Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), July 21, 1998.

Jennifer J. Johnson,

Secretary of the Board.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 933

[No. 98–29]

RIN 3069–AA67

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) (Membership Regulation) to make certain technical and substantive revisions to the regulation that would improve the operation of the membership application process, as well as further streamline application processing for certain types of applicants for Bank membership.

EFFECTIVE DATE: August 26, 1998.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, Compliance Assistance Division, Office of Policy, (202) 408–2848, or Sharon B. Like, Senior Attorney-Adviser, Office of General Counsel, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under the Federal Home Loan Bank Act (Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks, which provide advances and other financial services to their member institutions. *See* 12 U.S.C. 1422a(a). Institutions may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Act and the Finance Board's implementing Membership Regulation. *See id.* sections 1424, 1426, 1430(e)(3); 12 CFR part 933.

On August 16, 1996, the Finance Board published a final rule amending the Membership Regulation to authorize 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 formerly contained in policy guidelines used by the Finance Board in approving membership applications. *See* 61 FR 42531 (Aug. 16, 1996) (codified at 12 CFR part 933); Federal Home Loan Bank System Membership Application Guidelines, Finance Board Res. No. 93–88 (Nov. 17, 1993) (Guidelines). The final rule also provided for streamlined application processing for certain types of membership applications. *See* 12 CFR part 933.

In the course of processing and approving membership applications under the Membership Regulation, the Banks raised a number of technical and substantive issues with the Regulation whose resolution would improve operation of the membership application process and streamline membership application processing for certain types of institutions. To address these concerns, the Finance Board issued a proposed rule revising various provisions of the Membership Regulation, which was published in the **Federal Register** on February 19, 1998, with a 30-day period for public comment. *See* 63 FR 8364 (Feb. 19, 1998). The Finance Board received a total of four letters on the proposed rule. Commenters included three Banks, and one Bank member thrift institution.

II. Analysis of the Final Rule

A. Definitions—Section 933.1

1. Definition of ''Primary Regulator''—Section 933.1(y)

Section 933.1(y) of the current Membership Regulation defines the term ''primary regulator'' as 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. *See* 12 CFR § 933.1(y). This definition does not include the Federal Reserve Board (FRB) for state-chartered applicants that are members of the Federal Reserve System (FRS). Under § 933.11(a)(3), a Bank is required to obtain as part of the membership application the applicant's most recent available regulatory examination report prepared by its primary regulator or appropriate state regulator. *See id.* § 933.11(a)(3). Section 933.11(b)(1) provides that 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 for membership. *See id.* § 933.11(b)(1).

One Bank identified a potential problem with meeting these financial condition requirements where the FRB and a state financial institution regulator alternate examinations of a state-chartered applicant that is an FRS member. When the state financial institution regulator performs the examination, it provides a copy of the regulatory examination report to the FRB. According to the Bank, certain state financial institution regulators in its district cannot or will not release to the Bank copies of the regulatory examination reports they have prepared, nor will the FRB release to the Bank copies of the state regulatory examination reports. Thus, regulatory examination reports prepared under such circumstances are not available in order for the Bank to obtain a regulatory examination rating for the applicant. Nor may the Bank obtain and rely on a copy of the regulatory examination report and rating of the FRB when the FRB has examined the applicant, because the definition of ''primary regulator'' in § 933.1(y) does not include the FRB. Thus, in such situations, the Bank may not be able to obtain any examination report and rating for the applicant and, therefore, the applicant cannot be deemed to satisfy the financial condition requirements of §§ 933.11(a)(3) and (b)(1). The presumption of noncompliance with the financial condition requirements would have to be rebutted under § 933.17(d)(1) by preparing a written justification providing substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4), notwithstanding the lack of a regulatory examination rating. *See id.* § 933.17(d)(1).

The exclusion of the FRB from the definition of ''primary regulator'' in § 933.1(y) was an oversight. The Banks should be able to rely on regulatory examination reports and examination ratings from the FRB to determine an applicant's financial condition under § 933.11. An applicant should not have to go through the additional burden of establishing its satisfactory financial condition through the rebuttal process if an FRB regulatory examination report and rating are available. Two Bank commenters specifically supported allowing the Banks to rely on FRB regulatory examination reports and ratings. One commenter stated that it believes the FRB examination is equivalent in rigor and thoroughness to an examination by the Federal Deposit Insurance Corporation (FDIC) or the Office of the Comptroller of the Currency (OCC).

