of the 10 percent requirement to ensure that new members hold at least 10 percent of their total assets in assets that facilitate home mortgage lending. The Finance Board does not expect the Bank to verify the actual usage of the bond proceeds for the qualified residential rental projects. The Finance Board also recognizes that there may be other similar types of bonds that should be permissible as "residential mortgage loans." Accordingly, the addition of the word "substantially" in the definition of "residential mortgage loan" in § 933.1(bb)(6)(i) of the final rule provides for the inclusion of such bonds and other similar types of bonds that meet the definition.

In the proposed rule, the Finance Board specifically requested comment on whether shares of open-end management companies, also known as "mutual funds," where the assets in the open-end management company's portfolio are comprised solely of assets that are "residential mortgage loans," should be included as "residential mortgage loans." Ownership of mutual fund shares could be considered the functional equivalent of ownership of the mutual fund's underlying assets. Several commenters specifically supported inclusion of shares of such mutual funds within the definition of

"residential mortgage loans." One commenter suggested that mutual fund shares be allowed where the mutual fund has a small percentage of its capital in cash or liquid assets. However, the Finance Board has not previously interpreted "residential mortgage loans" to include mutual fund shares, and is not seeking to expand the types of assets that may qualify as "residential mortgage loans" at this time. Accordingly, the definition of "residential mortgage loans" in the final rule does not include mutual fund shares.

The current membership regulation and proposed rule required that "residential mortgage loans" be domestic loans. See 12 CFR 933.1(r). However, the line items in regulatory financial reports corresponding to such loans may include foreign as well as domestic loans. In order to ease applicants' ability to rely on such line items for purposes of determining their "residential mortgage loans" for the 10 percent requirement, under the final rule, applicants may include foreign residential mortgage loans.

For the same reasons discussed under part III.B.5.a. above, § 933.1(bb) of the final rule does not include the Finance Board's current regulatory discretion to determine that other loans not specifically listed in the definition of "residential mortgage loan" meet the definition. See 12 CFR 933.1(r)(8).

d. Definition of "total assets."

Section 4(a)(2)(A) of the Bank Act and § 933.10 of the final rule provide that, in order to be eligible for Bank membership, an applicant must have at least 10 percent of its "total assets" in residential mortgage loans. See 12 U.S.C. 1424(a)(2)(A). The proposed rule listed the specific assets included in the definition of "total assets." Since the applicant will be relying on the total assets reported on its regulatory financial report, the definition in § 933.1(dd) of the final rule is revised to mean total assets as reported on the applicant's regulatory financial report.

The total assets line item in regulatory financial reports may include foreign as well as domestic assets. In order to ease applicants' ability to rely on such line item for purposes of determining their "total assets" for the 10 percent requirement, under the final rule, applicants may include foreign assets as part of total assets.

e. Noncompliance not rebuttable.

Noncompliance by an applicant with the 10 percent requirement is not a rebuttable presumption under § 933.17.

8. Financial Condition Requirement for Applicants Other Than Insurance Companies—§ 933.11

Section 4(a)(2)(B) of the Bank Act requires that, in order to be eligible for Bank membership, an insured depository institution's financial condition must be such that advances may be safely made to it. 12 U.S.C. 1424(a)(2)(B). Section 933.6(a)(4) of the final rule applies this general requirement to all applicants for membership, including applicants that are not insured depository institutions such as insurance companies. Section 933.11 implements this requirement by establishing specific financial condition standards applicable to applicants other than insurance companies, and is modeled on the Guidelines. As discussed below, § 933.16 implements this requirement by establishing specific financial condition standards applicable to insurance companies that recognize the specialized nature of the insurance business.

a. Review requirement.

Section 933.11(a) describes the documents pertaining to financial condition that must be reviewed for each applicant. Under § 933.11(a)(1), the Bank must obtain and review the applicant's regulatory financial reports for at least the last six calendar quarters and three year-ends. In response to a commenter's suggestion, the definition of "regulatory financial report" in § 933.1(aa) of the final rule is revised to include a regulatory financial report maintained by the primary regulator on a computer on-line database.

Section 933.11(a)(2) lists, in order of preference, the financial statement that a Bank must obtain and review in evaluating the applicant's financial condition. This provision has been revised from the proposed rule to make it consistent with the financial statement requirement in the Guidelines.

Under § 933.11(a)(3) of the final rule, the Bank must obtain and review the applicant's most recent available regulatory examination report prepared by its primary regulator, as defined in § 933.1(y), or appropriate state regulator, as defined in § 933.1(f), and prepare a summary of the applicant's strengths and weaknesses as cited in the regulatory examination report. The Bank or the applicant also must prepare a summary of actions taken by the applicant to respond to examination weaknesses.

Under § 933.11(a)(4), the Bank also must obtain and review a description 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 primary regulator or appropriate state regulator, whichever is applicable, of how the applicant is complying with the terms of the enforcement action. In response to two comments, "enforcement action" is defined in § 933.1(l) of the final rule to exclude board of directors' resolutions adopted by applicants in response to examination weaknesses identified by the regulator.

Under § 933.11(a)(5), the Bank also must obtain and review any other relevant document or information concerning the applicant that comes to the Bank's attention in reviewing the applicant's financial condition. The proposed rule required that a Bank also consider other relevant information that reasonably should come to the Bank's attention in reviewing the applicant's financial condition. This was intended to impose a measure of due diligence on the Bank as a part of the membership approval process. Several commenters opposed this requirement because: (1) it imposes an undefined or unreasonably high standard that could be prohibitively costly (e.g., on-line database searches); (2) the most valuable information comes from the applicant and its regulator; and (3) the Banks could be exposed to liability for reliance on inaccurate or insufficient information. For the reasons cited by the commenters, the final rule does not incorporate this "due diligence" requirement.

b. Standards of adequate "financial condition."

The Bank Act does not define the term "financial condition" for purposes of membership eligibility, except to say that financial condition must be "such that advances may be safely made." 12 U.S.C. 1424(a)(2)(B). The Finance Board believes that specific, uniform and quantifiable standards for evaluating financial condition are necessary to ensure that Bank advances may be extended in a safe and sound manner.

Under § 933.11(b)(1), in order to be presumed to be in adequate financial condition for purposes of section 4(a)(2)(B) of the Bank Act and § 933.6(a)(4) of the final rule, an applicant must have received a composite regulatory examination rating from its primary regulator or appropriate state regulator within two years preceding the date the Bank receives the application. The Finance Board requires that the applicant have been examined within this two-year period in order to ensure the accuracy of critical information used for financial

condition eligibility determinations. Section 933.11(b)(3) establishes the minimum performance standard the applicant must satisfy, based on the applicant's most recent composite regulatory examination rating from its primary regulator or appropriate state regulator.

