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

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1263

RIN 2590–AA39

Members of Federal Home Loan Banks

AGENCY: Federal Housing Finance Agency.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is undertaking a review of its regulations governing Federal Home Loan Bank (Bank) membership to identify provisions that may need to be updated to ensure that they remain consistent with the statutory provisions that require a nexus between Bank membership and the housing and community development mission of the Banks. This Advance Notice reviews the statutory provisions governing Bank membership and the regulatory provisions that implement those statutory requirements, suggests various ways that the regulations might be amended within this statutory framework, and invites comments on each of the possible alternatives.

DATES: Written comments must be received on or before March 28, 2011.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA39, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include "RIN 2590–AA39" in the subject line of the message.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail to *RegComments@fhfa.gov.* Please include "RIN 2590–AA39" in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, *Attention:* Comments/RIN 2590–AA39, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, *Attention:* Comments/RIN 2590–AA39, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Assistant General Counsel, *eric.raudenbush@fhfa.gov,* (202) 414–6421 or Amy Bogdon, Associate Director, Division of Bank Regulation, *amy.bogdon@fhfa.gov,* (202) 408–2546 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the Advanced Notice of Proposed Rulemaking (ANPR). Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

A. Overview of Membership Requirements

The 12 Banks are instrumentalities of the United States that were organized in 1932 under the Federal Home Loan Bank Act (Bank Act) to provide a reserve banking system for thrift institutions to support their residential mortgage lending activities.[1] The Banks are financial cooperatives of which eligible financial institutions may become members by purchasing capital stock. Membership allows institutions to obtain access to secured loans, known as advances, for the purpose of funding residential housing finance and, in some cases, for funding small businesses, small farms, small agri-businesses, and community development activities.[2] Bank membership has expanded since 1932 but is still limited to the types of financial institutions listed in section 4(a)(1) of the Bank Act, which are: Building and loan associations, savings and loan associations, cooperative banks, homestead associations, insurance companies, savings banks, community development financial institutions (CDFIs) and insured depository institutions.[3] Because all state-chartered depository institutions are now federally-insured, there are essentially three categories of institutions that are eligible for Bank membership: federally insured depository institutions, insurance companies, and CDFIs. In order for any of these institutions to become a member of a Bank, it must comply with the criteria specified in section 4(a)(1) and, in the case of certain insured depository institutions, those specified in section 4(a)(2) of the Bank Act.

Section 4(a)(1) imposes three general requirements that each eligible institution must satisfy in order to qualify for Bank membership. Under that provision an applicant for membership must: (A) Be duly organized under the laws of any state or the United States; (B) be subject to inspection and regulation under banking, or similar, laws of a state or the United States [4]; and (C) make long-term home mortgage loans.[5] An applicant that fails to satisfy any one of those requirements may not become a member

[1] *See* 12 U.S.C. 1423, 1432(a).

[2] *See* 12 U.S.C. 1430(a)(2).

[3] The Bank Act defines "insured depository institution" to include any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC), as well as any credit union the member accounts of which are insured by the National Credit Union Administration (NCUA). 12 U.S.C. 1422(9).

[4] In the case of a CDFI applicant, the institution need only be certified as a CDFI by the United States Department of the Treasury, instead of being subject to inspection and regulation by a state or federal regulator.

[5] 12 U.S.C. 1424(a)(1).

of a Bank. Section 4(a)(2) imposes three additional requirements on applicants that are insured depository institutions that were not Bank members as of January 1, 1989. Such an institution may become a Bank member only if, in addition to meeting the general requirements of section 4(a)(1), the institution: (A) Has at least 10 percent of its total assets in residential mortgage loans; (B) is in a financial condition such that advances may be safely made to it; and (C) shows that the character of its management and its home-financing policy are consistent with sound and economical home financing.[6] The statute exempts from the 10 percent requirement any "community financial institution" (CFI), which is defined as any depository institution the deposits of which are insured by the FDIC and that has less than $1 billion in average total assets over the preceding three years.[7] By regulation, the Federal Housing Finance Board (Finance Board), and its successor FHFA, have applied the financial condition, character of management, and home financing policy requirements to all applicants for membership. Any applicant that does not meet any of these requirements also cannot become a Bank member.

FHFA has adopted regulations that implement each of the above-described statutory requirements. The regulations list six general eligibility requirements, which are the same as the above-cited statutory requirements, and further require any non-CFI depository institution to have at least 10 percent of its assets in residential mortgage loans. The regulations also require any non-depository institution applicants, *i.e.,* insurance companies and CDFIs, to have mortgage-related assets that reflect a commitment to housing finance.[8] For each of the six general eligibility requirements, as well as for the 10 percent requirement, the regulations include a separate provision that specifies how a Bank is to determine whether a particular applicant has satisfied the particular eligibility requirement. With respect to the requirements that an applicant "make long-term home mortgage loans" and that non-CFI depository institution applicants have 10 percent of their assets in "residential mortgage loans," the regulations provide that compliance is to be determined based on the applicant's most recent regulatory financial report that is available as of the date that the institution applies for membership. *See* 12 CFR 1263.9, 1263.10. Thus, under the existing regulatory regime, compliance with those two requirements is determined only at that point in time. An institution is not required to remain in compliance with either of those requirements subsequent to becoming a member.