Accordingly, consistent with the proposed rule, the final rule revises the definition of ''primary regulator'' in

§ 933.1(y), as further described below, to include the FRB.

Another limitation of the current definition of ''primary regulator'' in § 933.1(y) is that it requires a Bank to obtain the regulatory examination report and rating only from the ''primary'' regulator listed, even though a regulatory examination report and rating from an alternate regulator also may be available. For example, many potential members are examined by more than one regulator. However, under the regulation, the Bank is required to obtain the regulatory examination report and rating prepared by the FDIC for a state-chartered, FDIC-insured institution, even though there may be a more recent state regulatory examination report and rating available for such institution. A Bank should not be limited to using only the ''primary'' regulator's regulatory examination report and rating when more current information is available.

Accordingly, consistent with the proposed rule, the final rule amends § 933.1(y) by changing the term ''primary regulator'' to the broader term ''appropriate regulator,'' and defining it to mean a regulatory entity listed in § 933.8, as applicable. The regulatory entities listed in § 933.8 are: for depository institution applicants, the FDIC, FRB, National Credit Union Administration, OCC, Office of Thrift Supervision (OTS), or other appropriate state regulator; and for insurance company applicants, an appropriate state regulator accredited by the National Association of Insurance Commissioners. *See id.* § 933.8. The final rule replaces the terms ''primary regulator'' and ''primary regulator or appropriate state regulator'' wherever they appear throughout the Membership Regulation with the term ''appropriate regulator.''

2. Nonperforming Assets Performance Trend Criterion; Definitions of ''Nonperforming Loans, Leases and Securities;'' ''Performing Loans, Leases and Securities''—Sections 933.11(b)(3)(i)(B); 933.1(u), (x)

Section 933.11(b)(3)(i)(B) of the current Membership Regulation provides that if an applicant's most recent composite regulatory examination rating within the past two years was ''2'' or ''3,'' the applicant's nonperforming loans, leases and securities plus foreclosed and repossessed real estate may not have exceeded 10 percent of its performing loans, leases and securities plus foreclosed and repossessed real estate, in the most recent calendar quarter. *See id.* § 933.11(b)(3)(i)(B). This nonperforming assets performance trend criterion was intended to be the same criterion as that required in the former Finance Board Guidelines, but was described incorrectly in the Membership Regulation. The proposed rule revised the criterion to state it correctly as provided in the Guidelines, and made conforming changes to components of the criterion consistent with the Guidelines. One Bank commenter specifically supported this proposed change.

Accordingly, consistent with the proposed rule, the final rule revises § 933.11(b)(3)(i)(B) to state the criterion correctly, as follows: the applicant's nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter. The final rule makes a conforming change to the definition of ''nonperforming loans, leases and securities'' in § 933.1(u) by deleting the references to securities. The final rule also makes a conforming change to § 933.1(x) by replacing the definition of ''performing loans, leases and securities'' with a new definition of ''other real estate owned.''

3. Definition of ''Consolidation''—Section 933.1(ee)

Sections 933.24 and 933.25 of the current Membership Regulation set forth certain requirements and procedures in the event of the ''consolidation'' of members with other members or members with nonmembers. *See id.* §§ 933.24, 933.25. Questions were raised as to whether the term ''consolidation'' applies only to transactions falling within the narrow meaning of the term, *i.e.*, combinations where a new company is formed to acquire the net assets of the combining companies. The term ''consolidation'' was not intended to apply solely to such combinations of entities. The proposed rule clarified this issue by adding a new definition of ''consolidation'' in § 933.1(ee) to include a consolidation, a merger, or a purchase of all of the assets and assumption of all of the liabilities of an entity by another entity. One Bank commenter specifically supported the proposed definition.

Accordingly, the final rule adopts the proposed definition without change.

B. Action on Applications—Section 933.3(c)

Section 933.3(c) of the current Membership Regulation requires a Bank to notify an applicant when its application is deemed by the Bank to be complete. *See id.* § 933.3(c). Section 933.3(c) also requires a Bank to notify an applicant if the 60-day period for acting on a membership application is stopped, and when the period for acting on the application is resumed. *See id.* The proposed rule required the Bank to provide such notices to the applicant in writing. The intent was to ensure that there is a written record of the Banks' actions during the application processing period, which may be relevant in the event of an appeal of a Bank's denial of an application for membership.

No commenters opposed the proposed requirement that the Banks provide written notice to an applicant when its application is deemed complete, which starts the 60-day processing clock. Accordingly, this requirement is retained in the final rule.

