

administration of loans under this part even though the cotton has already been marketed, so long as:

(i) Neither the producer nor anyone else has received a marketing loan gain or loan deficiency payment on the cotton;

(ii) The person seeking the payment is the actual producer of the cotton and had beneficial interest in the cotton at the time of the operative marketing, for cotton to which paragraph (d)(2)(iii) of this section applies, or the time at which the cotton was redeemed in the case of cotton to which paragraph (d)(2)(iv) of this section applies;

(iii) For cotton that was previously placed under loan, the payment is made solely as marketing loan gain in which case the rate to be paid will be determined as of the date of the redemption;

(iv) For cotton not covered by paragraph (d)(2)(iii) of this section, the producer will receive the payment as a loan deficiency payment in which case the amount to be paid will be determined as of the date that the producer marketed or lost beneficial interest in the cotton;

(v) Unless otherwise allowed by the Deputy Administrator, the producer marketed the cotton prior to February 16, 2000.

Signed at Washington, DC, on March 10, 2000.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 00-6424 Filed 3-13-00; 8:54 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 925 and 950

[No. 2000-10]

RIN 3069-AA94

Amendment of Membership Regulation and Advances Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its Membership Regulation and Advances Regulation to conform certain provisions to the requirements of the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act), and is making certain technical revisions to the Membership Regulation that are not related to the Modernization Act, in order to clarify the treatment of *de novo*

members that fail to meet the 10 percent residential mortgage loans requirement within the required one-year time frame.

DATES: This interim final rule shall be effective on March 15, 2000. The Finance Board will accept written comments on the interim final rule on or before April 14, 2000.

ADDRESSES: Send comments to: Elaine L. Baker, Secretary to the Board, by electronic mail at bakere@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT:

James L. Bothwell, Director, (202) 408-2821, Janet M. Fronckowiak, Acting Deputy Director, (202) 408-2575, Jennifer R. Salamon, Program Analyst, (202) 408-2974, or Patricia L. Sweeney, Program Analyst, (202) 408-2872, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408-2930, Office of General Counsel, 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 (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Federal Home Loan Banks (Banks), which provide advances and other financial services to their member institutions. *See* 12 U.S.C. 1422a(a) (1994). Institutions, including those not meeting the Qualified Thrift Lender (QTL) test,¹ may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Bank Act and the Finance Board's implementing Membership Regulation *See id.* sections 1424, 1426, 1430(e)(3) (1994); 12 CFR part 925.² Members may obtain advances from a Bank subject to certain statutory and regulatory requirements. *See* 12 U.S.C. 1430(a) (1994). Prior to recent amendments to the Bank Act, discussed further below, access to advances by non-QTL members was restricted in various ways. *See id.* section 1430(e).

¹ *See* discussion QTL test in I.E. below.

² The Finance Board recently reorganized and redesignated all of its regulations. *See* 65 FR 8253 (Feb. 18, 2000). The Membership Regulation, which formerly was part 933 of the Finance Board's regulations, 12 CFR part 933 (1999), was redesignated as part 925. *See* 65 FR 8253, 8260 (to be codified at 12 CFR part 925).

The recently enacted Modernization Act³ amended certain membership eligibility provisions, and repealed certain stock purchase and non-QTL advances provisions, in the Bank Act. *See* Pub. L. 106-102, sections 602, 603, 604(c), (d)(1), 605, 608 (1999). Accordingly, the Finance Board is amending its regulations to conform them to the Modernization Act amendments. The Finance Board also is taking this opportunity to make certain technical revisions to the Membership Regulation that are not related to the Modernization Act, in order to clarify the treatment of *de novo* members that fail to meet the 10 percent residential mortgage loans requirement within the required one-year time frame.