B. Mission of the Banks

FHFA regulations define the mission of the Banks as providing to their members and housing associates financial products and services that assist such members' and housing associates' financing of housing and community lending.[9] Although this definition was adopted by the Finance Board, it remains consistent with both the Bank Act and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, under which FHFA is established. The latter Act confirms that point by including among the duties of the Director of FHFA a responsibility to ensure that the operations and activities of the Banks foster liquid, efficient, competitive, and resilient national housing finance markets and that they carry out their statutory mission through activities that are authorized under the Bank Act.[10] Read together, these provisions clearly evidence a Congressional view that the Banks have a housing finance and community development mission and that it is the duty of the Director of FHFA to ensure that the Banks carry out that mission. In a similar fashion, the advances and membership provisions of the Bank Act make apparent that such a mission exists and indicate the scope of that mission, such as by stating that a Bank may make long-term advances to members only for the purposes of providing funds for residential housing finance and, in the case of advances to CFIs, providing funds for small businesses, small farms, small agri-businesses, and community development activities.[11] In addition, the Banks' mission is reflected in the statutory provisions that limit the types of collateral that they may accept for advances to members, which include, in addition to cash and government securities, first mortgage loans on residential property and securities representing a whole interest in such mortgage loans, as well as other real estate related collateral and, in the case of any CFI, secured loans for small business, agriculture, or community development activities or securities representing a whole interest in such secured loans.[12]

Finally, the Bank Act's membership provisions reinforce the connection between eligibility for membership and the Banks' housing finance and community development mission by requiring all eligible applicants to satisfy the "makes long-term home mortgage loans" requirement, by requiring all insured depository institution applicants to meet the "home financing policy" requirement, and by requiring all non-CFI depository institution applicants to meet the "10 percent" requirement in order to become a member.

C. FHFA Review of Membership Provisions

Recently, FHFA has begun a review of its membership regulations in order to identify provisions that may need to be updated to ensure that they remain consistent with previously described statutory requirements and the housing finance mission underlying those requirements. One purpose of this review is to determine whether the existing regulatory standards and the manner in which they have been applied allow the Banks to admit to membership institutions that have insufficient involvement in supporting residential housing finance and, if so, whether it would be appropriate to revise the regulations to ensure that any institutions admitted to membership have and maintain a demonstrable involvement in residential mortgage lending and otherwise comply with the statutory requirements for membership. The intent of this ANPR is to solicit public comments on these issues as an aid to FHFA in determining how to amend the current membership rules to strengthen the ties between membership and the Bank System's primary public purpose by helping to ensure that the focus of the Banks' advances business supports the Banks' housing finance and community development mission.

At this stage in the review process, FHFA has identified three regulatory provisions, all of which link membership to housing finance, that could be amended in certain respects to reinforce that connection. Those provisions are the "10 percent" requirement, the "makes long-term home mortgage loans" requirement, and the "home financing policy" requirement, each of which is discussed in detail below. FHFA is considering whether it would be appropriate to amend those requirements so that they would apply to members on a

[6] 12 U.S.C. 1424(a)(2).

[7] By statute, FHFA must annually adjust the $1 billion CFI asset limit for inflation. The inflation-adjusted CFI limit for 2010 is $1.011 billion.

[8] 12 CFR 1263.6.

[9] 12 CFR 1265.2.

[10] 12 U.S.C. 4513(a)(1).

[11] *See* 12 U.S.C. 1430(a)(2).

[12] 12 U.S.C. 1430(a)(3).

continuing basis, rather than only at the time of admission to membership, and whether it would be appropriate to establish more objective and quantifiable standards for the "makes long-term home mortgage loans" and "home financing policy" requirements. The following paragraphs discuss each of these regulatory provisions, their history, and how they might be revised to reinforce the connection between membership and support for residential housing finance. With respect to each of those issues, FHFA requests public comments on how well the existing regulations implement the underlying statutory requirements, whether there is a need to revise the regulations to reinforce the connection between membership and the housing finance mission, and the appropriateness of the alternatives being considered by FHFA. This notice also includes several other questions that are not derived from the three statutory requirements described above, but that have some implications for membership and the connection to housing finance, and FHFA requests comments on all aspects of those questions as well.

1. The 10 Percent Requirement

As mentioned above, section 4(a)(2)(A) of the Bank Act and § 1263.6(b) of the FHFA regulations provide that an insured depository institution that was not a Bank member as of January 1, 1989, may become a member only if it has at least 10 percent of its total assets in "residential mortgage loans." [13] The existing regulations employ a "presumptive compliance" approach, under which an applicant that is subject to the 10 percent requirement is deemed to be in compliance with that requirement if, based on the applicant's most recent regulatory financial report, *i.e.,* the report that the applicant files with its appropriate regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans.[14] Because the existing regulation requires a Bank to determine compliance with this requirement based solely on the applicant's most recent financial report, institutions that are subject to the 10 percent requirement need to demonstrate compliance only when applying for membership; there is no ongoing requirement to maintain residential mortgage loans at or above 10 percent of total assets. The absence of an ongoing requirement means that the current regulations would allow an institution that has been admitted to membership to reduce, or even eliminate, its residential mortgage loan assets subsequent to becoming a member. Although FHFA has no evidence that significant numbers of members that were subject to the 10 percent requirement when they became members have substantially reduced their holdings of residential mortgage loans after becoming members, it believes that as a matter of sound regulatory policy the membership regulations should not be structured in such a way as to permit or encourage that result. FHFA believes that amending the regulations to make compliance with the 10 percent requirement an ongoing requirement would eliminate the possibility of institutions substantially reducing their holdings of residential mortgage assets after becoming Bank members and would not pose an undue burden on a significant number of members.