Two Bank commenters specifically opposed requiring the Banks to provide written notice to an applicant when the 60-day processing period is stopped or resumed. They stated that telephone notification to the applicant, with a written log of such notification maintained in the application files at the Bank, should be sufficient. The commenters viewed the notice requirement merely as ''bureaucratic paperwork'' that would provide no additional information to the applicant, which would already have received verbal notice from the Bank, while increasing the workload for Bank staff. One commenter also noted that the processing clock often is stopped only for short periods of time in order to get additional information from the applicant, and the Bank probably will have received the requested information from the applicant before it has had time to generate the notice letter.

The Finance Board believes there is merit in the commenters' arguments. A written record can be ensured, for purposes of reviewing any appeal of a Bank's denial of a membership application, by requiring the Banks to maintain a written log in their application files of notices provided to applicants when the processing clock is stopped or resumed. Written notice to the applicants in such circumstances does not appear to be necessary. The final rule is revised accordingly.

C. Automatic Membership Approval For Certain Consolidations—Section 933.4(d)

Sections 933.4(a) and (b) of the current Membership Regulation provide for automatic Bank membership approval for institutions required by law to become Bank members, and for institutions that have undergone certain charter conversions, respectively. *See id.* §§ 933.4(a), (b). Several Banks

suggested that the Regulation also should allow for automatic Bank membership approval where a member consolidates with a nonmember, the nonmember is the surviving entity, and a significant percentage of the surviving entity's total assets are derived from the assets of the disappearing member. Where the surviving entity has substantially the same assets as the disappearing member, the surviving entity arguably should not have to go through the membership application process. The proposed rule authorized such automatic membership approval where 90 percent or more of the total assets of the surviving entity are derived from the assets of the disappearing member, and where the surviving entity provides written notice to the Bank that it desires to be a member of the Bank. The Finance Board requested comment on the arguments for or against this proposal, including whether the 90 percent calculation or some other number or approach was an appropriate method for determining the similarity of the disappearing and surviving entities. In response to a Bank suggestion, the Finance Board also requested comment on whether the chief executive officer of the surviving entity should be required to submit a letter or certification stating that the surviving entity continues to meet the membership eligibility requirements.

1. 90 Percent Test

One Bank commenter specifically supported the proposed 90 percent test. Two Bank commenters recommended reducing the percentage requirement to 75 percent or 50 percent, which also was supported by the Bank endorsing the 90 percent test. Two of these commenters recommended that the surviving entity in such consolidations be required to provide a letter or certification stating that it continues to meet the membership eligibility requirements. The other commenter stated that such a letter or certification is not necessary since the preponderance of the assets is derived from the disappearing member, and it is highly unlikely that the surviving entity would not meet the membership eligibility requirements. The commenters stated that lowering the percentage requirement would further streamline the membership process, while posing little financial risk to the Banks. Otherwise, there would be an interruption in membership status while the surviving entity applied for membership, which could result in lost business for the Bank as well as the surviving entity. The thrift member commenter opposed the proposed amendment, stating that any efficiencies that may be gained by allowing automatic membership approval for the small number of institutions that would be eligible for such treatment are outweighed by the risks of not maintaining appropriate vigilance over Bank membership.

After consideration of the comments, the Finance Board has decided to retain in the final rule the proposed 90 percent test, but to make its application discretionary with the Banks. The final rule also clarifies that a consolidated institution that is approved for automatic membership by a Bank may become a member of the Bank only upon the purchase of its minimum stock purchase requirement pursuant to the requirements of § 933.20.

The intent of the 90 percent test is to permit automatic membership approval for consolidated institutions where substantially all of the institution's assets are derived from the assets of the disappearing member, making satisfaction of the membership eligibility requirements essentially automatic. The Finance Board is comfortable that the 90 percent test generally represents a satisfactory proxy for this eligibility determination and that there are not significant risks that would affect the integrity of the membership process. However, the Finance Board recognizes that there may be special circumstances where relying solely on the 90 percent proxy test is not sufficient, and that warrant obtaining additional information about the consolidated institution in order to verify its satisfaction of the membership eligibility requirements. In such cases, a Bank may want to conduct additional due diligence of the consolidated institution's financial condition or other eligibility factors, pursuant to the normal membership application process, in order to verify the institution's compliance with the eligibility requirements. Thus, rather than requiring automatic membership approval for all consolidated institutions meeting the 90 percent test, the final rule authorizes the Banks, in their discretion, to approve automatic membership for consolidated institutions meeting the 90 percent test.