II. Analysis of the Interim Final Rule

A. Removal of the Automatic Membership Provision For Mandatory Members—§ 925.4(a)

Section 5(f) of the Home Owners' Loan Act (HOLA) formerly provided that "[e]ach Federal savings association, upon receiving its charter, shall become automatically a member" of its district Bank. *See* 12 U.S.C. 1424(f) (1994). Consistent with section 5(f), section 925.4(a) of the Finance Board's Membership Regulation provides that any institution required by law to become a member of a Bank automatically shall become a member of the Bank of the district in which its principal place of business is located upon the purchase of stock in that Bank pursuant to § 925.20(b)(1). *See* 12 CFR 925.4(a). The Modernization Act amended section 5(f) of the HOLA to provide that "[a]fter the end of the 6-month period beginning on [Nov. 12, 1999], a Federal savings association may become a member of the [Bank] System, and shall qualify for such membership in the manner provided in the [Bank Act] * * * with respect to other members." *See* Modernization Act, section 603. Staff of the Office of Thrift Supervision (OTS), the agency that charters federal savings associations and administers the HOLA, has interpreted this amended language to mean that, as of November 12, 1999, a federal savings association is eligible to become a member, but no longer automatically becomes a member, of the Bank System, and federal savings associations that were members of the Bank System prior to November 12, 1999 may not withdraw from the Bank System and redeem their Bank capital stock until the 6-month period has expired (May

³ The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. 106-102, 113 Stat. 1338, enacted into law on November 12, 1999.

12, 2000). As the HOLA is administered by the OTS and not the Finance Board, the Finance Board defers to the OTS for interpretations of the HOLA.

In deference to and consistent with the OTS interpretation of the HOLA, the Finance Board is removing section 925.4(a) of the Finance Board's Membership Regulation, which provides for automatic Bank membership for federal savings associations. No change is required to the provision of section 925.26(a) of the Finance Board's Membership Regulation stating that any member "that is eligible under applicable law" to withdraw from Bank membership may do so after providing the Finance Board and its Bank at least six months written notice of the member's intention to withdraw from membership. See 12 CFR 925.26(a). The language "that is eligible under applicable law" requires that a federal savings association meet the amended HOLA requirement that it may not withdraw from Bank membership until after May 12, 2000. The interim final rule amends section 925.26 to provide that Federal savings association members may submit notices of intention to withdraw from Bank membership prior to May 13, 2000.

B. Removal of the 10 Percent Residential Mortgage Loans Requirement For Community Financial Institution Applicants For Membership—Sections 925.6(b), 925.10, 925.14(a)(3)

Section 4(a)(2)(A) of the Bank Act formerly provided that an insured depository institution may become a member of a Bank only if it has at least 10 percent of its total assets in residential mortgage loans (10 percent requirement). See 12 U.S.C. 1424(a)(2)(A) (1994). Section 4(a)(2) also provided that an insured depository institution commencing business operations after January 1, 1989 (*de novo* institution), may become a member of a Bank if at least 10 percent of its total assets are in residential mortgage loans, within one year after the commencement of its operations. See *id.* section 1424(a)(2). Section 4(a)(2) is implemented by sections 925.6(b), 925.10 and 925.14(a)(3) of the Finance Board's Membership Regulation. See 12 CFR 925.6(b), 925.10, 925.14(a)(3).

The Modernization Act amended section 4(a)(2) of the Bank Act to exempt from the 10 percent requirement any applicants, including *de novo* institutions, that qualify as "community financial institutions." See Modernization Act, section 605 (*to be codified at* 12 U.S.C. 1424(a)(2)(A)(4)). The Modernization Act defines a

"community financial institution" to mean, generally, an institution whose deposits are insured under the Federal Deposit Insurance Act (FDIA) and that has less than \$500 million in average total assets, based on an average of total assets over the three preceding years. See *id.* section 602 (*to be codified at* 12 U.S.C. 1422(13)). Accordingly, the Finance Board is amending sections 925.6(b), 925.10 and 925.14(a)(3) of its Membership Regulation to include an exemption from the 10 percent requirement for community financial institutions, and is adding a definition of "community financial institution" in new section 925.1(ff). A definition of "community financial institution," which predates the Modernization Act, in section 925.1(n)(1)(iii), also is being removed. The Finance Board requests comments on what source of data should be used in calculating the average of total assets over the three preceding years.

C. Amendment of the Conditional Approval Provision For De Novo Insured Depository Institution Applicants Sections 925.14(a)(3), 925.29(a)(1)

As discussed above, section 4(a)(2) of the Bank Act formerly provided that an insured depository institution commencing business operations after January 1, 1989, may become a member of a Bank if at least 10 percent of its total assets are in residential mortgage loans, within one year after the commencement of its operations. See *id.* section 1424(a)(2) (1994). The Modernization Act amended this provision to provide an exemption for *de novo* community financial institutions. See Modernization Act, section 605. Thus, a *de novo* institution's membership is conditioned on the timely satisfaction of the 10 percent requirement. If an institution fails to satisfy this condition within the one-year period, it would not have met one of the statutory criteria for membership and the conditional approval (as well as the institution's membership) would be deemed null and void by operation of law. Thus, although the Membership Regulation is silent as to the consequences of a *de novo* institution's failure to meet the 10 percent requirement, compliance is required by statute no later than one year after commencing operations.