Nothing in the Bank Act would preclude FHFA from applying the 10 percent requirement on an ongoing basis, although doing so would constitute a change in the policy established by the Finance Board. If FHFA were to apply the 10 percent requirement on an ongoing basis, it also would need to include new regulatory provisions that address how the Banks are to measure the ongoing compliance. Issues include whether compliance should be tested at specified points in time, such as annually or quarterly, and whether compliance should be based upon the actual amount of residential mortgage loans held as of those dates or the average amounts of residential mortgage loans held over a specified period, such as three years.

In addition to making the 10 percent requirement ongoing, FHFA has considered whether it would be appropriate to extend the requirement to other categories of applicants that are not currently subject to this requirement, or to retain the current approach, under which certain institutions are subject to an alternative requirement that they have mortgage-related assets that reflect a commitment to housing finance. At present, the 10 percent requirement applies only to insured depository institution applicants that are not CFIs: FDIC-insured banks and savings associations with average assets in excess of the $1,011,000,000 CFI asset cap, and all credit union applicants. The universe of additional institutions that could potentially be made subject to the 10 percent requirement would include all of those institutions not currently subject to the requirement: insurance companies, CDFIs, and CFIs. FHFA is not considering extending the 10 percent requirement to CFIs because that result appears to be precluded by the Bank Act, which states that CFIs may become members without regard to the percentage of their total assets that is represented by residential mortgage loans.[15] Arguably, section 4(a)(2) of the Bank Act implicitly precludes the extension of the 10 percent requirement to insurance companies and CDFIs because that requirement is listed among those that apply to insured depository institutions. Notwithstanding that fact, the Finance Board considered applying the 10 percent requirement to insurance companies (and believed it had the authority to do so) in 1993, when it adopted the original version of the membership regulations.[16] In that case, the Finance Board cited its general regulatory and rulemaking authorities as its basis for doing so. The Finance Board also noted that the other requirements of section 4(a)(2), the financial condition, character of management, and home financing policy requirements, had applied to all applicants since the enactment of the Bank Act.[17] Ultimately, the Finance Board declined to apply the 10 percent requirement to insurance company applicants and adopted the alternative requirement, now embodied in § 1263.6(c) of the regulations, that all applicants that are not insured depository institutions, such as insurance companies and CDFIs, have mortgage-related assets that reflect a commitment to housing finance. In adopting this alternative requirement, the Finance Board recognized that, although depository institutions and insurance companies are engaged in different lines of business, an insurance company applicant may have a significant absolute dollar volume of residential

[13] 12 U.S.C. 1424(a)(2)(A); 12 CFR 1263.6(b), 1263.10. The term "residential mortgage loans" includes: (1) Home mortgage loans; (2) funded residential construction loans; (3) loans secured by manufactured housing; (4) loans secured by junior liens on one-to-four family property or multifamily property; (5) certain mortgage pass-through securities; (6) certain mortgage debt securities; (7) home mortgage loans secured by a leasehold interest; and (8) loans that finance properties or activities that would satisfy the requirements for the Community Investment Program or a community investment cash advance program. 12 CFR 1263.1.

[14] 12 CFR 1263.10.

[15] 12 U.S.C. 1424(a)(4).

[16] *See* 58 FR 43522, 43532 (1993).

[17] In addition, the Finance Board justified the universal application of these other section 4(a)(2) requirements by reference to its duty to ensure the safety and soundness of the Bank System. *See* 58 FR 43522, 43532 (1993).

mortgage assets, given the large asset size of many insurance companies.[18]

In light of the above, FHFA requests comment on the following three questions relating to the 10 percent requirement:

Question One: Should FHFA revise § 1263.10 of its regulations so that an insured depository institution that is subject to the 10 percent residential mortgage loans requirement when it is admitted for membership must also comply with that requirement for the duration of the time that it remains a member?

Question Two: Should FHFA amend §§ 1263.6(b) and 1263.10 of its regulations to subject insurance company and CDFI applicants to the 10 percent residential mortgage loans requirement?

Question Three: If FHFA does not subject insurance company and CDFI applicants to the 10 percent requirement, should FHFA amend § 1263.6(c) of its regulations, which currently requires all such applicants to have mortgage related assets that reflect a commitment to housing finance, to establish levels of mortgage-related assets that may be deemed to constitute a sufficient commitment to housing finance?