A percentage requirement below 90 percent does not ensure automatic satisfaction of the membership eligibility requirements, as substantially all of the surviving institution's assets cannot be said to be derived from the assets of the disappearing member. An independent determination that the surviving institution continues to meet the eligibility requirements would be necessary. This goes beyond the intent of the proposed rule, which was to streamline the membership process for consolidated institutions that can be deemed to automatically satisfy the membership eligibility requirements. Relying on a self-certification of eligibility from the surviving institution is no longer an automatic membership process, and may not achieve the desired effect of streamlining the process. The surviving institution still would have to work through the data from its regulatory financial report and determine whether it satisfies the eligibility requirements before it could certify its eligibility, and the Bank presumably would need to conduct some sort of informal analysis of the institution's data in order to ensure that it is comfortable with relying on the certification. Moreover, it may not be advisable for a Bank to rely on an institution's self-certification of eligibility, in light of the fact that the Banks often are required to work extensively with membership applicants to get all of the information needed to conduct an adequate eligibility review. In addition, it is not clear how the rebuttable presumption process under the current Regulation should work under a certification process. The Regulation currently allows an applicant to rebut a presumption of noncompliance with eligibility requirements, as determined in the discretion of the Bank. It may not make sense to allow an institution to make its own discretionary certification that it has rebutted a presumption of noncompliance.

In view of all these factors, the final rule does not adopt the commenters' suggestions, which go beyond the intended scope of the proposed rule.

2. Post-Consolidation Notice Requirement

Two Bank commenters recommended that the surviving entity be required to notify the Bank of its desire for membership within 60 days after the effective date of the consolidation, consistent with the 60-day notice requirement for consolidations involving nonmembers that do not satisfy the 90 percent test, which must apply for membership under § 933.25(b) of the current Regulation. *See id.* § 933.25(b). There appears to be no reason why consolidated institutions meeting the 90 percent test should be treated differently, for membership notice purposes, from consolidated institutions that do not meet the 90 percent test and must apply for membership. Sixty days appears to be a reasonable amount of time for consolidated institutions meeting the 90

percent test to make a decision regarding whether they want to be members. Accordingly, the final rule adopts a 60-day post-consolidation notice requirement for automatic consolidations.

3. Treatment of Acquired Advances and Stock During Notice Period

Since the final rule allows for a 60-day post-consolidation notice period, the rule also must clarify how any outstanding Bank advances and Bank stock acquired from the disappearing member will be treated during that period before the consolidated institution has announced its intention whether to accept membership. The final rule treats such advances and stock consistent with the treatment for consolidated institutions not meeting the 90 percent test, under §§ 933.25(d)(1)(i), (e) and (f) of the current regulation, *i.e.*, during the 60-day notice period, the consolidated institution's Bank may permit the institution to continue to hold any outstanding Bank advances and stock, and the institution shall have the limited rights associated with such stock in accordance with §§ 933.25(e) and (f). *See id.* §§ 933.25(d)(1)(i), (e), (f).[1] Of course, if the consolidated institution ultimately decides not to accept membership, then the liquidation of any outstanding indebtedness owed to the disappearing institution's Bank and redemption of stock of such Bank would be carried out in accordance with the requirements of § 933.29 of the current Regulation. *See* 12 CFR 933.29.

4. Multiple Members Merging Into a Nonmember; ''Same District'' Requirement

A Bank commenter also recommended that automatic membership be allowed for multiple members merging into a single nonmember, but only if the principal places of business of the multiple members are located in the same Bank district as the principal place of business of the surviving nonmember, consistent with the ''same district'' requirement in § 933.25(b) of the current Regulation. The final rule allows for automatic membership for multiple members merging into a single nonmember, where 90 percent of more of the total assets of the consolidated institution are derived from the total assets of the disappearing members. The final rule also applies to consolidations meeting the 90 percent test the ''same district'' requirement, which was inadvertently omitted from the proposed rule.

D. Allowance For Loan and Lease Losses Performance Trend Criterion— Section 933.11(b)(3)(i)(C)

Section 933.11(b)(3)(i)(C) of the current Membership Regulation provides that if an applicant's most recent composite regulatory examination rating within the past two years was ''2'' or ''3,'' the applicant's ratio of its allowance for loan and lease losses to nonperforming loans, leases and securities must have been 60 percent or greater during 4 of the 6 most recent calendar quarters. This allowance for loan and lease losses performance trend criterion was intended to be the same criterion as that required in the former Finance Board Guidelines, but was described incorrectly in the Membership Regulation. The proposed rule revised the criterion to state it correctly as provided in the Guidelines. One Bank commenter specifically supported this proposed change.