The proposed rule required that the applicant have received such a rating from its primary regulator. Several commenters supported allowing the Banks to accept composite regulatory examination ratings from state or federal regulators because: (1) state regulatory examination reports containing ratings may be obtainable and just as reliable as federal regulatory examination reports in reviewing an applicant's financial condition; and (2) state and federal regulators may alternate examination cycles or may conduct joint examinations for some state chartered, federally insured institutions, and they typically examine regulated entities at least every two years. In response to these comments, the final rule allows use of the most recent state or federal regulatory examination report containing a composite regulatory examination rating.

Section 933.11(b)(2) of the final rule requires an applicant to meet all of its minimum statutory and regulatory capital requirements in order to satisfy the financial condition requirement.

Under § 933.11(b)(3)(i), in order to be presumed to be in adequate financial condition, the applicant's most recent composite regulatory examination rating from its primary regulator or appropriate state regulator within the past two years must be "1;" or must be "2" or "3" and the applicant also must satisfy certain performance trend criteria.

The term "composite regulatory examination rating" is defined in § 933.1(j) of the final rule as a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Rating System (UFIRS), including a CAMEL rating, a MACRO rating or other similar rating, contained in a written regulatory examination report. The composite regulatory examination rating for an insured depository institution is determined according to the UFIRS, commonly referred to as the CAMEL rating system. The UFIRS is an internal supervisory rating system used by Federal regulatory agencies for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special supervisory attention or concern. Under the UFIRS, each institution is assigned a composite

rating based on an evaluation and rating of five essential components—capital, assets, management, earnings, and liquidity—of an institution's financial condition and operations. The composite rating reflects, in a comprehensive fashion, an institution's overall financial condition, compliance with banking statutes and regulations, and management capability. A composite rating of "1" is the highest possible rating on a 5-point scale, indicating the strongest performance and management practices. A composite rating of "5" indicates the weakest performance and management practices and, therefore, the highest degree of supervisory concern. The Federal Financial Institutions Examination Council recently proposed changes to the UFIRS, including adding a sixth rating component addressing sensitivity to market risks. See 61 FR 37472 (July 18, 1996). The language in § 933.1(j) and (z) of the final rule incorporates this proposed change by referring generally to the UFIRS and removing specific references to the five rating components.

The importance of the composite regulatory examination rating in the membership approval process may be illustrated in the breakdown of the ratings assigned to applicants approved by the Finance Board since the enactment of FIRREA—all but one institution approved for membership have been rated "1," "2" or "3"; the single "4"-rated institution approved for membership has since been upgraded. No "5"-rated institutions have been approved for membership.

Using the UFIRS to evaluate membership applicants reduces the documentation requirements for applicants, limits the potential for the Banks to be perceived by applicants as another layer in the financial regulatory structure, adds considerable efficiency to the application process, and provides an independent assessment by those responsible for the soundness of the entity.

Under § 933.11(b)(3)(i) of the final rule, a composite regulatory examination rating of "2" or "3" may be an acceptable financial condition performance standard if the applicant also meets certain additional performance trend criteria. These criteria are designed to identify trends in the institution's key performance areas by reviewing the six most recent calendar quarters of financial data. The performance trend criteria are: (1) positive adjusted net income in 4 of the 6 most recent calendar quarters; (2) nonperforming loans, leases and securities plus foreclosed and repossessed real estate not exceeding 10

percent of performing loans, leases and securities plus foreclosed and repossessed real estate, in the most recent calendar quarter; and (3) a ratio of the allowance for loan and lease losses to nonperforming loans, leases and securities of 60 percent or greater during 4 of the 6 most recent calendar quarters. These performance trend criteria are derived from the criteria contained in the Guidelines.

The terms used in the ratios are more specifically defined in § 933.1(b), (d), (u), and (x) of the final rule, modeled after the Guidelines, to aid applicants and the Banks in determining the appropriate line items to use from the regulatory financial reports. In some cases, the terminology is clarified to reflect that used in the regulatory financial reports.

In the proposed rule, the denominator for the nonperforming assets ratio was incorrectly identified as "total assets." The Finance Board intended to continue requiring use of a denominator consistent with that used in the Guidelines, *i.e.*, performing assets plus foreclosed and repossessed real estate. This is corrected in the final rule.

In the proposed rulemaking, the Finance Board specifically requested comment on whether the nonperforming assets ratio should be 8 percent, instead of the proposed 10 percent. Two commenters supported a 10 percent requirement, in order to provide maximum flexibility in membership decisions and to prevent "undue hardship" in cases of mergers and acquisitions. One commenter stated that the 10 percent requirement was too liberal. The final rule adopts the 10 percent requirement which, to date, has served as an adequate performance trend indicator.

Two additional performance trend ratios included in the Guidelines for applications reviewed by the Banks under the delegation criteria are not included in the final rule. The Finance Board has determined that the three ratios discussed above are adequate to determine applicants' performance trends and that no additional criteria are necessary for this purpose.

Various other comments were received recommending changes to some of the performance trend criteria. The final rule does not adopt these changes, as the Finance Board believes that the three ratios as specified are sufficient for determining an institution's performance trends.

A number of commenters stated that the financial condition requirement in § 933.11 is too stringent, arguing that such in-depth financial review for membership decisions exceeds, and

should not be confused with, that which should be required for lending decisions. However, the Bank Act requires that an institution have a "financial condition * * * such that advances may be safely made." 12 U.S.C. 1424(a)(2)(B). The argument was made that the Bank Act should be interpreted to presume that any applicant with "eligible collateral" would meet the financial condition requirement of section 4(a)(2)(B) of the Bank Act. However, in order to minimize the possibility of the Banks becoming a liquidity source for weak or failing institutions, the Finance Board has determined that a minimum level of financial analysis should be required for all applicants as a prerequisite to membership. Section 933.11(c) of the final rule states that 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 and § 933.6(a)(4) of the final rule. One commenter expressly supported this provision in the rule.

c. Noncompliance is rebuttable.

As further discussed below under § 933.17(d)(1), noncompliance by an applicant with the financial condition requirement is a rebuttable presumption.

9. Character of Management Requirement—§ 933.12

Section 4(a)(2)(C) of the Bank Act requires that the "character of [an applicant's] management" be "consistent with sound and economical home financing." 12 U.S.C. 1424(a)(2)(C). Section 933.6(a)(5) of the final rule applies this general requirement to all applicants, including insurance companies. Section 933.12 implements this requirement by establishing specific character of management standards applicable to such applicants, modeled after the Guidelines.

a. Standards of adequate "character of management."

Section 933.12 has been simplified from the proposed rule by removing the proposed review requirements and allowing the Bank to rely solely on an unqualified written certification from the applicant that it meets all of the specified standards.

Under § 933.12(a), neither the applicant nor any of its directors or senior officers may be subject to, or operating under, any enforcement action instituted by its primary regulator or appropriate state regulator. One commenter suggested that demonstrated

full compliance by an applicant with an enforcement action should be sufficient to meet the standard. Section 933.17(e)(1) of the final rule provides, instead, that an applicant may rebut the presumption of noncompliance by showing substantial compliance with all aspects of the enforcement action.