2. The "Makes Long-Term Home Mortgage Loans" Requirement

Section 4(a)(1)(C) of the Bank Act applies to all applicants for Bank membership and provides that an institution may become a member only if it makes such home mortgage loans as the Director determines to be long-term loans. Section 1263.9 of the membership regulations implements that provision through a "presumptive compliance" approach, under which an applicant is deemed to have satisfied the statutory requirement if its most recent regulatory financial report demonstrates that it originates or purchases long-term home mortgage loans. Because the regulation requires a Bank to look solely to an applicant's most recent financial report, the Banks do not assess compliance with this provision at any subsequent date; there is no ongoing requirement that an institution that has been admitted to membership must continue to make long-term home mortgage loans after it has become a member. Thus, as is the case with respect to the 10 percent requirement, the absence of an ongoing requirement means that it is possible that an institution could reduce or cease making long-term home mortgage loans after becoming a member. As discussed previously, FHFA believes that as a matter of sound regulatory policy its membership regulations should not encourage such a result, and questions whether the existing provision is the most appropriate means of implementing the statutory "makes long-term home mortgage loans" requirement. Amending the membership regulations to make compliance with the "makes long-term home mortgage loans" requirement an ongoing requirement would eliminate that possibility, and should not pose an undue burden for Bank members.

FHFA believes that amending the regulations in that manner would be permissible under the Bank Act, although it would represent a departure from the point-in-time policy established by the Finance Board. Also, if this provision were to be made an ongoing requirement, FHFA also would need to develop a new test through which the Banks could measure their members' ongoing compliance with this requirement. Unlike the 10 percent requirement, the statutory language includes no quantifiable benchmarks for compliance with the "makes long-term home mortgage loans" requirement, and the only standard required by the regulations is that an applicant's financial reports must show that it originates or purchases such loans. In theory, an applicant could satisfy this requirement by having made a single long-term mortgage loan in the reporting period immediately preceding its application for Bank membership. Although the current regulations do not require members to comply with this provision on an ongoing basis, a previous regulator of the Bank System interpreted this provision of the Bank Act as requiring that applicants be engaged in the business of making long-term home mortgage loans as an ongoing activity, and not just as an isolated instance. *See* Opinion of the General Counsel of the Federal Home Loan Bank Board, at 2 (Nov. 7, 1978).

If FHFA were to amend the regulations to establish quantifiable benchmarks for this requirement, it necessarily would have to determine the content of those benchmarks. For example, FHFA could develop benchmarks based on a specified percentage of an institution's assets or on a minimum dollar volume of the institution's long-term home mortgage loan originations or loan purchases. If FHFA were to establish a benchmark based on a percentage of assets that an institution must have in long-term home mortgage loans, the percentage would likely need to be smaller than the percentage of assets that members must have under the 10 percent requirement, discussed above, because of the differences between the terms "residential mortgage loans" and "long-term home mortgage loans." The operative term for determining compliance with the 10 percent requirement is "residential mortgage loans," which is considerably more expansive than the term "long-term home mortgage loans." "Residential mortgage loans" is defined to include eight different categories of loans, one of which is "home mortgage loans."[19] "Home mortgage loans" is considerably more narrow and is defined by statute and by regulation to mean a loan (or an interest in a loan) that is secured by a first lien on one-to-four family property or multifamily property.[20]

If FHFA were to establish a standard with quantifiable benchmarks, it would also need to decide whether those benchmarks should apply equally to all applicants or members, or whether it should establish separate requirements for the different classes of institutions eligible for membership—insured depository institutions, insurance companies, and CDFIs—in recognition of the fact that each type of institution has a different primary business model and, thus, a different level of involvement in supporting residential mortgage finance. A single standard for all institutions would be easier for the Banks to apply. On the other hand, establishing separate standards that are tailored to the different classes of institutions that are eligible for membership would recognize the practical reality that each type of eligible institution, by the nature of its business, has a different level of involvement in mortgage lending.

If FHFA were to establish separate standards for the three categories of institutions that are eligible for membership, it likely would have to consider and resolve certain ancillary issues related to the different types of institutions. For example, if FHFA were

[18] 58 FR 43522, 43532–33 (1993). At the time this requirement was first promulgated, the Finance Board itself reviewed and approved Bank membership applications. In 1996, this provision was revised to devolve the decision-making authority to the Banks. *See* 61 FR 42531, 42545 (1996).

[19] *See* 12 CFR 1263.1.

[20] 12 U.S.C. 1422(4), (5); 12 CFR 1263.1. The term "home mortgage loan" includes primarily the following: (1) First mortgage loans secured by one-to-four family property, multifamily property, or combination business or farm property where at least 50 percent of the total appraised value is attributable to the residential portion of the property; and (2) mortgage pass-through securities that represent an undivided ownership interest in the above types of loans or in securities that represent an undivided ownership interest in such loans. The regulations also define "long-term" to mean a term to maturity of five years or greater.

to develop a percentage-based standard for insurance companies, it would need to consider whether the percentage should be calculated based on the insurance company's "total assets" or on its "invested assets," the latter of which would typically exclude certain assets, such as premiums receivable and separate accounts. For the reasons mentioned above with regard to the 10 percent requirement, FHFA might determine that it would be preferable to apply a volume-based standard to insurance companies, or perhaps a combination of the volume-based and percentage-based approaches. In a similar fashion, if FHFA were to establish a separate, quantifiable standard for insurance companies, it might also consider whether it would be appropriate to establish different standards for different types of insurance companies, recognizing that insurers engaged in underwriting different lines of insurance are apt to hold different types of investments and may include mortgage assets to differing degrees. For example, life insurance companies historically have held longer-term assets, including mortgage loans, because their liabilities on their policies tend to be of longer duration, while property and casualty insurers traditionally have had investment portfolios with more short-term assets and fewer bonds and mortgage loans, because their policy liabilities tend to be of shorter duration.