Accordingly, consistent with the proposed rule, the final rule revises § 933.11(b)(3)(i)(C) to state the criterion correctly, as follows: the applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during 4 of the 6 most recent calendar quarters.

One Bank commenter recommended that the minimum 60 percent ratio be reduced to 40 percent, arguing that 60 percent is too high a threshold that too often triggers the need for rebutting a presumption of noncompliance with this criterion for applicants that are in a strong financial condition. The Bank also suggested an alternative measure of compliance through reliance on a determination by the applicant's primary regulator of satisfactory performance of the criterion, based on the primary regulator's own definition of the criterion.

The substantive issue of what amount should be the required ratio for this performance criterion was not specifically raised for comment in the proposed rule, which was intended merely to correct, consistent with the Guidelines, an incorrect statement of the ratio in the current regulation. No other commenter recommended lowering the ratio from 60 percent. This issue, therefore, does not appear to be ripe for review at this time. However, if additional information is brought to the Finance Board's attention at a future time that suggests that the 60 percent figure should be reconsidered, the Finance Board will act accordingly.

E. De Novo Insured Depository Institution Applicants—Section 933.14

Section 933.14 of the current Membership Regulation sets forth the requirements for processing and approving membership applications from de novo insured depository institution applicants. *See id.* § 933.14. Section 933.14(a) provides for streamlined processing for newly-chartered applicants that have not yet commenced operations, which are deemed to meet the duly organized, inspection and regulation, financial condition, and character of management eligibility requirements. *See id.* § 933.14(a)(1). Section 933.14(b) requires newly-chartered applicants that have commenced operations to meet all of the eligibility requirements, subject to certain exceptions provided in paragraph (b). In particular, if such applicants have not yet filed regulatory financial reports for the last six calendar quarters preceding the date the Bank receives the membership application, the applicant need not meet the performance trend criteria in § 933.11(b)(3)(i)(A) through (C) if the applicant has filed regulatory financial reports for at least three calendar quarters of operation. *See id.* § 933.14(b)(2)(iii)(A).

A number of Banks stated that the requirement for having filed three calendar quarters of regulatory financial reports should not be necessary for institutions that have recently commenced operations. The financial condition and character of management of such institutions already will have been recently reviewed and approved by their chartering and insuring regulators (*see, e.g.*, 12 U.S.C. 1816, 12 CFR 303.7(d)(ii) (FDIC); 12 U.S.C. 26, 12 CFR 5.20 (OCC)), will have been based on a forward looking business plan, and should not have changed significantly since the commencement of operations. The Banks should not have to duplicate the review performed by the prospective member's appropriate regulator. Further, de novo insured depository institution applicants should be treated similarly to mandatory de novo thrift institutions, which do not have to satisfy any specific Bank membership

[1] Section 933.25(f) of the current Membership Regulation provides that the consolidated institution may not vote the Bank stock acquired in the consolidation from the disappearing member unless and until the consolidated institution is a Bank member. *See id.* § 933.25(f). Under the Finance Board's proposed amendments to its regulations governing the election of Bank directors, § 933.25(f) would be removed. *See* 63 FR 26532, 26544 (May 13, 1998). The proposed election regulation would provide that the consolidated institution may vote the Bank stock acquired from the disappearing member that was held by such member on the record date (December 31 of the calendar year immediately preceding the election year). *See* proposed §§ 932.1 (definition of ''record date''), 932.5(b), 63 FR 26539–40.

eligibility requirements since they are required by law to be Bank members.

Based on these arguments, proposed § 933.14(a)(1) extended the streamlined application processing currently applicable to newly-chartered insured depository institutions that have not yet commenced operations to newly-chartered insured depository institutions that have commenced operations. Such applicants would be deemed to meet the duly organized, inspection and regulation, financial condition, and character of management eligibility requirements. In order to be considered newly-chartered and subject to the streamlined application processing procedures of § 933.14(a)(1), applicants would have to have been chartered within three years prior to the date the Bank receives the application for membership. Three years is consistent with the time period for de novo treatment applied by other financial institution regulators. *See, e.g.*, 12 CFR 543.3(a) (OTS).