Notwithstanding the statutory conditional approval language, there has been some confusion at a number of Banks as to how they should deal with *de novo* members that would fail to satisfy the 10 percent requirement within the one-year time frame. To provide regulatory clarity, the Finance

Board is amending section 925.14(a)(3) of the Membership Regulation to reinforce the conditional nature of the *de novo* membership application approval, as required by the statute. This regulatory amendment is consistent with the conditional approval requirements applicable to the home financing policy eligibility requirement in section 925.14(a)(4) of the Membership Regulation. See *id.* section 925.14(a)(4). The provisions of section 925.29(a)(1) of the Membership Regulation dealing with orderly liquidation of advances and redemption of stock in the event an institution ceases to be a member also are amended to include references to sections 925.14(a)(3) and (a)(4).

D. Amendment of the Provision on Reacquisition of Membership After 10 Years— § 925.30

Former section 6(h) of the Bank Act provided:

Notwithstanding any other provision of this chapter, an institution which withdraws from membership may acquire membership in any Federal Home Loan Bank only after the expiration of a period of 10 years thereafter, except where such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between banks or in connection with obtaining a charter as a Federal savings association * * *.

12 U.S.C. 1426(h) (1994). Former section 6(h) is implemented by section 925.30 of the Finance Board's Membership Regulation in virtually identical form. See 12 CFR 925.30.

The Modernization Act repealed section 6(h) of the Bank Act and replaced it with new section 6(g), which provides that:

(1) IN GENERAL—Except as provided in paragraph (2), and notwithstanding any other provision of this Act, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.

(2) EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Finance Board and the requirements of this Act.

Public Law 106–102, section 608. This amendment, which took effect upon enactment, reduced the statutory period for readmission from 10 years to 5 years. The result of the amendment is that an institution that withdraws or withdrew from membership may reacquire

membership, *i.e.*, purchase shares of Bank capital stock, after the expiration of a period of 5 years from the date of completion of divestiture of all shares of the institution's capital stock in the Bank. An institution that withdrew from membership before December 31, 1997 that does not meet the 5-year requirement may reacquire membership in a Bank subject to Finance Board approval. Any applicant for membership in a Bank is still required, of course, to meet all of the applicable eligibility requirements in order to be approved for membership.

The Finance Board is amending section 925.30 of its Membership Regulation to reflect the above-described statutory changes in the waiting period for readmission to membership.

The Finance Board has not received any requests from former members seeking readmission under section 6(g)(2) and, thus, has not determined what factors it would consider in such a proceeding. The Finance Board does anticipate that any requests for readmission would be submitted pursuant to the Finance Board's Procedures in 12 CFR part 907.

E. Removal of the Additional Capital Stock Purchase Requirements and Restrictions on Advances Applicable to Non-QTL Members—Sections 925.20, 925.22(c), 950.1, 950.13, 950.15

Section 604(c) of the Modernization Act repealed section 10(e) of the Bank Act, which had imposed a number of restrictions on members that did not meet the QTL test.⁴ Section 10(e) limited the purposes for which a non-QTL member could obtain an advance, limited Bank System-wide advances to non-QTL members to 30 percent of total Bank System advances outstanding, and gave QTL members a priority over non-QTL members in obtaining advances. *See* 12 U.S.C. 1430(e) (1), (2) (1994). Section 10(e) also limited the dollar amount of advances that a non-QTL member could obtain by progressively reducing its ability to leverage its investment in the capital stock of the Bank. In practice, a non-QTL member

with a QTL ratio of 50 percent could obtain only half the amount of advances that a QTL member with the same amount of Bank capital stock could borrow. If the member's QTL ratio decreased further, its ability to borrow against its capital stock would be reduced further. *See id.* section 1430(e).

Separately, section 10(e)(3) of the Bank Act established a statutory presumption that each member has at least 30 percent of its assets in home mortgage loans, which presumption was used in determining the minimum amount of Bank capital stock that a member must purchase pursuant to section 6(b) of the Bank Act. *See id.* section 1430(e)(3). Section 6(b) requires all members to subscribe to a minimum amount of Bank capital stock, which must equal at least one percent of the member's aggregate unpaid loan principal (home mortgage loans, home purchase contracts and similar obligations). As a practical matter, this provision would have applied only to non-QTL members, as QTL members (which have at least 65 percent of their assets in housing-related investments) likely would have had more than 30 percent of their assets in home mortgage loans.