Under § 933.12(b), neither the applicant nor any of its directors or senior officers shall have 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.

Under § 933.12(c), there must be 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. This provision was revised in response to comments that the proposed requirement was too burdensome unless it applied only to such liabilities, lawsuits or judgments that are significant to an applicant's operations.

The proposed rule required that the written certification be provided by a majority of the applicant's board of directors, or by an individual with authority to act on behalf of the board. A commenter pointed out that state corporate laws impose different requirements for a corporate board to take valid action and, therefore, that the requirement should be a certification duly adopted by the applicant, rather than majority action. The final rule adopts this recommendation. The Finance Board has found the written certification to be the best way to surface any character of management issues, and to get an explanation of those issues because the burden of disclosure is placed on the applicant.

b. Noncompliance is rebuttable.

As further discussed below under § 933.17(e), noncompliance by an applicant with the character of management requirement is a rebuttable presumption.

10. Home Financing Policy Requirement—§ 933.13

Section 4(a)(2)(C) of the Bank Act requires that an applicant's "home-financing policy" be "consistent with sound and economical home financing." 12 U.S.C. 1424(a)(2)(C). Section 933.6(a)(6) of the final rule applies this general requirement to all applicants, including insurance companies. Section 933.13 implements this requirement by

establishing specific home financing policy standards applicable to such applicants, modeled after the Guidelines.

a. Standards of adequate "home-financing policy."

Under § 933.13(a), an applicant that 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 is deemed to meet the home financing policy requirement. The proposed rule required an applicant to have a CRA performance evaluation within four years from the date of application. The Guidelines did not contain this requirement, and it is expected that all applicants will have received such evaluations within the four-year timeframe. Accordingly, this four-year requirement is not adopted in the final rule. If a formal CRA performance evaluation is unavailable, an informal or preliminary CRA performance evaluation from the regulator should be permissible as an indicator of the applicant's recent CRA performance. Allowing informal or preliminary evaluations makes this requirement the same for other applicants as well as de novo applicants, which were allowed to provide such evaluations under the Guidelines.

Section 933.13(b) requires an applicant that is not subject to the CRA, such as an insurance company, to demonstrate how and why its home financing policy is consistent with the Bank System's housing finance mission. The home financing policy requirements for de novo insured depository institution applicants and recent merger or acquisition applicants are discussed below under §§ 933.14(a)(4) and (b)(3), and 933.15(b).

Several commenters supported use of CRA performance evaluations to determine compliance with the home financing policy requirement. The Finance Board acknowledges that CRA performance evaluations are not a perfect method for evaluating whether an institution's home financing policy is "consistent with sound and economical home financing." CRA performance evaluations are based on whether a financial institution meets the credit needs of its assessment area through a variety of lending activities, rather than solely on its mortgage lending activity. See, e.g., 60 FR 22180 (May 4, 1995), 12 CFR 25.22. Further, CRA performance evaluations do not consider whether a financial institution's home financing policy is "sound and economical." *Id.* However, use of CRA performance

evaluations as a proxy for the home financing policy requirement appears to be the best method at the present time for determining whether an applicant's home financing policy meets this requirement.

Since neither the Congress nor the Finance Board have yet specifically defined the Bank System's housing finance mission, the Finance Board also acknowledges limitations in requesting a written justification demonstrating how and why an applicant's home financing policy is consistent with the Bank System's housing finance mission.

b. Noncompliance is rebuttable.

As further discussed below under § 933.17(f), noncompliance by an applicant with the home financing policy requirement is a rebuttable presumption.

11. De Novo Insured Depository Institution Applicants—§ 933.14

Section 933.14 of the final rule establishes the membership eligibility requirements for de novo, *i.e.*, newly chartered, insured depository institution applicants that have not yet commenced operations or that have recently commenced operations.

a. Newly chartered applicants that have not yet commenced operations.

(1) Streamlined requirements.

Section 933.14(a) includes a new provision not included in the proposed rule, which provides for a streamlined application process for newly chartered, insured depository institution applicants that have not yet commenced operations. Since either or both the regulatory agency that chartered the institution and the agency insuring the deposits of an insured depository institution will have determined that the institution's financial condition and character of management are acceptable, or will have made their approval contingent on the institution satisfying these and other requirements, the Banks should be able to rely on the agency's determination without having to do a duplicative review of these eligibility requirements. Accordingly, § 933.14(a)(1) provides that such institutions are deemed to meet the requirements of §§ 933.11 (financial condition) and 933.12 (character of management), as well as §§ 933.7 (duly organized) and 933.8 (subject to inspection and regulation).

(2) "Makes long-term home mortgage loans" requirement.

Since the agency's charter or insurance approval is not contingent on the institution agreeing to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act and § 933.9, § 933.14(a)(2) requires the

applicant to file as part of its application 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. See 12 U.S.C. 1424(a)(1)(C).

(3) 10 percent requirement.

Section 933.14(a)(3) implements section 4(a)(2) of the Bank Act by providing that the applicant shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10. See 12 U.S.C. 1424(a)(2).

(4) Home financing policy requirement.

Since the agency's charter or insurance approval is not contingent upon the institution having an adequate home financing policy, as required by section 4(a)(2)(C) of the Bank Act and § 933.6(a)(6), § 933.14(a)(4)(i) requires the applicant to file as part of its application 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. See 12 U.S.C. 1424(a)(2)(C). However, the final rule makes the Bank's approval conditional upon the applicant receiving a "Satisfactory" or better Community Reinvestment Act (CRA) rating on its first formal, or if unavailable, informal or preliminary, CRA performance evaluation. Noncompliance with this requirement is a rebuttable presumption under § 933.17(f). An applicant that is conditionally approved for membership is subject to the stock purchase requirements of § 933.20, and is eligible to receive advances, in the Bank's discretion, pursuant to 12 CFR part 935. Under § 933.14(a)(4)(iii), if the applicant's first CRA rating is "Needs to Improve" or "Substantial Non-Compliance," and the applicant is unable to rebut the presumption of noncompliance, the applicant's conditional membership approval shall be deemed null and void. In such event, § 933.14(a)(4)(iv) provides that 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 § 933.29 of this part.

b. Newly chartered applicants that have recently commenced operations.

Section 933.14(b) codifies certain exceptions in the Guidelines to the membership eligibility standards for newly chartered applicants that have recently commenced operations.

(1) 10 percent requirement.

Section 933.14(b)(1) of the final rule implements section 4(a)(2) of the Bank Act by providing that the applicant shall

have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10. See 12 U.S.C. 1424(a)(2).