The Finance Board requested comment on the arguments for or against this proposal. Three Bank commenters specifically supported the proposal, while the thrift member commenter opposed it. The supporting commenters cited the reasons expressed in the proposed rule for streamlining the process. One commenter also noted that the de novo applicant's other regulators closely scrutinize the financial condition of the institution during its first three years of operations, which should provide additional comfort regarding the safety and soundness of the institution. The commenter also pointed out that after approving a de novo institution for membership, the Bank would closely monitor its financial soundness before providing any advances to the institution. In addition, the commenter noted that streamlining membership approval for such institutions will enable them to more quickly access long-term Bank advances for the purpose of originating long-term housing and community and economic development loans.

The thrift member stated that the efficiencies to be gained by the proposal appeared small compared to the risks being assumed by the Bank System. The commenter indicated that a de novo applicant's first three quarterly reports should be reviewed to compare its actual performance with its business plan, thereby preserving the possibility of early identification and avoidance of financial risks to the Bank System. However, as discussed above, streamlined membership processing for de novos should not increase the financial risks to the Bank System, given the extensive financial scrutiny of the institution already performed by its other regulators, as well as the close monitoring that the Banks will conduct before making advances to such an institution.

Accordingly, the final rule retains the proposed provisions, with a clarification that the charter date to be used in determining the three-year period for de novo status is the date the charter was approved. One commenter suggested that the charter date be the date the letter approving the charter is issued to the applicant by its regulator. This seems unnecessary as the date of charter approval should be easily verifiable.

F. Recent Merger or Acquisition Applicants—Section 933.15

Sections 933.9 and 933.10 of the current Membership Regulation require applicants to show satisfaction of the ''makes long-term home mortgage loans'' and ''10 percent residential mortgage loans'' requirements, respectively, based on the applicant's most recent regulatory financial report. *See id.* §§ 933.9, 933.10. An applicant that recently has merged with or acquired another institution prior to applying for Bank membership must show satisfaction of these eligibility requirements based on the most recent regulatory financial report filed by the consolidated entity. *See id.* However, a newly consolidated entity may not be able to show compliance with these requirements as it may be several months before the next quarterly regulatory financial report is due to be filed with the appropriate regulator.

One Bank suggested that in order to allow the applicant to be approved for membership promptly, the applicant should be allowed to demonstrate satisfaction of §§ 933.9 and 933.10 by providing the combined pro forma financial statement that the combined entity filed with the regulator that approved its merger or acquisition. Another suggestion was that the applicant should be allowed to provide the most recent regulatory financial report filed prior to the merger or acquisition by each of the institutions that entered into the merger or acquisition. The Bank then would consolidate the relevant data from both reports for purposes of determining compliance with §§ 933.9 and 933.10. The proposed rule allowed reliance on such regulatory financial reports, provided that in the case of showing satisfaction of the 10 percent residential mortgage loans requirement, the Bank obtained a certification from the applicant that there was no material decrease in the ratio of consolidated residential mortgage loans to consolidated total assets derived from the reports since the reports were filed with the appropriate regulator.

One Bank commenter specifically supported this proposal. However, upon further consideration of the issue, the Finance Board is concerned that simply consolidating the mortgage loan data contained in the regulatory financial reports filed by the entities before the merger or acquisition does not accurately reflect a true valuation of the asset composition of the combined entity. The proposed rule also created a potential difficulty in defining what constitutes a ''material'' decrease in the ratio of consolidated residential mortgage loans to consolidated total assets. The Finance Board believes that the combined pro forma financial statement filed with the regulator that approved the merger or acquisition represents a more accurate picture of the combined institution's asset composition. Moreover, § 933.15(a)(ii) of the current Regulation already allows such applicants to provide combined pro forma financial statements to show satisfaction of the performance trend criteria in §§ 933.11(b)(3)(i)(A) to (C) where combined regulatory financial reports are not available. *See id.* § 933.15(a)(ii). Accordingly, the final rule provides that, for purposes of determining compliance with §§ 933.9 and 933.10, a Bank may, in its discretion, permit a recent merger or acquisition applicant that has not yet filed the required consolidated regulatory financial report as a combined entity with its appropriate regulator, to provide the combined pro forma financial statement for the combined entity filed with the regulator that approved the merger or acquisition.