In light of the above discussion, FHFA requests comment on the following five questions relating to the "makes long-term home mortgage loans" requirement:

Question Four: Should FHFA revise § 1263.9 of its regulations to require that an institution that is admitted to membership must comply with the "makes long-term home mortgage loans" requirement both at the time that it is admitted for membership and for the duration of the time that it remains a member?

Question Five: Should FHFA replace the existing standard, which requires only that an institution demonstrate that it originates or purchases home mortgage loans, with one or more quantifiable standards, such as by requiring applicants and members to have a specified portion of their assets invested in long-term home mortgage loans or by meeting a minimum dollar volume of originations and purchases of such loans?

Question Six: If FHFA were to adopt a standard based on a minimum percentage of long-term home mortgage loans, what would be an appropriate level of long-term home mortgage loans or mortgage-backed securities to be held by depository institutions, insurance companies, or CDFIs, respectively?

Question Seven: If FHFA were to replace the existing regulatory requirement with a quantifiable standard, should FHFA apply one standard to all eligible institutions and members, or separate standards for the three distinct categories of institutions that are eligible for membership?

Question Eight: If FHFA were to establish separate quantifiable standards for the separate categories of eligible institutions, should it also establish separate sub-categories for different types of institutions within each category, such as for life insurance companies and property and casualty insurance companies?

3. The Home Financing Policy Requirement

Section 4(a)(2)(C) of the Bank Act provides that an insured depository institution that was not a Bank member as of January 1, 1989, may become a member only if the character of its management and its home financing policy are consistent with sound and economical home financing.[21] Although the Bank Act does not require other applicants to comply with the home financing policy requirement, the FHFA regulations have retained the provisions adopted by the Finance Board that require all applicants for membership to demonstrate their compliance with this provision.[22] Neither the Bank Act nor the membership regulations defines the term "home financing policy" or requires that a home financing policy be in the form of a written document. Section 1263.13 of the membership regulations implements the home financing policy requirement through a "presumptive compliance" approach, under which an applicant that is subject to the Community Reinvestment Act (CRA) is deemed to be in compliance with the requirement if it has received a CRA rating of "Satisfactory" or better on its most recent CRA performance evaluation. An applicant that is not subject to the CRA is required to file, as part of its application for membership, a written justification acceptable to the Bank of how and why its home financing policy is consistent with the Bank System's housing finance mission. An applicant that does not have a satisfactory CRA rating is presumed not to have complied with the home financing policy requirement, although it may attempt to rebut that presumption.[23] As is the case with respect to the 10 percent requirement and the "makes long-term home mortgage loans" requirement, the Banks assess compliance with the home financing policy requirement only at the time that they consider an institution's application for membership.[24]

As discussed previously, FHFA believes that the assessment of compliance with certain of the eligibility requirements on a one-time basis may not be the most appropriate means of implementing those provisions. Moreover, in the context of the home financing policy requirement, the absence of any qualitative standards as to the form or content of what constitutes an acceptable home financing policy compounds the problem of determining whether applicants comply with this provision. Accordingly, FHFA is considering whether it would be appropriate to amend its regulations relating to the home financing policy requirement by establishing more specific standards and by making compliance an ongoing requirement for all members. Amending the regulations in that manner would be permissible under the Bank Act, although doing so would represent a departure from the point-in-time policy established by the Finance Board and would require FHFA to develop new tests through which the Banks could assess their members' ongoing compliance with this requirement.

If FHFA were to develop a new standard for assessing compliance with the home financing policy requirement, an initial question would be the form of the new standard, *i.e.,* whether it should be written, or whether some members could demonstrate compliance by other means. Requiring all applicants to have a written home financing policy that explains in narrative fashion the manner and degree to which the institution's existing activities and investments support home financing might make it easier to assess compliance with the home financing policy requirement, although a revised rule likely would need to establish some minimum

[21] 12 U.S.C. 1424(a)(2)(C).

[22] 12 CFR 1263.6(a)(6), 1263.13.

[23] An applicant can rebut the presumption of noncompliance by providing either a confirmation from its appropriate regulator of its recent satisfactory CRA rating, or a written analysis acceptable to the Bank demonstrating that its CRA rating is unrelated to home financing, and providing substantial evidence of how and why its home financing credit policy and lending practices meet the credit needs of its community. 12 CFR 1263.17(f)(2).