(2) *Financial condition requirement.*

Section § 933.14(b)(2)(i) provides that, for purposes of § 933.11(a)(1), an applicant that has not yet filed regulatory financial reports for six calendar quarters and three year-ends shall provide any regulatory financial reports that it has filed with its primary regulator. As discussed earlier, "regulatory financial report" is defined in § 933.1(aa) to include such reports maintained by the primary regulator on a computer on-line database.

Section 933.14(b)(2)(ii) provides that, for purposes of § 933.11(b) (1) and (3), an applicant that has not yet received a composite regulatory examination rating from its primary regulator or appropriate state regulator shall provide a preliminary or informal, written composite regulatory examination rating, if available, from its primary regulator or appropriate state regulator. The final rule has been revised to take into account the availability of such rating, consistent with the Guidelines.

Under § 933.14(b)(2)(iii) of the final rule, an applicant that has not yet filed regulatory financial reports for six calendar quarters need not meet the performance trend criteria in § 933.11(b)(3)(i) (A) to (C), if: (1) the applicant has filed regulatory financial reports with its primary regulator for at least three calendar quarters of operation; and (2) the Bank determines that the applicant is in substantial compliance with the terms of its regulatory business plan. The proposed rule required that the applicant have completed regulatory financial reports for at least six calendar quarters of operation. Consistent with the Guidelines, the final rule requires three, instead of six, calendar quarters of operation. The proposed rule also required the Bank to determine such compliance either through confirmation in writing by the de novo applicant's primary regulator or based on a written analysis provided by the de novo applicant. In response to a commenter's recommendation, the final rule deletes this requirement, leaving documentation of the Bank's determination to its discretion.

(3) *Home financing policy requirement.*

Section 933.14(b)(3) provides that, for purposes of § 933.13, an applicant that has not received its first formal, or if unavailable, informal or preliminary, CRA performance evaluation, is subject to the home financing policy requirements of § 933.14(a)(4).

12. Recent Merger Applicants—§ 933.15

a. *"Pending merger applicants."* The proposed rule, consistent with the Guidelines, set forth specific eligibility requirements for pending merger applicants. A "pending merger applicant" was defined as an institution applying for membership that: (1) is a party to a merger or acquisition agreement expected to be consummated within two calendar quarters of submission of the membership application (timing test); and (2) will account for 75 percent or less of the combined assets of the resulting entity at the time of the merger or acquisition (materiality test).

The proposed provisions applicable to pending merger applicants are not adopted in the final rule. Since the merger or acquisition has not yet been consummated and may never be consummated, the Finance Board has determined that applicants expecting to shortly consummate a merger or acquisition should be subject to the standard eligibility requirements set forth in §§ 933.7 to 933.13, and should not be evaluated based on each party to the transaction or the pending resulting entity.

b. *Recent merger or acquisition applicants.* The proposed rule, consistent with the Guidelines, set forth specific eligibility requirements for recent merger applicants. A "recent merger applicant" was defined as an institution applying for membership that: (1) merged with or acquired another institution within the six calendar quarters preceding submission of the membership application (timing test); and (2) accounted for 75 percent or less of the combined assets of the resulting entity at the time of the merger or acquisition (materiality test). The proposed rule required that, for certain of the eligibility requirements, each of the parties to the merger or acquisition had to satisfy the requirements. The timing and materiality tests for the definition of a recent merger or acquisition applicant have been eliminated in the final rule.

Section 933.15 of the final rule streamlines the application process by requiring that an applicant resulting entity must satisfy the standard eligibility requirements of §§ 933.7 to 933.13 except as provided in § 933.15. The Finance Board has determined that it is not necessary to analyze each party to the transaction to determine satisfaction of the eligibility requirements.

(1) *Financial condition requirement.*

Section 933.15(a)(i) of the final rule provides that, for purposes of

§ 933.11(a)(1), an applicant that, as a result of a merger or acquisition prior to the date the Bank receives its membership application, has not yet filed regulatory financial reports for the last six calendar quarters and three year-ends (recent merger or acquisition applicant), shall provide any regulatory financial reports that the applicant has filed with its primary regulator.

Section 933.15(a)(ii) provides that, for purposes of § 933.11(b)(3)(i) (A) to (C), an applicant that, as a result of a merger or acquisition, has not yet filed combined regulatory financial reports for the last six calendar quarters, shall provide pro forma combined financial statements for those calendar quarters in which actual combined regulatory financial reports are unavailable.

(2) *Home financing policy requirement.*

Section 933.13(b) provides that, for purposes of § 933.13, a recent merger or acquisition applicant has not received its first formal, or if unavailable, informal or preliminary, CRA performance evaluation, must demonstrate how and why its home financing credit policy and lending practices will meet the credit needs of its community.

A recent merger or acquisition applicant may provide evidence to rebut a presumption of noncompliance with an eligibility requirement, as provided in § 933.17 of the final rule.

13. Insurance Company Applicants—§§ 933.8, 933.12, 933.13, 933.16

As discussed in part III.B.2. above, the Bank Act requires that an insurance company applicant must meet the membership eligibility requirements set forth in section 4(a)(1) of the Bank Act. See 12 U.S.C. 1424(a)(1); § 933.6(a) (1), (2) and (3) of the final rule. As further discussed in part III.B.6., 7., 9., 10., and 13., the final rule applies all of the section 4(a)(2) criteria except the 10 percent requirement to insurance company applicants, even though the Bank Act, on its face, specifically applies the section 4(a)(2) criteria to insured depository institution applicants. See 12 U.S.C. 1424(a)(2); §§ 933.12, 933.13, 933.16 of the final rule.

a. *"Subject to inspection and regulation" requirement—§ 933.8.*

(1) *Standard of adequate inspection and regulation.*

Insurance companies are subject to state, not federal, regulation and, therefore, the standards used to inspect and regulate insurance companies from state to state are not uniform. Every United States insurance company is subject to examination and regulation

by the state insurance department in its domiciliary state, as well as to some level of regulation by the state insurance department in each state where the insurance company applicant is licensed to do business. State insurance laws are similar to federal banking laws in that they require the appropriate state regulator to monitor whether the insurance company has complied with minimum capital and reserve, financial condition, asset valuation and various consumer-related requirements.

Forty-seven states and the District of Columbia now adhere to the financial regulation standards established by the National Association of Insurance Commissioners (NAIC) and, thus, are accredited by the NAIC. In its proposed rulemaking, the Finance Board specifically requested comment on whether the degree of inspection and regulation imposed by a particular state, e.g., whether the state insurance commissioner is NAIC-accredited, should be a factor in determining whether an insurance company applicant satisfies the "subject to inspection and regulation" requirement of section 4(a)(1)(B) of the Bank Act. See 12 U.S.C. 1424(a)(1)(B). Two commenters generally opposed requiring an applicant to be subject to inspection and regulation by an NAIC-accredited state insurance commissioner, because it could discourage insurance company membership. One commenter supported establishing such a requirement as a rebuttable presumption.

