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FEDERAL HOME LOAN BANK BOARD

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FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Conversions from Mutual to Stock Form

FEDERAL HOME LOAN BANK BOARD

[No. 74-1343]

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION

[12 CFR Part 563b]

Conversions from Mutual to Stock Form;
Proposed Amendments

SUMMARY

DECEMBER 19, 1974.

The following summary of the amendments proposed by this Resolution is provided for the reader's convenience and is subject to the full discussion in the following preamble and to the specific provisions of the regulations.

I. Principal provisions reflecting proposed changes. A. Mandatory priorities in conversion plans:

- (1) Pure pro rata share.
- (2) Greater of 100 shares or number of shares equal to two times the quotient obtained by dividing qualifying deposit by subscription price per share.

(3) Association members who are not eligible account holders to receive rights to purchase up to 100 shares.

B. Optional priorities:

- (1) Directors, officers and employees may purchase limited priority amount.
- (2) Public offering provision.
- (3) Private placement provision.
- (4) Eligible account holders may purchase excess.

C. Discounts. Provisions concerning discounts and related holding periods eliminated.

D. Approvals and judicial review. Preliminary and final approval provisions are consolidated; the present "preliminary" approval becomes final action for purposes of judicial review.

II. Other Amendments. A. Definitions of entitlement shares and subscription offering are amended to conform to amended regulations.

B. Definition of eligible account holder is amended to include only a person having a qualifying deposit.

C. Conforming amendments are made to reflect authority for Federal stock charters.

III. Forms. A. Amend forms to conform to amended regulations.

B. Redesignate form PA as form AC (application for conversion) and delete form FA.

The Federal Home Loan Bank Board, by Resolution No. 74-144, dated February 28, 1974, adopted Part 563b of the Rules and Regulations for Insurance of Accounts (12 CFR 563b) to permit conversions of insured institutions from mutual to stock form. Those regulations became effective on April 8, 1974. Since April 8, 1974, over 30 conversion applications have been analyzed. Analysis of these applications, discussions with other regulatory agencies and the adoption of Pub. L. 93-495 (H.R. 11221) have indicated the need to amend the regulations adopted on February 28, 1974. Accordingly, the Board hereby proposes to amend Part 563b of the Rules and Regulations for Insurance of Accounts, as discussed herein.

Presently § 563b.3(c) (3) provides that, after eligible account holders are given the right to subscribe to their entitlement shares under § 563b.3(c) (2), they shall receive nontransferable subscription rights to purchase additional shares of capital stock to the extent such shares are available after satisfaction of their rights under § 563b.3(c) (2). Presently the plan of conversion is permitted to place a limit of not less than one percent of the total offering on the number of shares to which "each eligible account holder or group of eligible account holders affiliated with each other or otherwise acting in concert" can subscribe under § 563b.3(c) (3). If a plan of conversion does not contain the one percent limitation any eligible account holder who holds any qualifying deposit could subscribe for all or a significant portion of the stock left after satisfaction of § 563b.3(c) (2). Such subscriptions could or would cause oversubscription and reallocation of the priority under § 563b.3(c) (3) with the possibilities of attendant inequities, delays and excessive expense. If a plan of conversion does contain the permitted maximum purchase limitation of not less than one percent, the task of determining whether eligible account holders are acting in concert could cause unnecessary expense and delay.

In order to remedy these problems the Board proposes to amend § 563b.3(c) to make it mandatory that plans of conversion contain:

(1) A provision giving eligible account holders their pure pro rata share, that is the share that results when the total number of shares is multiplied by the amount of an eligible account holder's qualifying deposit divided by the total amount of qualifying deposits.

(2) A provision giving each eligible account holder the right to subscribe to the greater of 100 shares or a number of shares equal to two times the quotient obtained by dividing such account holder's qualifying deposit by the subscription price per share.

(3) A provision allowing those account holders and borrowers entitled to vote at the meeting called to consider the conversion, but who are not eligible account holders, to purchase up to 100 shares.

The Board further proposes to amend § 563b.3(d) to provide that a plan of conversion may have the following optional provisions. These provisions may be used singly or in combination.

