



Federal Housing Finance Board

1777 F Street, N.W., Washington, D.C. 20006
Telephone: (202) 408-2500 Facsimile: (202) 408-1435

September 17, 1998

[REDACTED]
[REDACTED]
Federal Home Loan Bank
of [REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

This is in response to your letter of July 9, 1998 to William W. Ginsberg, wherein you seek concurrence by the Federal Housing Finance Board (Finance Board) with the Federal Home Loan Bank (FHLBank) of [REDACTED] interpretation of 12 C.F.R. § 933.14 of the Finance Board's membership regulations concerning conditional membership approvals for *de novo* insured depository institutions. Finance Board staff concurs in your interpretation.

As you point out in your letter, the Finance Board's membership regulations at 12 C.F.R. Part 933, and particularly § 933.14, provide for the conditional approval of membership applications made by *de novo* insured depository institutions. For instance, *de novo* membership application approvals may be conditioned on the institution's receiving a Community Reinvestment Act (CRA) rating of "Satisfactory" or better on its first formal, informal or preliminary CRA performance evaluation (home financing policy requirement). *Id.*, §933.14(a)(4)(ii). *De novo* membership application approvals also may provide that the institution shall have until one year after commencing operations to meet the statutory requirement that it have at least ten percent of its total assets in residential mortgage loans (10 percent requirement). 12 U.S.C.A. § 1424(a)(2)(A); 12 C.F.R. §§ 933.10, 933.14(a)(3). You have indicated in your letter that when the [REDACTED] Bank approves *de novo* membership applications for institutions that have not yet demonstrated compliance with either of both of these criteria, that Bank's approval resolution stipulates the "condition(s) subsequent" that must be satisfied.

The Finance Board's membership regulations specifically provide that if a *de novo* institution subsequently fails to meet the CRA performance condition, the applicant is deemed to be in noncompliance with the home financing policy requirement, subject to rebuttal. If the *de novo* institution fails to rebut the presumption of non-compliance, its conditional membership approval is deemed null and void. However, as you note in your

letter, the membership regulations are silent as to the consequences of a *de novo* institution's not subsequently meeting the 10 percent requirement. You have indicated that, unless otherwise advised by the Finance Board, the ██████ Bank intends to handle a *de novo* institution's failure to comply with the 10 percent requirement within one year of commencing its operations in the same manner as the membership regulations prescribe for handling a *de novo* institution's failure to meet the statutory home financing policy requirement, i.e by treating the *de novo's* membership application as null and void

Finance Board staff concurs in your conclusion that, if a *de novo* depository institution is given one year to meet the statutory 10 percent requirement and then fails to meet that requirement within the prescribed time period, the institution would never have met all of the statutory criteria for eligibility for membership. Finance Board staff also concurs in your conclusion that, despite the regulations' silence on this issue, it is logical to treat failures to meet statutory membership eligibility criteria in a consistent manner.

Therefore, Finance Board staff has no legal objection to the ██████ Bank's proposed treatment of a *de novo* institution's failure to comply with the 10 percent requirement within one year of commencing its operations in the same manner as the membership regulations prescribe for handling a *de novo* institution's failure to meet the statutory home financing policy requirement, i.e by treating the *de novo's* membership application as null and void.

If you have any questions concerning this letter, please do not hesitate to contact the undersigned at (202) 408-2570.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah F. Silberman". The signature is fluid and cursive, with a large initial "D" and "S".

Deborah F. Silberman
General Counsel

cc: William W. Ginsberg
James L. Bothwell
Mitchell Berns
Sharon B. Like