Section 933.8 of the final rule requires that an applicant's appropriate state regulator be NAIC-accredited to meet the "subject to inspection and regulation" requirement, in order to ensure some minimum degree of inspection and regulation.

(2) *Noncompliance is rebuttable.*

As further discussed below under § 933.17(c), noncompliance by an insurance company applicant with the "subject to inspection and regulation" requirement is a rebuttable presumption.

b. *Financial condition requirement—§ 933.16.*

Section 933.16 establishes specific financial condition requirements applicable to insurance company applicants that differ from those applicable to other applicants under § 933.11, due to the differences between the regulatory schemes for insurance companies and depository institutions.

(1) *Capital requirements.*

Section 933.16 provides that an insurance company applicant shall be deemed to meet the financial condition requirement of section 4(a)(2)(B) of the

Bank Act and § 933.6(a)(4), if the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the NAIC, based on the information contained in the applicant's most recent regulatory financial report filed with its primary regulator. See 12 U.S.C. 1424(a)(2)(B).

Under the proposed rule, an insurance company applicant was deemed to meet the financial condition requirement if: (1) the applicant received a regulatory examination by its primary regulator within the three years preceding the date of the membership application; (2) the applicant's most recent regulatory examination indicated no major adverse findings on financial condition; (3) the applicant received a composite independent insurance company rating from one of the five principal private companies that rate insurance companies within the three years preceding the date of the membership application; (4) the applicant's most recent composite independent insurance company rating was "strong," as defined therein; or alternatively, the applicant had an "adequate rating" and "adequate earnings," as defined therein; (5) the applicant met all of its minimum statutory and regulatory capital requirements and the NAIC capital standards, based on the applicant's most recent regulatory financial report filed with its primary regulator; and (6) the applicant met eight specified minimum performance ratios during the most recent year-end or quarter-end period. Insurance company regulators do not use the UFIRS to evaluate the financial condition of insurance companies.

One commenter stated that the financial condition requirement should be based on satisfaction of the NAIC capital standards, and not on additional independent ratings and performance ratios. The commenter noted that the NAIC capital standards are relied upon by insurers, analysts and regulators to evaluate insurance companies, not all insurers want to pay for independent ratings, and most rating services do not rate life insurance companies.

The commenter also stated that the minimum performance ratios may be too stringent even for financially strong applicants, are in some cases inapplicable to life insurance companies, and where used in the NAIC Insurance Regulatory Information System (IRIS), are only intended as a screening tool to flag an insurance company for further financial evaluation and not as a measure of its financial condition. The commenter noted that the IRIS standards require regulatory

action only if there is an abnormal value in four or more of the IRIS ratios, while the rule would deem an insurance company applicant ineligible for Bank membership if it fails to meet only one of the rule's eight ratios.

The Finance Board believes that these points have merit and the proposed rule may have applied overly stringent financial condition criteria to insurance companies. While not all states have yet adopted the NAIC capital standards, the Finance Board believes that these standards are a useful measure of an insurance company's financial condition. Satisfaction of these standards, as well as the applicant's minimum statutory and regulatory capital requirements, should be sufficient to deem an insurance company applicant in compliance with the financial condition requirement of § 933.6(a)(4). As discussed earlier, the applicants also will be required to be subject to inspection and regulation by an NAIC-accredited regulator, to ensure a minimum degree of inspection and regulation.

(2) *Noncompliance is rebuttable.*

As further discussed below under § 933.17(d)(2), noncompliance by an insurance company applicant with the financial condition requirement applicable to such applicants is a rebuttable presumption.

14. *Rebuttable Presumptions—§ 933.17*

Based on the Finance Board's general supervisory authority over the Banks, 12 U.S.C. 1422a(a)(3), 1422b(a)(1), and its authority to interpret the Bank Act's membership eligibility requirements, *id.* § 1424, the final rule establishes flexible requirements for each membership eligibility criterion required by the Bank Act and this part. An applicant that meets those requirements is presumed to be in compliance with the statutory membership eligibility criteria.

So, too, an applicant not meeting the requirements is presumed not to be in compliance with the Bank Act criteria. Section 933.17 of the final rule provides that certain presumptions may be rebutted if the applicant provides, or the Bank otherwise obtains, substantial evidence to overcome the presumption. This approach is modeled after the Guidelines. A number of commenters expressly supported this approach, rather than requiring applicants to meet rigid, "bright line" eligibility requirements, because it provides definite requirements while still allowing the Banks to exercise discretion in appropriate cases.

a. *Rebutting presumptive compliance.*

Under § 933.17(a), the presumption that an applicant meeting the

requirements of §§ 933.7 to 933.16 is in compliance with § 933.6 (a) and (b), 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.

Under § 933.17(b), the presumption that an applicant not meeting a particular requirement of §§ 933.8, 933.11, 933.12, 933.13, or 933.16 is in noncompliance with § 933.6(a) (2), (4), (5) or (6), may be rebutted, and the applicant shall be deemed to meet such requirement, if the applicable requirements of § 933.17 are satisfied.

(1) "Subject to inspection and regulation" requirement.

Section 933.17(c) provides that an insurance company applicant may rebut a presumption of noncompliance with the "subject to inspection and regulation" requirement of § 933.8 by providing substantial evidence acceptable to the Bank that it is subject to inspection and regulation as required by § 933.6(a)(2), notwithstanding the lack of NAIC accreditation.

(2) Financial condition requirement.

Section 933.17(d) sets forth the requirements for rebutting a presumption of noncompliance with the financial condition requirements of §§ 933.11 and 933.16. Under § 933.17(d)(1), for applicants other than insurance companies, in the case of an applicant's lack of a composite regulatory examination rating within the required two-year period, a variance from the required rating, or a variance from a required performance trend criterion, as required under § 933.11, 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 § 933.6(a)(4), notwithstanding the lack of rating or variance. In response to a commenter's suggestion, the final rule adopts a "substantial," rather than the proposed "compelling," evidence standard, which the Finance Board believes is sufficient for purposes of determining an applicant's financial condition.

Under § 933.17(d)(2) of the final rule, in the case of an insurance company applicant's variance from a capital requirement or standard of § 933.16, 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 § 933.6(a)(4), notwithstanding the

variance. The proposed rule did not provide for rebuttals by insurance company applicants of a presumption of noncompliance with the financial condition requirement. Making the financial condition requirement a rebuttable presumption for insurance companies is consistent with the treatment of other applicants, and is reasonable because an insurance company applicant may otherwise be able to show that it is in adequate financial condition to be a member of the Bank System.

(3) Character of management requirement.

Section 933.17(e) sets forth the requirements for rebutting a presumption of noncompliance with the character of management requirement of § 933.12.

(4) Home financing policy requirement.