[24] The use of an applicant's CRA rating at a single point in time for purposes of the membership regulations differs from the use of a member's CRA rating in assessing its compliance with the community support regulation under 12 CFR 1290.3, which is an ongoing requirement.

benchmarks in order to ensure that the provision is applied uniformly throughout the Bank System. Because certain applicants will have a business model that focuses primarily on mortgage lending, it also would be possible to fashion an alternative home financing policy standard for those institutions that would deem them to have an acceptable home financing policy if they have a specified level of mortgage loan originations or mortgage related assets or otherwise demonstrate that mortgage lending is their principal line of business.

Apart from the form of a new home financing policy standard, FHFA also would need to develop the content of the standard. At present, the regulations do not address the content of an acceptable home financing policy, but instead use an applicant's CRA rating as a proxy for an acceptable policy. As mentioned above, one possible approach, which could be in lieu of or in addition to the CRA rating, would be to require an applicant or member to maintain a specified level of mortgage related assets or mortgage loan originations in order to be deemed to have an acceptable home financing policy. If FHFA were to adopt that approach, it would have to be consistent with the 10 percent requirement and the "makes long-term home mortgage loans" requirement, and it is possible that compliance with the home financing policy requirement could be presumed by compliance with ongoing quantifiable standards for the other two requirements. If FHFA were to develop quantifiable standards for the home financing policy requirement, it also might consider whether the specifics of a "home financing policy" could vary based on the type of institution involved. Such an approach could be warranted based on the different levels of involvement in mortgage lending that might be typical among the different types of institutions that are eligible for Bank membership. For example, the home financing activities of a traditional savings and loan association (the core business of which is mortgage lending) are apt to be significantly greater than those of an insurance company or CDFI (the primary business of which is underwriting insurance and promoting community development, respectively). Given that the statutory requirement for a home financing policy is that it must be "consistent with sound and economical home financing," a regulatory standard that recognizes the possibility of distinctions among the different types of institutions that are eligible for membership would appear to be consistent with the Bank Act.

In light of the above discussion, FHFA requests comment on the following four questions relating to the "home financing policy" requirement:

Question Nine: Should FHFA revise § 1263.13 of its regulations to require that an institution that is admitted to membership must comply with the "home financing policy" requirement both at the time that it is admitted for membership and for the duration of the time that it remains a member?

Question Ten: Should FHFA define the term "home financing policy" and, if so, how should that term be defined? Should it be defined to include only a written policy that describes in narrative fashion the manner and extent to which an applicant's past and current activities and investments support home financing, or should it also be defined to include certain business practices, such as having specified levels of mortgage related assets above which an acceptable housing finance policy could be presumed?

Question Eleven: Should the regulations allow the specifics of a home financing policy to vary based on the type of institution? Should FHFA recognize that originating mortgage loans and investing in mortgage loans and mortgage related securities may constitute the core business of certain types of eligible institutions, such as thrift institutions, while those same activities may constitute only an incidental portion of the business of other eligible institutions, such as insurance companies?

Question Twelve: Should FHFA continue to use an institution's CRA rating as a proxy for compliance with the home financing policy requirement or should FHFA develop an alternative approach to assessing compliance with this requirement? One such alternative could be to develop a quantifiable standard, such as one based on a minimum level of housing related assets, which could be used either alone or in conjunction with the CRA rating, for determining whether an institution has an acceptable home financing policy.

4. Other Provisions

In addition to the foregoing, FHFA is also considering whether certain other provisions of its membership regulations should be revised to address concerns relating to other aspects of the membership regulations. Those issues relate to "shell" or "captive" insurance companies, consequences for failing to comply with the new requirements, and the structure of the current membership regulation, and are discussed below.

5. Captive or Shell Insurance Companies

When the Bank Act was enacted in 1932, it included insurance companies among the types of institutions that were permitted to become Bank members because at that time life insurance companies were active residential mortgage lenders.[25] Although insurance companies have been eligible for Bank membership since the inception of the Bank System, until recently comparatively few insurance companies have become members, and, as of December 31, 2009, insurance companies represented only 209 of the 8,057 members of the Bank System. Those companies that have become members would have satisfied the statutory and regulatory requirements relating to home financing, as discussed above, as well as the requirements that they be "subject to inspection and regulation" under federal or state law and that their financial condition be such that advances could be safely made to the insurance company member. There have been some instances in which Banks have admitted to membership, or inquired about admitting to membership, institutions that are chartered as an insurance company but are inactive—"shell" insurance companies—or do not underwrite insurance for third parties—"captive" insurance companies. Such institutions raise at least two concerns relating to their eligibility to become Bank members, which are whether they are in fact subject to the degree of supervision and examination contemplated by section 4(a)(1)(B) of the Bank Act, and whether they have a *bona fide* involvement in supporting housing finance. A "shell" insurance company is apt to be inactive, *i.e.,* not engaged in underwriting any types of insurance. A company that is not underwriting insurance also may not be actively supervised or examined by its state insurance commissioner, and thus may not file periodic financial reports with the state regulator. Moreover, an inactive insurance company without any insurance liabilities on its books is unlikely to maintain an investment portfolio, and in particular, investments in mortgage loans or mortgage-backed securities that provide the housing finance nexus contemplated by Congress. The absence of ongoing supervision and examination by the