(1) A provision that directors, officers, and employees shall be entitled to purchase stock after § 563b.3(c) has been satisfied but the amount such persons may subscribe for is limited;

(2) A provision providing for a public offering;

(3) A provision providing for a private placement after an additional offering to eligible account holders of shares equal to their mandatory subscription rights;

(4) A provision permitting an additional offering to eligible account holders with such limitations as the converting association may determine.

Presently, Part 563b provides that a plan of conversion may allow certain account holders to be given subscription rights to purchase shares of stock at a discount, and that certain holding periods attach to any shares purchased at a discount. Experience has caused the Board to question the desirability of these provisions and the Board therefore proposes to delete them from Part 563b. The Board will, however, consider on the merits discount provisions in existing plans of conversion.

Pub. L. 93-495 amended § 402(j) of the National Housing Act to provide that an "aggrieved person may obtain review of a final action [of the Board] which approves, with or without conditions, or disapproves a plan of conversion . . ." only by complying with § 408(k) of the National Housing Act. Presently, Part 563b provides for preliminary Board approval before the plan of conversion is voted on by the members of a converting association and for final approval after such vote. The subscription period and public or other offering occur after final approval. Under the proposal the present preliminary approval would become the final action of the Board for purposes of judicial review and the present final approval procedure would be established as a condition of the Board's final action. The proposal would also indicate the subsequent changed circumstances under which the finality of the Board's action would be superseded.

Pub. L. 93-495 further amended § 402(j) of the National Housing Act to provide that a converting Federal association may retain its Federal charter. Presently, certain sections of Part 563b exclude the possibility of converting Federal associations retaining their Federal charters. Those sections would be amended to refer to converting Federal associations which retain their Federal charters.

Presently, § 563b.3(e) (1) (i) permits a plan of conversion to provide that a savings account balance of less than \$100 (or any lesser amount) shall not constitute a qualifying deposit. The Board proposes to reduce the \$100 figure to \$50. This conforms with § 545.1-1 of the Federal Regulations (12 CFR 545.1-1) which permits a Federal association, by resolution of its board of directors, not to distribute earnings on accounts of \$50 or less.

Current § 563b.2(a) (14) defines an eligible account holder as "any person holding a savings account in a converting institution on the eligibility record date." Currently, if a plan includes a provision stating that a deposit of less than \$100 shall not constitute a qualifying deposit, an account holder with an account on the eligibility record date who has a deposit in a lesser amount would not have a qualifying deposit but would be an eligible account holder. The Board proposes to define an eligible account holder in terms of his qualifying deposit.

In addition, a variety of conforming changes are made to the forms used in connection with Part 563b.

Interested persons are invited to submit written data, views, and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 320 First Street NW., Washington, D.C. 20552, by February 28, 1975, as to whether these proposals should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the General Regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

PART 563B—CONVERSIONS FROM MUTUAL TO STOCK FORM

1. Section 563b.1 would be amended by revising paragraph (a) and by deleting the phrase "preliminary approval of" from paragraph (c) (1), as follows:

§ 563b.1 Scope of part.

(a) *General.* Except as the Corporation may otherwise determine, the provisions of this part shall exclusively govern the conversion of mutual insured institutions capital stock insured institutions. No such mutual institution shall convert to the capital stock form of organization without the prior written approval of the Corporation pursuant to the provisions of this part, except as the Corporation may otherwise provide in supervisory cases.

(c) *Conflicts with State law.* (1) In the event an applicant finds that compliance with any provision of this part would be in conflict with applicable State law, the applicant may file with the Corporation a written request for waiver of compliance with such provision. Such request may be incorporated in the application for conversion; otherwise, the applicant shall file four copies of such request.

2. Section 563b.2 would be amended by revising paragraphs (a) (14), (16) and (31); by deleting paragraph (a) (30); and by redesignating present paragraphs (a) (31), (32), (33) and (34) as paragraphs (a) (30), (31), (32) and (33), as follows:

§ 563b.2 Definitions.

(a) As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(14) *Eligible account holder.* The term "eligible account holder" means any person holding a qualifying deposit as determined in accordance with § 563b.3 (e).

(16) *Entitlement Shares.* The term "entitlement shares" means the shares of capital stock an eligible account holder is entitled to purchase determined as computed under § 563b.3(c) (2).