Section 933.17(f) sets forth the requirements for rebutting a presumption of noncompliance with the home financing policy requirement of §§ 933.13, 933.14(a)(4), and 933.14(b)(3), where an applicant received a "Substantial Non-Compliance" rating on its most recent formal, or if unavailable, informal or preliminary, 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. This section has been revised to incorporate meeting the credit needs of the applicant's community, since the provision is now being applied to depository institution applicants and not to insurance company applicants. An insurance company applicant or recent merger or acquisition applicant would have no need for rebuttal, since §§ 933.13(b) and 933.15(b), respectively, already require such applicants to submit written justifications regarding their home financing policies.

15. Conforming Changes to Citations

For the sake of brevity, conforming changes to the citations in subparts D through I of part 933 are set out in a table at the end of this final rule.

III. Regulatory Flexibility Act

The final rule largely implements statutory requirements binding on applicants for Bank membership, regardless of their size. The Finance Board is not at liberty to make adjustments to those statutory requirements to accommodate small entities. The final rule does not impose

any additional regulatory requirements that will have a disproportionate impact on small entities. The final rule will, to some extent, reduce the criteria for determining compliance with statutory eligibility requirements that currently are used by the Finance Board in approving membership applications. Therefore, it is certified, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The information collection requirements contained in the proposed rule, as well as the information collection requirements in the sections redesignated as §§ 933.18, 933.22, 933.25, 933.26 and 933.31 of the final rule, which are not otherwise affected by this final rule, were submitted to and approved by the Office of Management and Budget (OMB) in accordance with the requirements of § 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned OMB control number 3069-0004. The title, description of need and use, and the respondent description for the information collection requirements in this final rule are discussed elsewhere in **SUPPLEMENTARY INFORMATION**. Any comments on this information collection should be sent to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503, and to the Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

The following table discloses the estimated annual reporting and recordkeeping burden:

a. Number of respondents.....	6,412
b. Total annual responses.....	6,412
Percentage of these responses collected electronically.....	0%
c. Total annual hours requested.....	59,152.1
d. Current OMB inventory.....	38,889.6
e. Difference	20,262.5

The estimated annual reporting and recordkeeping burden is:

a. Total annualized capital/startup costs.....	0
b. Total annual costs (O&M)	\$1,683,923.95
c. Total annualized cost requested	1,683,923.95
d. Current OMB inventory.....	1,754,181.95
e. Difference	(\$70,258.00)

The approved information collection requirements will not otherwise be adversely affected (and may be reduced) by the requirements of the final rule.

List of Subjects in 12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Board hereby amends title 12, chapter IX, subchapter B, part 933, of the Code of Federal Regulations as follows:

PART 933—MEMBERS OF THE BANKS

1. The heading for part 933 is revised to read as set forth above.

2. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1424, 1426, 1430, 1442.

3. The table of contents to part 933 is revised to read as follows:

Subpart A—Definitions

Sec.

933.1 Definitions.

Subpart B—Membership Application Process

933.2 Membership application requirements.

933.3 Decision on application.

933.4 Automatic membership.

933.5 Appeals.

Subpart C—Eligibility Requirements

933.6 General eligibility requirements.

933.7 Duly organized requirement.

933.8 Subject to inspection and regulation requirement.

933.9 Makes long-term home mortgage loans requirement.

933.10 10 percent requirement for insured depository institution applicants.

933.11 Financial condition requirement for applicants other than insurance companies.

933.12 Character of management requirement.

933.13 Home financing policy requirement.

933.14 De novo insured depository institution applicants.

933.15 Recent merger or acquisition applicants.

933.16 Financial condition requirement for insurance company applicants.

933.17 Rebuttable presumptions.

933.18 Determination of appropriate Bank district for membership.

Subpart D—Stock Requirements

933.19 Par value and price of stock.

933.20 Stock purchase.

933.21 Issuance and form of stock.

933.22 Adjustments in stock holdings.

933.23 Purchase of excess stock.

Subpart E—Consolidations Involving Members

933.24 Consolidation of members.

933.25 Consolidations involving nonmembers.

Subpart F—Withdrawal and Removal From Membership

933.26 Procedure for withdrawal.

933.27 Procedure for removal.

933.28 Automatic termination of membership for institutions placed in receivership.

Subpart G—Orderly Liquidation of Advances and Redemption of Stock

933.29 Orderly liquidation of advances and redemption of stock.

Subpart H—Reacquisition of Membership

933.30 Reacquisition of membership.

Subpart I—Bank Access to Information

933.31 Reports and examinations.

Subpart J—Membership Insignia

933.32 Official membership insignia.

Subparts C Through I of Part 933 [Redesignated as Subparts D Through J]

4. Subparts C through I of part 933 are redesignated as Subparts D through J, respectively.

§§ 933.6 through 933.19 [Redesignated as §§ 933.19 through 933.32]

5. Sections 933.6 through 933.19 are redesignated as §§ 933.19 through 933.32, respectively.

6. Subpart A of part 933 is revised to read as follows:

Subpart A—Definitions**§ 933.1 Definitions.**

For purposes of this part:

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

(b) *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.

(c) *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.

(d) *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.

(e) *Appropriate Federal banking agency* has the same meaning as used in 12 U.S.C. 1813(q) and, for federally insured credit unions, shall mean the National Credit Union Administration.

(f) *Appropriate state regulator* means any state officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, an applicant for Bank membership.

(g) *Bank* means a Federal Home Loan Bank established under the authority of the Act.

(h) *Board* means the Federal Housing Finance Board.

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

(j) *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; for availability contact the Federal Housing Finance Board, FOIA Office, 1777 F Street, NW., Washington, DC 20006.), including a CAMEL rating, a MACRO rating, or other similar rating, contained in a written regulatory examination report.

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

(l) *Enforcement action* means any written notice, directive, order or agreement initiated by an applicant for Bank membership or by its primary regulator or appropriate state 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.

(m) *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.

(n) *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

(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 (n)(1) of this section; 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 (n)(1) of this section.

(o) *Institutions which are eligible to make application to become members* means, for purposes of 12 U.S.C. 1431(e)(2)(A), any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution, regardless of whether the institution applies for or would be approved for membership.

(p) *Insured depository institution* means an insured depository institution as defined in 12 U.S.C. 1422(12).

(q) *Long-term* means a term to maturity of five years or greater.

(r) *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)).

(s) *Member* means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 or 933.25 of this part.

(t) *Multifamily property* means:

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

(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.

(u) *Nonperforming loans, leases and securities* means the sum of the following, reported on a regulatory financial report: loans, leases and debt securities that have been past due for 90 days (60 days in the case of credit union applicants) or longer but are still accruing; loans, leases and debt securities on a nonaccrual basis; and restructured loans and leases (not already reported as nonperforming).

(v) *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.

(w) *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.

(x) *Performing loans, leases and securities* means loans, leases and debt securities, reported on a regulatory financial report, that do not meet the definition of "nonperforming loans, leases and securities," as provided in paragraph (u) of this section.