[25] *See The Anatomy of a Residential Mortgage Crisis: A Look Back to the 1930s,* Kenneth A. Snowden (June 2009) (insurance company share of the residential mortgage market).

state regulator and the absence of periodic financial reports calls into question the ability of a shell insurance company to satisfy the statutory requirement that it is "subject to inspection and regulation" by a state or federal regulator, and raises additional questions about whether a Bank could accurately assess the financial condition of such a company in order to determine whether the Bank could safely make advances to the insurance company. In a similar fashion, the absence of any underwriting of insurance, in the case of a shell company, and the limited nature of the self-insurance activities, in the case of a captive insurance company, call into question whether such institutions have any *bona fide* involvement in the lending or investment activities that support residential mortgage markets and that are typical of other insurance companies that underwrite insurance for third parties and maintain an investment portfolio, which may include mortgage related investments that correspond to the types of risks that the companies underwrite. Membership for shell insurance companies or captive insurance companies also raises other supervisory concerns, such as whether the insurance company member is simply acting as a conduit to provide advances to its parent company that which is ineligible for membership and thus cannot legally obtain advances in its own right. To address those concerns, FHFA is considering whether it should amend its regulations to preclude the possibility that shell or captive insurance companies, which may not be adequately supervised or may not be actively engaged in any meaningful housing finance activities, could be admitted to membership. Accordingly, FHFA requests comments on the following question:

Question Thirteen: Should FHFA amend its membership regulations to require that insurance company applicants be actively engaged in underwriting insurance for third parties and be actively examined and supervised by their appropriate state insurance regulator, and that insurance company members remain so engaged and so examined and supervised as a condition to remaining Bank members?

6. Sanctions for Noncompliance. If FHFA were to amend its regulations to make the "10 percent," "makes long-term home mortgage loans," or "home financing policy" requirements ongoing, it believes that it should also incorporate a transition period to allow members that are not in compliance with the new requirements a period of time within which to come into compliance if they wish to remain members. With respect to the 10 percent requirement, initial research indicates that, of the approximately 1,500 members that were subject to that requirement when they became members, only 32 institutions would fail to comply with that requirement if it were applied to them as of December 31, 2009. Of those 32 institutions, 11 had residential mortgage loans of more than nine percent of their total assets and 12 had residential mortgage loans of between seven and nine percent of their total assets, which suggests that they should be able to comply with an ongoing "10 percent requirement" following a reasonable transition period. Only nine current members had residential mortgage loans of less than five percent of their total assets, with four of those members having ratios of less than one percent. This suggests that even with a transition period some of those institutions may not be able to comply with an ongoing 10 percent requirement. In a similar fashion, if the eligibility requirements are to become ongoing, it is also possible that some members that would initially comply with the new requirements may later fall out of compliance with those requirements. Both of those possibilities raise the question of how FHFA and the Banks should deal with institutions that either cannot comply with the new requirements or that subsequently fall out of compliance.

Each of the regulatory provisions that FHFA is contemplating making an ongoing requirement is an eligibility requirement for membership, which suggests that failure to comply with any of them should make the institution ineligible for membership and thus could require the Bank to terminate its membership. Section 6(d)(2)(A)(i) of the Bank Act provides that the board of directors of a Bank may terminate the membership of any institution if the institution fails to comply with any provision of the Bank Act or FHFA regulations. 12 U.S.C. 1426(d)(2)(A)(i). The use of the language "may terminate" in that provision, however, indicates that the provision is not mandatory and would allow FHFA and the Bank to impose sanctions other than termination of membership, at least initially. For example, FHFA could allow the Banks to give a noncompliant member a specified period of time within which to cure the noncompliance before terminating its membership. During that time the Bank could be prohibited from entering into new transactions with the member, but would not be required to take any other adverse actions against the member.

Accordingly, in order to help it determine how best to deal with the possibility of noncompliance with any new requirements, FHFA requests comment on the following questions relating to sanctions for failure to comply with any revised membership requirements:

Question Fourteen: Should FHFA amend the membership regulations to address the possibility that a member might not comply with, or might later fall out of compliance with, one or more of the new ongoing membership requirements after a transition period has expired, and if so, should FHFA require the Banks to terminate that institution's membership, either with or without a grace period, or should FHFA consider lesser sanctions, such as prohibiting further access to Bank services during a specified grace period, before requiring the Banks to terminate the membership of the noncompliant members?

7. Regulatory Structure. The current membership regulations embody a "presumptive compliance" approach, under which an eligible institution that satisfies the regulatory standards is presumed to comply with the corresponding statutory requirements, and an institution that fails to satisfy any of the regulatory standards may nonetheless attempt to rebut the presumption of noncompliance by submitting certain specified additional information to the Bank.[26] The regulatory standards relating to the "makes long-term home mortgage loans" and the "10 percent" requirements are not rebuttable, although the standards relating to the "home financing policy," "inspection and regulation," "character of management," and "financial condition" requirements are rebuttable. As part of its review of the membership regulations FHFA has also considered whether it should retain the "presumptive compliance" and "rebuttal" approaches of the current regulations, along with the existing regulatory standards, many of which are phrased in somewhat general terms, or whether it should adopt more objective and quantifiable regulatory standards that would be more of a "bright line" approach for evaluating eligibility for membership. In order to help it determine the appropriate approach for the regulatory standards, FHFA requests comment on the following question:

Question Fifteen: Should FHFA retain the existing structure of its membership regulations, under which the regulations

[26] *See* 12 CFR 1263.17 (rebuttal provisions).

establish certain standards of "presumptive compliance" and allow an opportunity for institutions that do not meet those standards to rebut the presumption of noncompliance, or should FHFA devise an alternative structure, such as one that incorporates "bright line" tests for each of the various eligibility requirements and does not create presumptions that an institution would be permitted to rebut? [27]

Question Sixteen: Should FHFA play a role in resolving close membership issues, or leave them to the discretion of the Banks?