(30) *Subscription offering.* The term "subscription offering" refers to the of-

fering of shares of capital stock, through nontransferable subscription rights issued to: (1) eligible account holders as required by § 563b.3(c) (2) and (3); (2) members entitled to vote at the meeting called to consider the conversion as required by § 563b.3(c) (4); (3) directors, officers and employees, as permitted by § 563b.3(d) (1); and (4) eligible account holders as permitted by § 563b.3(d) (2) and (4).

(31) *Subsidiary.*

(32) *Supervisory Agent.*

(33) *Underwriter.*

3. Section 563b.3 would be amended by deleting the phrase "preliminary approval of" from paragraph (b); by revising paragraphs (c) and (d); by changing the figure "\$100" to "\$50" in paragraph (e) (1) (i); and by adding the phrase "Federal or" to the first sentence of paragraph (i) (3), as follows:

§ 563b.3 General principles for conversions.

(b) *General requirements.* No application for conversion shall be approved by the Corporation if:

(c) *Required provisions in plan of conversion.* The plan of conversion shall:

(1) Provide that the converting insured institution shall issue and sell its capital stock at a total price equal to the estimated pro forma market value of such stock in the converted insured institution, based on an independent valuation, as provided in § 563b.7.

(2) Provide that each eligible account holder shall receive without payment, nontransferable subscription rights to purchase entitlement shares in an amount equal to the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting insured institution.

(3) Provide that each eligible account holder shall receive, without payment, additional nontransferable subscription rights to purchase additional shares, subject to the following conditions:

(i) The maximum number of additional shares which an eligible account holder may subscribe for under this paragraph (c) (3) shall be the greater of:

(A) 100 shares; or

(B) Twice the number of shares obtained by dividing the amount of the qualifying deposit of the eligible account holder by the subscription price per share (rounded down to the next whole number);

(ii) The number of nontransferable subscription rights to purchase entitle-

ment shares received by an account holder in accordance with paragraph (c) (2) of this section shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this paragraph (c) (3);

(iii) In the event of an oversubscription for additional shares pursuant to this paragraph (c) (3), shares shall be allocated among the subscribing eligible account holders as follows:

(A) Any shares not subscribed for in accordance with paragraph (c) (2) of this section shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his total allocation (including the number of shares allocated in accordance with paragraph (c) (2) of this section) equal to 100 shares.

(B) Any shares not allocated in accordance with paragraph (c) (3) (iii) (A) of this section shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

(4) Association members who are not eligible account holders shall receive, without payment, nontransferable subscription rights to purchase up to 100 shares of capital stock, to the extent that shares are available after satisfying the entitlement and additional shares subscriptions of eligible account holders provided for under paragraphs (c) (2) and (3) of this section. In the event of an oversubscription for shares under the provisions of this subdivision (4), the shares available shall be allocated among the subscribing members on such equitable basis as may be provided in the plan of conversion.

(5) Provide that the sales price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with § 563b.7; and specify the underwriting, and/or other marketing arrangements to be made to assure the sale of all shares not sold in the subscription offering.

(6) Provide that each savings account holder of the converting insured institution shall receive, without payment, a withdrawable savings account or accounts in the converted insured institution equal in withdrawable amount to the withdrawal value of such account holder's savings account or accounts in the converting insured institution.

(7) Provide for the establishment and maintenance of a liquidation account for the benefit of eligible account holders in the event of a subsequent complete liquidation of the converted insured institution, in accordance with the provisions of paragraph (f) of this section.

(8) Provide for an eligibility record date, which shall be not less than 90 days prior to the date of adoption of the plan by the converting insured institution's board of directors.

(9) Provide that the holders of the capital stock of the converted insured institution shall have exclusive voting

rights, unless in the case of a State-chartered converted insured institution State law requires savings account holders and/or borrowers of the converted insured institution to have voting rights, in which case the charter of the converted insured institution shall (i) limit such voting rights to the minimum required by State law, and (ii) provide for the management of the converted insured institution to solicit proxies from such savings account holders and/or borrowers in the same manner as it solicits proxies from its shareholders.

(10) Provide that the plan of conversion adopted by the applicant's board of directors may be substantively amended by such board of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from members to vote on the plan and at any time thereafter with the concurrence of the Corporation; and that the conversion may be terminated by such board of directors at any time prior to the meeting of members called to consider the plan of conversion and at any time thereafter with the concurrence of the Corporation.