Section 10(e) was added to the Bank Act in 1987 by the Competitive Equality Banking Act of 1987, Public Law 100-86, section 105, 101 Stat. 552 (Aug. 10, 1987) (CEBA), which also established the QTL test. Congress established the QTL test principally as a means of encouraging unitary savings and loan holding companies to ensure that their subsidiary savings associations maintained at least 60 percent of their assets in housing-related investments. If the savings association failed the QTL test, the business activities of the holding company would be sharply curtailed. Similarly, section 10(e) reduced the ability of the non-QTL savings association to obtain advances from its Bank; *i.e.*, an association with a QTL ratio of 59 percent could obtain only 59 percent of the amount of advances that it could obtain were it to meet the QTL test.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, section 714(b), 103 Stat. 418 (Aug. 9, 1989) (FIRREA), amended section 10(e) by revising the sanctions imposed on non-QTL members, which were, with only minor exceptions, the same as those described earlier that the Modernization Act repealed. Congress described its amendments to section 10(e), referring to both the housing finance purposes restriction and the reduced leverage on Bank capital stock, as "special eligibility

requirements for advances to members that are not qualified thrift lenders." *See* FIRREA Conference Report, No. 101-222, at 428 (August 4, 1989). Congress did not describe any of FIRREA's QTL amendments to section 10(e) as amendments to the capital structure of the Banks. Indeed, Congress chose to locate the QTL provisions in section 10(e), which relates solely to Bank advances, rather than in section 6, which establishes the capital structure for the Banks.

Section 604(c) of the Modernization Act repealed section 10(e) in its entirety. There is little legislative history for the amendment. The Managers' Statement accompanying the bill as reported by the Conference Committee refers specifically to each of the QTL provisions in section 10(e) and states simply that each such provision is "eliminated" or "removed." Because section 604(c) of the Modernization Act does not provide a separate effective date for the QTL repeal, the amendments are to take effect upon enactment, unless they are preserved by some other provision of the Modernization Act.

The only provision in the Modernization Act that could even arguably be read to preserve the QTL provisions of section 10(e) would be the transition provision for the amendments to section 6 of the Bank Act, relating to the capital structure of the Banks. *See* Modernization Act, section 608 (*to be codified at* 12 U.S.C. 1426(a)(6)). That section provides that:

Notwithstanding any other provisions of [the Modernization Act], the requirements relating to the purchase and retention of capital stock of a [Bank] by any member thereof in effect on [November 11, 1999], shall continue in effect * * * until the [capital] regulations required by [the Modernization Act] have taken effect and the capital structure plan * * * has been approved by the Finance Board and implemented by such [Bank].

Although certain provisions of section 10(e) bear some relation to the capital stock of a Bank, such as the reduced leverage and the 30 percent presumption of home mortgage loans, they do not appear to have been intended by Congress to function as capital provisions *per se*, nor do they appear to be so closely linked to the capital provisions in section 6 of the Bank Act that they must necessarily be preserved by the transition provisions in the Modernization Act.

As originally enacted in CEBA, section 10(e) was simply a limitation on the amount of advances that a non-QTL member could obtain; it included no reference to Bank capital. Though

⁴ The "Qualified Thrift Lender" test is set forth in section 10(m) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a(m), and applies directly only to savings associations. Originally enacted in 1987, the QTL test was intended to ensure that savings associations remained committed to the business of providing housing-related loans. Failure to meet the test subjected both the savings association and its holding company to certain statutory penalties, including reduced access to Bank advances for the association. In 1989, Congress revised the QTL test and the penalties for failing to meet it, including more severe restrictions on access to Bank advances for savings associations or commercial banks that did not meet the test.

FIRREA reduced the borrowing leverage on Bank capital stock for non-QTL members and established the 30 percent presumption of home mortgage loans, the Congress did not refer to either provision as an amendment to the capital structure of the Bank System. Instead, Congress expressly described both of those provisions as "special eligibility requirements for advances to" non-QTL members. That characterization suggests an intent that section 10(e) continue to function primarily as a limitation on the ability of a non-QTL member to obtain advances, albeit using the provisions relating to capital as one of the means of implementing that limitation.