III. Regulatory Flexibility Act

The final rule implements statutory requirements binding on all Banks and on all applicants for Bank membership, regardless of their size. The Finance Board is not at liberty to make adjustments to those requirements to accommodate small entities. The final rule does not impose any additional regulatory requirements that will have a disproportionate impact on small entities. Therefore, in accordance with section 605(b) of the Regulatory Flexibility Act, *see* 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

As part of the proposed rulemaking, the Finance Board published a request

for comments concerning proposed changes to the collection of information in the current Membership Regulation, *see* 63 FR 8364, 8367 (Feb. 19, 1998), which previously was approved by the Office of Management and Budget (OMB) and assigned OMB control number 3069–0004. The Finance Board also submitted to OMB an analysis of the proposed changes to the collection of information contained in § 933.15 of the proposed rule, in accordance with section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). No comments were received by the Finance Board on the proposed changes to the collection of information. OMB approved the information collection without conditions with an expiration date of April 30, 2001. The final rule does not substantively or materially modify the approved information collection.

The Banks and, where appropriate, the Finance Board, will use the information collection under § 933.15(c) of the final rule to determine whether a recent merger or acquisition applicant meets certain membership eligibility requirements. *See* 12 U.S.C. 1424(a)(1)(C), (a)(2)(A); 12 CFR 933.9, 933.10. Only applicants meeting such requirements may become Bank members. *See id*.; *id*. Responses are required to obtain or retain a benefit. *See* 12 U.S.C. 1424. The Finance Board and the Banks will maintain the confidentiality of information obtained from respondents pursuant to the collection of information as required by applicable statute, regulation, and agency policy. Books or records relating to this collection of information must be retained as provided in the regulation.

Likely respondents and/or recordkeepers will be the Finance Board, Banks, and financial institutions that have recently undergone a merger or acquisition and are eligible to become Bank members under the Act, *see id*. section 1424(a)(1), including any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution. The title, description of need and use, and a description of the information collection requirements in the final rule are discussed further in part II. of the **SUPPLEMENTARY INFORMATION.** Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See* 44 U.S.C. 3512(a).

The changes to the information collection will not impose any additional costs on the Finance Board or the Banks. The estimated annual reporting and recordkeeping hour burden on respondents is:

a. Number of respondents—15
b. Total annual responses—15
Percentage of these responses collected electronically—0%
c. Total annual hours requested—60
d. Current OMB inventory—59,152
e. Difference—(59,092)

The estimated annual reporting and recordkeeping cost burden on respondents is:

a. Total annualized capital/startup costs—$0
b. Total annual costs (O&M)—$0
c. Total annualized cost requested—$1,800
d. Current OMB inventory—$1,684,000
e. Difference—($1,682,200)

Any comments regarding the collection of information may be submitted in writing to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503.

List of Subjects in 12 CFR Part 933

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

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

PART 933—MEMBERS OF THE BANKS

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

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

PART 933—[AMENDED]

2. Part 933 is amended by removing the term ''primary regulator or appropriate state regulator'' wherever it appears and adding the term ''appropriate regulator'' in its place in the following locations:

a. § 933.1(l);
b. § 933.1(z);
c. § 933.2(c)(2);
d. § 933.11(a)(3);
e. § 933.11(a)(4);
f. § 933.11(b)(1);
g. § 933.12(a);
h. § 933.17(e)(1) introductory text;
i. § 933.17(e)(1)(i);
j. § 933.17(e)(2)(i); and
k. § 933.17(e)(3)(i).

§ 933.11 [Amended]

3. Section 933.11(b)(3)(i) introductory text is amended by removing the term ''primary regulatory or appropriate state regulator'' and adding the term ''appropriate regulator'' in its place.

§§ 933.11 and 933.17 [Amended]

4. Sections 933.11(a)(4) and 933.17(e)(1)(i) are amended by removing the phrase '', whichever is applicable,'' wherever it appears.

5. Part 933 is amended by removing the term ''primary regulator'' wherever it appears and adding the term ''appropriate regulator'' in its place in the following locations:

a. § 933.1(aa);
b. § 933.9;
c. § 933.10;
d. § 933.11(a)(1);
e. § 933.11(b)(2);
f. § 933.11(b)(3)(i) introductory text;
g. § 933.11(b)(3)(ii);
h. § 933.15(a)(i);
i. § 933.15(a)(ii);
j. § 933.16; and
k. § 933.17(f)(1).

6. Section 933.1 is amended by revising paragraphs (u), (x), and (y), and adding paragraph (ee) to read as follows:

§ 933.1 Definitions.

* * * * *

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

* * * * *

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

(y) *Appropriate regulator* means a regulatory entity listed in § 933.8, as applicable.

* * * * *

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

7. Section 933.3 is amended by revising the fourth and fifth sentences of paragraph (c) to read as follows:

§ 933.3 Decision on application.