(11) Provide that all shares of capital stock purchased by directors and officers on original issue in the conversion either directly from the insured institution (by subscription or otherwise) or from an underwriter of such shares, shall be subject to the restriction that such shares shall not be sold for a period of not less than one year following the date of purchase, except in the event of the death of the shareholder.

(12) Provide that, in connection with shares of capital stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the transfer agent for the converted insured institution's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(iii) Any shares issued as a stock dividend, stock split or otherwise with respect to any such restricted stock shall be subject to the same restriction as may apply to such restricted stock.

(13) Contain no provision which the Corporation shall determine to be inequitable or detrimental to the applicant, its savings account holders or other insured institutions or to be contrary to the public interest.

(d) *Optional provisions in plan of conversion.* The plan of conversion may provide any or all of the following:

(1) That directors, officers, and employees of the converting insured institution, as part of the subscription offering, shall be entitled to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders provided for under paragraphs (c) (2) and (3) of this section and the subscriptions of association members who are not eligible account holders provided for under paragraph (c) (4) of this section, subject to the following conditions:

(i) The total number of shares which may be purchased under this subdivision (1) shall not exceed 20 percent of the total number of shares to be issued in the case of a converting insured institution with total assets of less than \$50 million or 10 percent in the case of a converting insured institution with total assets of \$50 million or more; in the case of a converting insured institution with total assets of \$50 million or more but less than \$500 million, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, 15 percent in the case of a converting insured institution with total assets of approximately \$275 million); and

(ii) The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to period of service, compensation and position, subject to a reasonable limitation on the amount of shares which may be purchased by any person or group of affiliated persons or group of persons acting in concert.

(2) That each eligible account holder, as part of the subscription offering, shall also receive, without payment, nontransferable subscription rights to purchase additional shares of capital stock, to the extent that such shares are available after satisfying the subscriptions provided for under paragraphs (c) (2), (3), and (4) of this section, subject to such conditions as may be provided in the plan of conversion. In the event of an over-subscription for such additional shares, the shares available shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion. Where possible such additional shares shall be allocated in such a manner that total purchases by eligible account holders shall be rounded up to the nearest 100 shares.

(3) That any shares of the converting insured institution not sold in the subscription offering shall be sold in a public offering subject to such conditions as may be provided in the plan of conversion.

(4) That any shares of the converting insured institution not sold in the subscription offering shall be sold in a private distribution, subject to such conditions as may be provided in the plan of conversion and to a requirement that each eligible account holder shall receive, without payment, additional non-transferable subscription rights to purchase additional shares equal to the number such account holder is entitled to purchase under paragraph (c) (3) (i) of this section before any shares are sold in a private distribution under this paragraph (4).

(5) That each eligible account holder exercising subscription rights to purchase entitlement or additional shares shall be required to purchase a minimum of up to 25 shares to the extent such shares are available (but the aggregate price for any minimum share purchase shall not exceed \$500).

(6) That management employment contracts may be authorized and a qualified stock option plan may be adopted at the meeting at which the plan of conversion is voted upon by the members of the converting insured institution.

(7) That the converted insured institution shall issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in which event any reference in the provisions of this part to capital stock shall apply to such units of equity securities unless the context otherwise requires.

(e) *Determination of amount of qualifying deposit; predecessor and successor accounts.* (1) Unless otherwise provided in the plan of conversion, for the purposes of this section, the amount of the qualifying deposit of an eligible account holder shall be the total of the deposit balances in the eligible account holder's savings accounts in the converting institution as of the close of business on the eligibility record date. However, the plan of conversion may provide that any one or more of the following optional provisions shall apply in determining the amount of the qualifying deposit:

(i) Any savings accounts with total deposit balances of less than \$50 (or any lesser amount) shall not constitute a qualifying deposit.