III. Request for Comments

FHFA invites comments on all of the issue discussed above, and will consider all comments in developing a proposed rule to amend its membership regulations.

Dated: December 20, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–32467 Filed 12–23–10; 8:45 am]

BILLING CODE 8070–01–P

[27] In January 2010, FHFA revised its membership regulations to implement statutory amendments authorizing CDFIs to become Bank members. As part of those revisions, FHFA allowed CDFI applicants that could not demonstrate compliance with certain of the specific standards relating to financial condition to provide alternative information demonstrating that they are in sound financial condition. By raising the larger issue of the appropriate regulatory structure for the membership regulations FHFA does not intend to change its policy, as evidenced by the recent revisions, that CDFI applicants are to be given latitude in demonstrating the soundness of their financial condition.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 738, 740, 743, 758, and 774

[Docket No. 100923470–0626–02]

RIN 0694–AF03

Export Control Modernization: Strategic Trade Authorization License Exception

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a typographical error in the address for submitting e-mail comments that appeared in a proposed rule, "Export Control Modernization: Strategic Trade Authorization License Exception," published on December 9, 2010.

DATES: Comments must be received by BIS no later than February 7, 2011.

ADDRESSES: Comments on this correction may be submitted to the Federal rulemaking portal (*http://www.regulations.gov*). The regulations.gov ID for this rule is: BIS–2010–0038. Comments may also be submitted via e-mail to *publiccomments@bis.doc.gov* or on paper to Regulatory Policy Division, Bureau of Industry and Security, Room 2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to RIN 0694–AF03 in all comments and in the subject line of e-mail comments.

FOR FURTHER INFORMATION CONTACT: William H. Arvin, Regulatory Policy Division, e-mail *warvin@bis.doc.gov,* telephone 202–482–2440.

SUPPLEMENTARY INFORMATION: The address for submitting e-mail comments was incorrectly stated under the **ADDRESSES** caption of a proposed rule entitled "Export Control Modernization: Strategic Trade Authorization License Exception" (75 FR 76653, December 9, 2010). This correction notice states the correct e-mail address in the **ADDESSSES** caption, which is *publiccomments@bis.doc.gov.*

In proposed rule FR Doc. 2010–30968, beginning on page 76653 in the issue of December 9, 2010, make the following correction: On page 76654, in the **ADDRESSES** section, correct "*publiccomments.bis.doc.gov*" to read "*publiccomments@bis.doc.gov*".

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2010–32441 Filed 12–23–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM10–5–000]

Interpretation of Protection System Reliability Standard

December 16, 2010.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The North American Electric Reliability Corporation (NERC) has submitted a petition (Petition) requesting approval of NERC's interpretation of Requirement R1 of Commission-approved Reliability Standard PRC–005–1 (Transmission and Generation Protection System Maintenance and Testing). The Commission proposes to accept the NERC proposed interpretation of Requirement R1 of Reliability Standard PRC–005–1, and proposes to direct NERC to develop modifications to the PRC–005–1 Reliability Standard, as discussed below, through its Reliability Standards development process to address gaps in the Protection System maintenance and testing standard, highlighted by the proposed interpretation.

DATES: Comments are due February 25, 2011.

ADDRESSES: You may submit comments, identified by docket number and in accordance with the requirements posted on the Commission's Web site, *http://www.ferc.gov.* Comments may be submitted by any of the following methods:

- *Agency Web Site:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format, at *http://www.ferc.gov.doc-filing/efiling.asp.*
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Ron LeComte (Legal Information), Office of the General Counsel, 888 First Street, NE., Washington, DC 20426. 202–502–8405. *Ron.lecomte@ferc.gov.*

Danny Johnson (Technical Information), Office of Electric Reliability, Division of Reliability Standards, 888 First Street, NE., Washington, DC 20426. 202–502–8892. *Danny.johnson@ferc.gov.*

SUPPLEMENTARY INFORMATION:

NERC submitted the Petition requesting approval of NERC's interpretation of Requirement R1 of Commission-approved Reliability Standard PRC–005–1 (Transmission and Generation Protection System Maintenance and Testing). NERC developed the interpretation in response to a request for interpretation submitted to NERC by the Regional Entities Compliance Monitoring Processes Working Group (Working Group).[1] The Commission proposes to accept the NERC proposed interpretation of Requirement R1 of Reliability Standard

[1] The Working Group is a subcommittee of the Regional Entity Management Group which consists of the executive management of the eight Regional Entities.