The repeal of section 10(e) is one of several provisions of the Modernization Act that were intended to equalize access to the Bank System for all members. The explanation by the Conferees' Managers Statement that the QTL provisions are "removed" and "eliminated" by the Modernization Act suggests strongly that the Congress intended that those amendments would take effect upon enactment. To read the Modernization Act otherwise would require an inference that Congress intended the QTL provisions to remain in effect for another 3 to 5 years, which is at odds with the language used in the Managers' Statement. Moreover, the history of the legislation, in which the amendments to section 6 (including the transition provision) were adopted at an earlier time than the repeal of section 10(e), would counsel against applying the transition provision so broadly as to preserve the QTL limitations.⁵ Given that history, the Finance Board believes that the transition provision in section 608 of the Modernization Act should not be read as applying to the QTL provisions in section 10(e) of the Bank Act, and that the QTL provisions are not preserved beyond the date of enactment.

⁵ As passed by the House of Representatives, H.R. 10 would have amended section 6 of the Bank Act, the capital structure provision, in its entirety, and would have included within the amended section 6 a transition provision preserving the existing capital structure until the new capital structures could be implemented. That transition provision is identical to the provision included in the so-called "Chairmen's Mark" that was considered by the Conference Committee and later was enacted in the Modernization Act. The repeal of section 10(e), however, was not included in the original Chairmen's Mark and had not been in either H.R. 10 or S. 900, as those bills were passed by their respective houses. The language repealing section 10(e) was adopted later in the Conference and was included among the amendments made by section 604 of the Modernization Act, which related to advances, rather than those made by section 608 of the Modernization Act, which includes all of the amended capital provisions, including the transition provision.

Accordingly, the Finance Board is removing sections 925.20(a)(2), 950.13 and 950.15(a)(2) of its regulations, which contain the additional capital stock purchase requirements and limitations on advances applicable to non-QTL members. Section 925.20(a)(1) is revised to set forth the new minimum stock purchase requirement for all members as the greater of:

- (i) \$500;
- (ii) 1 percent of the member's aggregate unpaid loan principal; or
- (iii) 5 percent of the member's aggregate amount of outstanding advances.

The Finance Board is aware that the repeal of the QTL limitations could result in excess capital stock positions for as much as 40 percent of the members of the Banks and that this will necessitate serious, thoughtful and active management of capital and business operations by the Banks during the transition period until final capital regulations and Bank capital plans are in place, as required by the Modernization Act. *See* Modernization Act, section 608. This will also require the Finance Board to monitor the Banks closely during this period. Any safety and soundness concerns raised during this transitional period as a result of the repeal of the QTL limitations will be addressed by the Finance Board through the supervisory process.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

IV. Notice and Public Participation

The Finance Board for good cause finds that the notice and public comment procedure required by the Administrative Procedure Act is impracticable, unnecessary or contrary to the public interest in this instance, because the changes made by this interim final rule implement recently enacted statutory amendments that rendered obsolete certain provisions of the Finance Board's regulations. *See* 5 U.S.C. 553(b)(3)(B).

V. Paperwork Reduction Act

For the reasons stated in IV. above, the Finance Board is adopting this interim final rule on an expedited basis to conform provisions of its regulations to the recently enacted statutory amendments to the Bank Act. Due to the expedited nature of this rulemaking, the Finance Board has not completed its analysis of the information collection requirements contained in the interim

final rule. The amendments in the interim final rule may result in a reduction in the information collection burden for institutions that qualify as community financial institutions, and an increase in the number of respondents that apply for Bank membership. The Finance Board intends to submit to the Office of Management and Budget the information collection requirements contained in this interim final rule in accordance with the requirements of section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d).

List of Subjects 12 CFR Parts 925 and 950

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

Accordingly, the Finance Board hereby amends title 12, chapter IX, parts 925 and 950, Code of Federal Regulations, as follows:

PART 925—MEMBERS OF THE BANKS

1. The authority citation for part 925 continues to read as follows:

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

2. Amend section 925.1 by:

- a. In paragraph (n)(1)(iii), removing the second and third sentences; and
- b. Adding paragraphs (ff) and (gg) to read as follows:

§ 925.1 Definitions.

* * * * *

(ff) *Community financial institution* means an institution—

(1) The deposits of which are insured under the Federal Deposit Insurance Act; and

(2) That has, as of the date of the transaction at issue, less than the community financial institution asset cap in average total assets, based on an average of total assets over the three years preceding that date.