(i) *Acquisition of converted insured institutions.*

(3) *Optional charter provision.* To the extent permitted by applicable Federal or State law, a plan of conversion may provide for a provision in the charter of the converted insured institution containing, in substance, the restriction set forth in paragraph (1) (2) of this section. There may also be included a restriction providing that such charter provision may be amended only by a vote of up to 75 percent of the votes eligible to be cast at a regular or special meeting of shareholders of the converted insured institution. If the converted insured institution elects to adopt the foregoing optional charter provision, the Corporation will impose, as a condition to its approval of the conversion, a requirement that the converted institution fully enforce such charter provision.

4. Section 563b.4 would be amended by revising the title of paragraph (a); by substituting the word "conversion" for the phrase "preliminary approval" in the first sentence of paragraph (a) (1) and the last sentence of paragraph (a) (2); by substituting the phrase "Federal (or State, as the case may be)" for the word "State-chartered" in paragraph (a) (3) (1), by substituting the word "conversion" for the phrase "preliminary approval" in the first sentence of paragraph (b) (1) and in the title of the notice quoted in paragraph (b) (1); and by revising that notice by deleting the word "preliminary" and changing the address of the Corporation, as follows:

§ 563b.4 Notice of filing; public statements; confidentiality.

(a) *Information prior to approval of plan of conversion.* (1) An insured institution which is considering converting pursuant to this part and its directors, officers and employees shall maintain such consideration in confidence to the extent consistent with the need to prepare information for filing an application for conversion. If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant.

(2) Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the insured institution shall (i) notify its members of such action by publishing a statement in a newspaper having general circulation in each community in which an office of the insured institution is located and/or by mailing a letter to each of its members and (ii) have copies of the adopted plan of conversion available for inspection by its members at each office of the insured institution. The insured institution may also issue a press release with respect to such action. Copies of the proposed statement, letter and press release are not required to be filed with the Corporation, but may be submitted for comment to the Office of General Counsel. Copies of the definitive statement, letter and press release shall be filed with the Corporation as part of the application for conversion.

(3) The statement, letter and press release, unless otherwise authorized by the Corporation shall contain only (but need not contain all of) the following:

(1) A statement that the board of directors has adopted a proposed plan to convert the insured institution from a Federal (or State, as the case may be) mutual institution to a Federal (or State, as the case may be) capital stock insured institution.

(b) *Notice of filing.* (1) Upon determination that an application for conversion is properly executed and is not materially incomplete, the Corporation will advise the applicant, in writing, to publish a notice of the filing of such application. Promptly after receipt of such advice, the applicant shall publish a notice of such filing in a newspaper printed in the English language and having general circulation in each community in which an office of the applicant is located, as follows:

NOTICE OF FILING OF AN APPLICATION FOR CONVERSION TO CONVERT TO A STOCK SAVINGS AND LOAN ASSOCIATION

Notice is hereby given that, pursuant to Part 563b. of the Rules and Regulations for Insurance of Accounts.....

(fill in name of applicant)

has filed an application with the Federal Savings and Loan Insurance Corporation for approval to convert to the stock form of organization. Copies of the application have been delivered to the Office of the Secretary

of said Corporation, 320 First Street, N.W., Washington, D.C. 20552, and to the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of.....

(Street address) (City) (State)
(ZIP Code)

5. Section 563b.5 would be amended by deleting the word "preliminary" from paragraph (a) (2) and from paragraph (e) (1); by deleting paragraph (g) (3) (iii); and by redesignating present paragraph (g) (3) (iv) as (g) (3) (iii), as follows:

§ 563b.5 Solicitation of proxies; proxy statement.

(a) *Solicitations to which rules apply.* This section applies to every solicitation of a proxy from an association member of an insured institution for the meeting at which a conversion plan will be voted upon, except the following:

(2) Any solicitation through the medium of a newspaper advertisement which informs association members, following approval of the plan of conversion, of a source from which they may obtain copies of a proxy statement form of proxy, or any other soliciting material and does no more than (i) name the insured institution, (ii) state the reason for the advertisement, (iii) identify the proposal or proposals to be acted upon by association members, and (iv) urge the member to vote at the meeting.

(e) *Material required to be filed.*

(1) Applicants shall file ten preliminary copies of such proxy materials as are required by the form for applying for approval to convert under this Part.

(g) *False or misleading statements.*

(3) If a solicitation by management violates any provision of this section, the Corporation may require remedial measures including:

(iii) Any other actions the Corporation may deem appropriate in the circumstances in order to ensure a fair vote.