(y) *Primary regulator* means the chartering authority for federally-chartered applicants, the insuring authority for federally-insured applicants that are not federally-chartered, or the appropriate state regulator for all other applicants.

(z) *Regulatory examination report* means a written report of examination prepared by the applicant's primary regulator or appropriate state 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 CAMEL rating, a MACRO rating, or other similar rating.

(aa) *Regulatory financial report* means a financial report that an applicant is required to file with its primary 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 primary regulator on a computer on-line database.

(bb) *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 (bb) (1) through (4) of this section 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 (bb) (1) through (4) of this section; or

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

(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 (bb) (1) through (4) of this section;

(ii) Securities that meet the requirements of paragraph (bb)(5) of this section; 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 (bb) (1) through (5) of this section; or

(7) Home mortgage loans secured by a leasehold interest, as defined in paragraph (n)(1)(ii) of this section, except that the period of the lease term may be for any duration.

(cc) *State* means a State of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

(dd) *Total assets* means the total assets reported on a regulatory financial report.

7. Subpart B of part 933 is revised to read as follows:

Subpart B—Membership Application Process

§ 933.2 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 § 933.5 of this part, prior to resolution of any appeal by the Board.

(b) *Digest.* The Bank shall prepare a written digest for each applicant stating whether or not the applicant meets each of the requirements in §§ 933.6 to 933.18 of this part, 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 and the resolution of any appeal to the Board. 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 §§ 933.6 to 933.18 of this part, 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 primary regulator or appropriate state 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 § 933.3(b) of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.3 Decision on application.

(a) *Authority.* The Board authorizes the Banks to approve or deny all applications for membership, subject to the requirements of this part. The Bank may delegate the authority to approve membership applications only to 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 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 when its application is deemed by the Bank to be complete. The Bank also shall notify an applicant if the 60-day clock is stopped, and when the clock is resumed. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and the Board's Executive Secretary with a copy of the Bank's decision resolution.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.4 Automatic membership.

(a) *Automatic membership for mandatory members.* Any institution required by law to become a member of a Bank automatically shall become a member of the Bank of the district in which its principal place of business is located upon the purchase of stock in that Bank pursuant to § 933.20(b)(1) of this part.

(b) *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.

(c) *Automatic membership for transfers.* Any member whose membership is transferred pursuant to § 933.18(d) of this part automatically shall become a member of the Bank to which it transfers.

§ 933.5 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 the Board.

(2) *Documents.* The applicant's appeal shall be addressed to the Executive Secretary, Federal Housing Finance Board, 1777 F 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 the Board with a copy of the applicant's complete membership file. Until the Board resolves the appeal, the appellee Bank shall supplement the materials provided to the Board as any new materials are received.

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

(c) *Deciding appeals.* The Board shall consider the record for appeal described in paragraph (b) of this section and shall resolve the appeal based on the requirements of the Act and this part within 90 calendar days of the date the appeal is filed with the Board. In deciding the appeal, the Board shall

apply the presumptions in this part, unless the appellant or appellee Bank presents evidence to rebut a presumption as provided in § 933.17 of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

8. Subpart C is added to part 933 to read as follows:

Subpart C—Eligibility Requirements

§ 933.6 General eligibility requirements.

(a) *Requirements.* Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution, upon application satisfying all of the requirements of the 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.* In order to be eligible to become a member of a Bank, an insured depository institution applicant 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.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.7 Duly organized requirement.

An applicant shall be deemed to be duly organized as required by section

4(a)(1)(A) of the Act and § 933.6(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.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.8 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 Act and § 933.6(a)(2) of this part, if, in the case of a depository institution applicant, it is subject to inspection and regulation by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or other appropriate state regulator, and, in the case of an insurance company applicant, it is subject to inspection and regulation by an appropriate state regulator accredited by the National Association of Insurance Commissioners.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.9 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 Act and § 933.6(a)(3) of this part, if, based on the applicant's most recent regulatory financial report filed with its primary regulator, the applicant originates or purchases long-term home mortgage loans.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.10 10 percent requirement for insured depository institution applicants.

An insured depository institution applicant shall be deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and § 933.6(b) of this part, if, based on the applicant's most recent regulatory financial report filed with its primary 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 § 933.1(bb)(6) of this part shall not be used to meet this requirement.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.11 Financial condition requirement for applicants other than insurance companies.

(a) *Review requirement.* In determining whether an applicant other than an insurance company has complied with the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(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 primary 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 primary regulator or appropriate state 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 primary regulator or appropriate state regulator, whichever is applicable, 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 other than an insurance company shall be deemed to be in compliance with the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part, if:

(1) *Recent composite regulatory examination rating.* The applicant has received a composite regulatory examination rating from its primary regulator or appropriate state 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 primary regulator; and

(3) *Minimum performance standard.* (i) The applicant's most recent composite regulatory examination rating from its primary regulator or appropriate state 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 primary 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, leases and securities plus foreclosed and repossessed real estate, did not exceed 10 percent of its performing loans, leases and securities plus foreclosed and repossessed real estate, 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 to nonperforming loans, leases and securities was 60 percent or greater during 4 of the 6 most recent calendar quarters.

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

(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 Act and § 933.6(a)(4) of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.12 Character of management requirement.

An applicant shall be deemed to be in compliance with the character of management requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(5) of this part, 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:

(a) *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 primary regulator or appropriate state regulator;

(b) *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

(c) *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.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.13 Home financing policy requirement.

(a) *Standard.* An applicant shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part, 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.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.14 De novo insured depository institution applicants.

(a) *Newly chartered applicants that have not commenced operations—(1) Duly organized, subject to inspection and regulation, financial condition and character of management requirements.* An insured depository institution applicant that is newly chartered and has not yet commenced operations, is deemed to meet the requirements of §§ 933.7, 933.8, 933.11 and 933.12 of this part.

(2) *Makes long-term home mortgage loans requirement.* The applicant shall be deemed to make long-term home mortgage loans as required by § 933.9 of this part, 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.

(3) *10 percent requirement.* The applicant shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10 of this part.

(4) *Home financing policy requirement—(i) Conditional approval.* An 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 Act and § 933.6(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 of § 933.20 of this part and the advances provisions of 12 CFR part 935.

(ii) *Approval.* The applicant shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(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.

(iii) *Conditional approval deemed null and void.* If the 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 Act and § 933.6(a)(6) of this part, subject to rebuttal by the applicant under § 933.17(f) of this part, and its conditional membership approval is deemed null and void.

(iv) *Treatment of outstanding advances and Bank stock.* If the applicant's conditional membership approval is deemed null and void pursuant to paragraph (a)(4)(iii) 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 § 933.29 of this part.

(b) *Newly chartered applicants that have recently commenced operations.* An insured depository institution applicant that is newly chartered and has commenced operations, is subject to the requirements of §§ 933.7 to 933.13 of this part except as provided in this paragraph (b).

(1) *10 percent requirement.* The applicant shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10 of this part.