(gg) *Community financial institution asset cap* means, for 2000, \$500 million. Beginning in 2001 and for subsequent years, the cap shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted cap.

§ 925.4 [Amended]

- 3. Amend section 925.4 by:
a. Removing paragraph (a); and
b. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.
4. Amend § 925.6 by revising paragraph (b) to read as follows:

§ 925.6 General eligibility requirements.

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

* * * * *

- 5. Revise § 925.10 to read as follows:

§ 925.10 10 percent requirement for certain insured depository institution applicants.

An insured depository institution applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Act and section 925.6(b) of this part, shall be deemed to be in compliance with such requirement if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans, except that any assets used to secure mortgage debt securities as described in § 925.1(bb)(6) of this part shall not be used to meet this requirement.

- 6. Amend section 925.14 by revising paragraph (a)(3) to read as follows:

§ 925.14 De novo insured depository institution applicants.

(a) * * *
(3) 10 percent requirement—(i) One-year requirement. An applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Act and section 925.6(b) of this part, shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 925.10 of this part.

(ii) Conditional approval. The applicant shall be conditionally deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and section 925.6(b) of this part. An applicant that receives such conditional membership approval is subject to the stock purchase requirements of § 925.20 of this part and the advances provisions of part 950 of this chapter.

(iii) Approval. The applicant shall be deemed to be in compliance with the 10 percent requirement of section

4(a)(2)(A) of the Bank Act and section 925.6(b) of this part upon receipt by the Bank from the applicant, within one year after commencement of the applicant's initial business operations, of evidence acceptable to the Bank that the applicant satisfies the 10 percent requirement.

(iv) Conditional approval deemed null and void. If the requirements of paragraph (a)(3)(iii) of this section are not satisfied, the applicant shall be deemed to be in noncompliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and § 925.6(b) of this part, and its conditional membership approval is deemed null and void.

(v) Treatment of outstanding advances and Bank stock. If the applicant's conditional membership approval is deemed null and void pursuant to paragraph (a)(3)(iv) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 925.29 of this part.

* * * * *

§ 925.18 [Amended]

- 7. Amend § 925.18(e) by removing the phrase "within 10 years".
8. Amend § 925.20 by:
a. Revising paragraph (a); and
b. In paragraphs (b)(1) and (b)(2), removing "§ 925.4(a) or (d)" and adding "§ 925.4(c)" in its place, to read as follows:

§ 925.20 Stock purchase.

(a) Minimum stock purchase. Each member shall purchase stock in the Bank in which it is a member in an amount equal to the greater of:
(1) \$500;
(2) 1 percent of the member's aggregate unpaid loan principal; or
(3) 5 percent of the member's aggregate amount of outstanding advances.

* * * * *

- 9. Amend § 925.26 by revising paragraph (a) to read as follows:

§ 925.26 Procedure for withdrawal.

(a) Notice of withdrawal. (1) Any member that is eligible under applicable law to withdraw from Bank membership may do so after providing the Finance Board and its Bank at least six months written notice of the member's intention to withdraw from membership.

(2) Federal savings association members may submit notices of intention to withdraw from Bank membership under paragraph (a)(1) of this section prior to May 13, 2000, but

may not withdraw from membership prior to May 13, 2000.

* * * * *

§ 925.29 [Amended]

- 10. Amend the first sentence of § 925.29(a)(1) by adding "925.14(a)(3), 925.14(a)(4)," before "925.26".

- 11. Revise § 925.30 to read as follows:

§ 925.30 Reacquisition of membership.

An institution that withdraws or withdrew from membership pursuant to § 925.26 of this part may acquire membership in a Bank only after the expiration of a period of 5 years from the date of completion of divestiture of all shares of the institution's capital stock in the Bank, except:

- (a) Such institution may acquire membership in a Bank if such divestiture is a consequence of a transfer of membership on a non-interrupted basis between Banks pursuant to § 925.18 of this part; and
(b) An institution that withdrew from membership pursuant to § 925.26 of this part before December 31, 1997 that does not meet the 5-year requirement in this section may acquire membership in a Bank subject to Finance Board approval.

PART 950—ADVANCES

- 1. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

§ 950.13 [Removed]

- 2. Remove § 950.13.
3. Amend § 950.15 by:
a. Redesignating paragraph (a)(1) as paragraph (a);
b. Removing paragraph (a)(2); and
c. Revising the first sentence of paragraph (b)(1) to read as follows:

§ 950.15 Capital stock requirements; unilateral redemption of excess stock.