6. Section 563b.6 would be amended by deleting the phrase "application for final approval" from its title; by revising paragraph (a); and by deleting paragraph (e), as follows:

§ 563b.6 Vote by members.

(a) *Vote at special meeting.* Following Corporation approval of an application for conversion, the plan of conversion shall be submitted to a special meeting of members, unless in the case of a State-chartered converting insured institution State law requires that the plan be considered at an annual meeting of members.

(e) [Revoked; effective]

7. Section 563b.7 would be amended by revising paragraphs (a), (b) and (c); by deleting present paragraph (d); by deleting the phrases "and (d)" and "preliminary or final approval of" from present paragraph (e) and redesignating present paragraph (e) as paragraph (d); by revising present paragraph (f) and redesignating it paragraph (e); by deleting the phrases "and (d)" and "to the materials in support of such price ranges and prices" from the first sentence of present paragraph (g) (1) and redesignating that paragraph as paragraph (f); by revising paragraph (h) and redesignating that paragraph as paragraph (g); by deleting present paragraph (j); and by redesignating present paragraphs (i) and (k) as paragraphs (h) and (l), as follows:

§ 563b.7 Pricing and sale of securities.

(a) *General.* No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the Corporation of the application for conversion and until the proxy statement has been authorized for use by the Corporation. No sale of such securities in the subscription offering may be made except by means of the final offering circular for the subscription offering. No sale of unsubscribed securities may be made except by means of the offering circular for the public or other offering. The provisions of this paragraph shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with the applicant.

(b) *Distribution of offering materials.* The proxy statement authorized for use by the Corporation, or any preliminary offering circular for the subscription offering which has been filed with the Corporation, may be distributed to eligible account holders not entitled to vote on the plan of conversion and to others in connection with the subscription offering at the same time as or after such proxy statement is mailed to association members pursuant to § 563b.6(c). Any preliminary offering circular for the public or other offering of unsubscribed securities, which has been filed with the Corporation, may be distributed in connection with such offering at the same time as or after such proxy statement is mailed to association members pursuant to § 563b.6(c). No final offering circular shall be distributed until such offering circular has been declared effective by the Corporation.

(c) *Estimated price information in proxy statements and preliminary offering circulars.* With respect to the capital stock of the applicant to be sold under the plan of conversion, the proxy statement and any preliminary offering circular for the subscription offering shall set forth the estimated subscription price range. The maximum of such price range should normally be no more

than 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no more than 15 percent below such average. The maximum price used in the price range should normally be no more than \$50 per share and the minimum no less than \$5 per share.

(d) *Prohibited representations.* The Corporation will review the price information required under paragraph (c) of this section in determining whether to give approval to the application for conversion.

(e) *Underwriting expenses.* Underwriting commissions shall not exceed an amount or percentage per share acceptable to the Corporation. No underwriting commissions shall be allowed or paid with respect to shares of capital stock sold in the subscription offering; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is so small that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses. The term "underwriting commissions" includes underwriting discounts.

(f) *Pricing materials.* (1) In considering the pricing information required under paragraph (c) of this section, the Corporation will apply the following guidelines:

(g) *Order forms for purchase of capital stock.* (1) Promptly after the Corporation has declared the offering circular for the subscription offering effective, the applicant shall distribute order forms for the purchase of shares of capital stock in the subscription offering to all eligible account holders, members eligible to vote at the meeting to consider the conversion and other persons who may subscribe for such shares under the plan of conversion.

(3) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price shall be within the subscription price range stated in the proxy statement. If the actual public offering price is less than the maximum subscription price stated in the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price. However, if the actual subscription price is more than 25 percent less than the maximum subscription price, previously returned order forms shall not be binding and a resolicitation through new order forms shall be required.

(4) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear and intelligible a manner as possible, the actions which are required or available to him with respect to the form and the capital stock

offered for purchase thereby. Specifically, each order form shall:

(1) Indicate the number of entitlement shares and the number of additional shares for purchase by the eligible account holder in the subscription offering. Indicate separately any other subscription rights which are available to eligible account holders and to other persons who may subscribe for capital stock under the plan of conversion. If there are several different types of subscription rights under the plan of conversion so that their inclusion on a single order form would cause it to be too complex, the applicant may wish, and the Corporation may require, the distribution of different order forms to different classes of persons who may subscribe;

(5) . . .