(2) *Financial condition requirement.* (i) *Regulatory financial reports.* For purposes of § 933.11(a)(1) of this part, if the applicant has not yet filed regulatory financial reports with its primary regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application, the applicant shall provide any regulatory financial reports that it has filed with its primary regulator.

(ii) *Recent composite regulatory examination rating.* For purposes of § 933.11(b)(1) and (3) of this part, if the applicant has not yet received a composite regulatory examination rating from its primary regulator or appropriate state regulator, the applicant shall provide a preliminary or informal, written composite regulatory examination rating, if available, from its primary regulator or appropriate state regulator.

(iii) *Performance trend criteria.* If the applicant has not yet filed regulatory financial reports with its primary regulator for the last six calendar quarters preceding the date the Bank receives its application for membership, the applicant need not meet the

performance trend criteria in § 933.11(b)(3)(i)(A) to (C) of this part, if:

(A) *Reports for three quarters.* The applicant has filed regulatory financial reports with its primary regulator for at least three calendar quarters of operation; and

(B) *Business plan compliance.* The Bank determines that the applicant is in substantial compliance with the terms of its regulatory business plan.

(3) *Home financing policy requirement.* For purposes of § 933.13 of this part, an applicant that has not received its first formal, or if unavailable, informal or preliminary, CRA performance evaluation, is subject to the home financing policy requirements of paragraph (a)(4) of this section.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.15 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 §§ 933.7 to 933.13 of this part except as provided in this section.

(a) *Financial condition requirement—* (i) *Regulatory financial reports.* For purposes of § 933.11(a)(1) of this part, 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 primary 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 primary regulator.

(ii) *Performance trend criteria.* For purposes of § 933.11(b)(3)(i)(A) to (C) of this part, 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 primary 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 § 933.13 of this part, 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.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.16 Financial condition requirement for insurance company applicants.

An insurance company applicant shall be deemed to meet the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part, if, based on the information contained in the applicant's most recent regulatory financial report filed with its primary 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.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.17 Rebuttable presumptions.

(a) *Rebutting presumptive compliance.* The presumption that an applicant meeting the requirements of §§ 933.7 to 933.16 of this part is in compliance with section 4(a) of the Act and § 933.6 (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 §§ 933.8, 933.11, 933.12, 933.13, or 933.16 of this part is in noncompliance with section 4(a) of the Act and § 933.6(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 § 933.8.* 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 § 933.8 of this part, 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 § 933.6(a)(2) of this part, notwithstanding the lack of NAIC accreditation.

(d) *Presumptive noncompliance with financial condition requirements of §§ 933.11 and 933.16*—(1) *Applicants other than insurance companies.* For applicants other than insurance companies, in the case of an applicant's lack of a composite regulatory examination rating within the two-year period required by § 933.11(b)(1) of this part, a variance from the rating required by § 933.11(b)(3)(i) of this part, or a variance from a performance trend criterion required by § 933.11(b)(3)(i) of this part, 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 § 933.6(a)(4) of this part, notwithstanding the lack of rating or variance.

(2) *Insurance company applicants.* In the case of an insurance company applicant's variance from a capital requirement or standard of § 933.16 of this part, 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 § 933.6(a)(4) of this part, notwithstanding the variance.

(e) *Presumptive noncompliance with character of management requirement of § 933.12*—(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 primary regulator or appropriate state regulator, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's primary regulator or appropriate state regulator, whichever is applicable, 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, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's primary regulator or appropriate state 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. 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, 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 primary regulator or appropriate state regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§ 933.11(b)(2) and 933.16 of this part; 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 §§ 933.11(b)(2) and 933.16 of this part. 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 §§ 933.13, 933.14(a)(4), and 933.14(b)(3).* 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 primary 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.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

§ 933.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) An institution eligible to become a member of a Bank under the 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.

(2) An institution eligible to become a member of a Bank under the 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 the Board.

(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, the Board 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 the Board 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 Board 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 including directorial representation under section 7(c) of the Act, 12 U.S.C. 1427(c), and § 932.11 of this chapter, but shall not be subject to the provisions on termination of membership set forth in section 6 of the Act, 12 U.S.C. 1426, or §§ 933.26, 933.27 and 933.29 of this part, including the restriction on reacquiring Bank membership set forth in § 933.30 of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069-0004.)

9. In the list below, for each newly designated section indicated in the left column, remove the reference indicated in the middle column from where it appears and add the reference indicated in the right column:

Section	Remove	Add
933.20(b)(1)	§§ 933.2(c) or 933.3, § 933.2(d)	§ 933.3, § 933.4(a).
933.20(b)(2)	§ 933.2(d)	§ 933.4(a).
933.22(b)(1)	§ 933.7(a), § 933.18(d)	§ 933.20(a), § 933.31(d).
933.23	§ 933.7(a)	§ 933.20(a).
933.24(a)(2)	§ 933.7(a)	§ 933.20(a).
933.24(b)(2)	§ 933.16	§ 933.29.
933.25(c)	§ 933.2	Subpart B.
933.25(d)(2) (ii) (A) and (B), and (iii)	§ 933.7(a)	§ 933.20(a).
933.25(d)(3)	§ 933.16	§ 933.29.
933.26(c)	§ 933.16	§ 933.29.
933.27(e)	§ 933.16	§ 933.29.
933.28(b)	§ 933.16	§ 933.29.
933.29(a)(1)	§§ 933.13, 933.14 or 933.15, § 933.15, § 933.11(b), or 933.12(d)(3).	§§ 933.26, 933.27 or 933.28, § 933.28, § 933.24(b) or 933.25(d)(3).
933.30 introductory text	§ 933.13	§ 933.26.
933.30(a)	§ 933.5	§ 933.18.
933.30(b)	§ 933.2(d)	§ 933.4(a).
933.31(d)	§ 933.9(b)(1)	§ 933.22(b)(1).

Dated: August 2, 1996.

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

Bruce A. Morrison,
Chairman.

[FR Doc. 96-20487 Filed 8-15-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-10-AD; Amendment 39-9663; AD 96-12-20]

RIN 2120-AA64

Airworthiness Directives; Lockheed Model 382, 382B, 382E, 382F, and 382G Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information that appeared in airworthiness directive (AD) 96-12-20, amendment 39-9663, that was published in the Federal Register on June 10, 1996 (61 FR 29279). This AD is applicable to certain Lockheed Model

382, 382B, 382E, 382F, and 382G series airplanes. Among other things, it requires visual inspections to detect loose, missing, or deformed fasteners in the upper truss mounts of certain engines. This action corrects a reference to the outboard and inboard engines, which should have referred to the outboard and inboard truss mounts.

DATES: Effective July 15, 1996.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of July 15, 1996 (61 FR 29279, June 10, 1996).

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, ACE-116A, Flight Test Branch, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, Suite 2-160, 1701 Columbia Avenue, College Park, Georgia 30337-