* * * * *

(b) Unilateral redemption of excess capital stock; fee in lieu prohibited. (1) A Bank, after providing 15 calendar days advance written notice to a member, may require the redemption of that amount of the member's Bank capital stock that exceeds the capital stock requirements set forth in paragraph (a) of this section, provided the minimum amount required in section 6(b)(1) of the Act is maintained.

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Dated: February 23, 2000.

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

Bruce A. Morrison,
Chairman.

[FR Doc. 00-6200 Filed 3-14-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-57-AD; Amendment 39-11623; AD 2000-05-13]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires a one-time inspection of the main landing gear (MLG) axle flange to detect cracking, and follow-on corrective actions. For certain airplanes, this amendment also requires replacement of the original brake mounting gasket with a more durable aluminum-nickel-bronze gasket, and installation of new shear studs, if necessary. For certain airplanes, this amendment requires modification of the mounting flange holes of the brake torque tube. This amendment is prompted by reports of cracking in the axle flange and by reports of deterioration of the brake mounting gasket. The actions specified by this AD are intended to prevent fracture of the MLG axle and separation of the wheel from the MLG, and consequent reduced controllability of the airplane.

DATES: Effective April 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1153; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the **Federal Register** on October 29, 1998 (63 FR 57953). That action proposed to require a one-time inspection of the main landing gear (MLG) axle flange to detect cracking, and follow-on corrective actions. For certain airplanes, that action proposed to require replacement of the original brake mounting gasket with a more durable aluminum-nickel-bronze gasket, and installation of new shear studs, if necessary. For certain airplanes, that action proposed to require modification of the mounting flange holes of the brake torque tube.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Requests to Extend Compliance Time

Several commenters request that the FAA extend the compliance time (i.e., within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later) for accomplishing the requirements of the proposed AD.

One commenter states that the proposed AD should be carried out within 250 days or 2,500 aircraft cycles, whichever occurs later. The commenter supports this request by stating that its standard practice is to clean and visually inspect all landing gear axle flanges each time the brake assemblies and wheel assemblies are removed from the axle. The commenter further states that it has never experienced loss of a MLG wheel with BFGoodrich brake assemblies, and that BFGoodrich is not aware of the loss of a wheel on aircraft equipped with BFGoodrich brake assemblies.

Another commenter, the airplane manufacturer, states that the inspection of axle flanges that have been repaired with nickel sulfamate or bushings

would require removal of the repair. The commenter notes that this will have a significant impact on the cost and time required to perform the proposed inspection. Therefore, consideration should be given to increasing the compliance time or modifying the inspection requirements.

One commenter states that the inspection schedule specified in paragraphs (b) and (c) of the proposed AD should be increased to at least 1 year or 4,000 cycles, whichever is later. The commenter states that the currently proposed inspection schedule for most of the operators will fall during a line maintenance check. The commenter points out that the inspection and repair specified in Boeing All Operators Telex (AOT) M-7272-96-1442, dated March 29, 1996 [which is referenced in the proposed AD the appropriate source for accomplishing the proposed inspection in paragraphs (b)(1) and (c)(1) and the proposed repair in paragraphs (b)(2) and (c)(2)], involves repairs that should be accomplished at a heavy check or overhaul facility.

One commenter states that the inspection should be accomplished during a heavy maintenance visit where equipment and trained personnel are more readily available.

The FAA concurs with the commenters' requests. The FAA concurs that the magnetic particle inspection, high frequency eddy current (HFEC) inspection, modification, and repair, if necessary, required by this AD should be accomplished at an overhaul facility. The FAA has determined that an extension of the compliance time to within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, will not compromise safety provided that an interim detailed visual inspection to detect fretting and corrosion of the axle flange bolt holes is accomplished within 200 days or 1,500 flight cycles after the effective date of this AD, whichever occurs later. The FAA has added a new paragraph (d) to the final rule to include such an option. The FAA also has added a note to the final rule to clarify the definition of the detailed visual inspection.

One commenter states that, if the FAA mandates modifications to the ten or eleven bolt configuration, it requests that the compliance time for paragraph (c) of the proposed AD be extended to 5 years. (This comment is discussed in more detail below under the heading "Requests to Exclude Actions on the Basis of Configuration").

The FAA does not concur with the commenter's request. Although the two stud/ten bolt configuration provides better clamp-up between the brake