* * * * *

(c) * * * The Bank shall notify an applicant in writing when its

application is deemed by the Bank to be complete, and shall maintain a copy of such letter in the applicant's membership file. The Bank shall notify an applicant if the 60-day clock is stopped, and when the clock is resumed, and shall maintain a written record of such notifications in the applicant's membership file. * * *

* * * * *

8. Section 933.4 is amended by adding paragraph (d) to read as follows:

§ 933.4 Automatic membership.

* * * * *

(d) *Automatic membership, in the Bank's discretion, for certain consolidations.* (1) If a member institution (or institutions) and a nonmember institution are consolidated and the consolidated institution has its principal place of business in a state in the same Bank district as the disappearing institution (or institutions), and the consolidated institution will operate under the charter of the nonmember institution, on the effective date of the consolidation, the consolidated institution may, in the discretion of the Bank of which the disappearing institution (or institutions) was a member immediately prior to the effective date of the consolidation, automatically become a member of such Bank upon the purchase of stock in that Bank pursuant to § 933.20, provided that:

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

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

(2) The provisions of § 933.25(d)(1)(i) shall apply, and upon approval of automatic membership by the Bank, the provisions of §§ 933.25(d)(2)(i), (e) and (f) shall apply.

9. Section 933.11 is amended by revising paragraphs (b)(3)(i)(B) and (b)(3)(i)(C) to read as follows:

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

* * * * *

(b) * * *

(3) * * *

(i) * * *

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

(C) *Allowance for loan and lease losses.* The applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during 4 of the 6 most recent calendar quarters.

* * * * *

10. Section 933.14 is amended by removing the heading for paragraph (a), revising paragraph (a)(1), and removing and reserving paragraph (b), as follows:

§ 933.14 De novo insured depository institution applicants.

(a)(1) *Duly organized, subject to inspection and regulation, financial condition and character of management requirements.* An insured depository institution applicant whose date of charter approval is within three years prior to the date the Bank receives the applicant's application for membership in the Bank, is deemed to meet the requirements of §§ 933.7, 933.8, 933.11 and 933.12.

* * * * *

11. Section 933.15 is amended by adding new paragraph (c) to read as follows:

§ 933.15 Recent merger or acquisition applicants.

* * * * *

(c) *Makes long-term home mortgage loans requirement; 10 percent requirement.* For purposes of determining compliance with §§ 933.9 and 933.10, a Bank may, in its discretion, permit an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed a consolidated regulatory financial report as a combined entity with its appropriate regulator, to provide the combined pro forma financial statement for the combined entity filed with the regulator that approved the merger or acquisition.

* * * * *

§ 933.20 [Amended]

12. Section 933.20 is amended by removing the citation ''§ 933.4(a)'' in paragraphs (b)(1) and (b)(2) and adding the citation ''§ 933.4(a) or (d)'' in its place.

Dated: June 24, 1998.

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

Bruce A. Morrison,

Chairman.

[FR Doc. 98–19912 Filed 7–24–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0274]

Food Labeling; Petitions for Nutrient Content and Health Claims, General Provisions; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of May 14, 1998 (63 FR 26717). The document amended FDA's regulations to define the conditions under which certain petitions for nutrient content and health claims shall be deemed to be denied and to codify the statutory timeframe within which the agency will complete rulemakings on such petitions. The document was published with some errors. This document corrects those errors.

DATES: Effective July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Hilario R. Duncan, Center for Food Safety and Applied Nutrition (HFS–24), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–8281.

In FR Doc. 98–12832, appearing on page 26717 in the **Federal Register** of Thursday, May 14, 1998, the following corrections are made:

1. On page 26718, in the first column, in the first paragraph under **Supplementary Information**, beginning in the thirtieth line, the phrase ''to include the statutory language, i.e., 'Secretary' is replaced with 'FDA'" is corrected to read ''by inserting the statutory language (with 'Secretary' replaced by 'FDA')''.

§ 101.69 [Corrected]

3. On page 26719, in the first column, in paragraph (m)(3), in the fifteenth line, the phrase ''denied without filing,'' is corrected to read ''denied, without filing''.

4. On page 26719, in the first column, in paragraph (m)(4)(iii), in the second line, the phrase ''of the filing date'' is corrected to read ''of the date of filing''.

§ 101.70 [Corrected]

5. On page 26719, in the second column, in paragraph (j)(3)(iii), in the second line, the phrase ''of the filing date'' is corrected to read ''of the date of filing''.