(h) *Withdrawal from certificate accounts.*

(i) *Period for completion of sale.*

(8) Section 563b.8 would be amended by revising paragraphs (a), (b), (c), and (d); by changing the phrases "paragraph (c) (4) (ii)" and "paragraph (c) (4) (i)" in present paragraphs (c) (4) (i) and (ii) to "paragraph (e) (4) (ii)" and "paragraph (e) (4) (i)"; by changing the phrase "paragraph (1)" in present paragraph (e) to "paragraph (n)" and deleting the word "preliminary" from that paragraph; by changing the phrase "paragraph (j)" in the second sentence of present paragraph (i) (1) to "paragraph (1)"; by changing the phrase "paragraph (m) (2)" in present paragraph (m) (1) to "paragraph (o) (2)"; by adding a new paragraph (m) (3) immediately following paragraph (m) (2) of present paragraph (m); by changing the phrase "paragraph (n)" in present paragraph (n) (2) to "paragraph (p)"; by changing the letter "(r)" in paragraph (i) (2) to "(t)"; by adding a new paragraph (u) immediately following present paragraph (r); and by redesignating paragraphs (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r) and (s) as paragraphs (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t) and (v), as follows:

§ 563b.8 Procedural requirements.

(a) *Filing an application for conversion.* An applicant that desires to convert in accordance with this part shall file ten copies of an application for approval in the form prescribed by the Corporation.

(b) *Return of improperly executed or materially incomplete filings.* Any application for approval that is improperly executed, or that does not contain copies of (i) a plan of conversion, (ii) a preliminary proxy statement with signed financial statements, and (iii) a preliminary form of proxy, shall not be accepted for filing and shall be returned to the applicant. Any application for ap-

proval containing a materially incomplete plan of conversion, proxy statement, or form of proxy may be returned by the Corporation to the applicant.

(c) *Additional filing requirements.* An applicant whose plan of conversion has been approved by the Corporation shall fulfill the following requirements:

(1) The applicant shall file with the Corporation promptly after the meeting of association members called to consider the plan of conversion a certified copy of each resolution adopted at such meeting relating to the plan of conversion, together with the following information:

(i) The total number of votes eligible to be cast;

(ii) The total number of votes represented in person or by proxy at the meeting;

(iii) The total number of votes cast in favor of and against each such matter; and

(iv) The percentage of votes necessary to approve each such matter.

The compilation of the votes cast at the meeting may be prepared for the insured institution, by an independent public accountant or by an independent transfer agent.

(2) The applicant shall file with the Corporation promptly after the meeting of association members called to consider the plan of conversion an opinion of counsel to the effect that (1) the meeting of members was duly held in accordance with all requirements of applicable State and Federal law and regulation; and (2) all requirements of State law applicable to the conversion have been complied with.

(3) The offering circulars for the subscription offering and for the public or other offering shall be prepared in compliance with this part and Form OC. The applicant shall file with the Corporation ten copies of each preliminary offering circular and twenty-five copies of each final offering circular.

(d) *Termination or amendment of charter.* (1) Upon approval of a plan of conversion by the members of a State-chartered insured institution or a Federal association which is converting to a State-chartered stock insured institution, the charter of such insured institution shall terminate effective upon the issuance to it of a stock charter under the laws of the State in which the home office of the applicant is located. If such converting insured institution is a Federal association, its Federal charter shall promptly be surrendered to the Board for cancellation. An insured institution converting to a State-chartered stock insured institution shall promptly file with the Corporation a copy of the stock charter issued to it. The certificate of insurance of such insured institution shall promptly be surrendered to the Corporation for amendment or cancellation, and the Corporation shall promptly issue an amended or new certificate of insurance to the converted insured institution.

(2) A Federal association converting to a Federal stock association shall apply to amend its charter and bylaws to read

in the form of a charter and bylaws for a Charter S association. The effective date of such amendment shall be stated in the Board's resolution approving the conversion.

(e) Number of copies; place of filing; binding; signatures.

(f) Requirements as to paper and printing.

(g) Method of preparation.

(h) Interpretation of requirements.

(i) Additional information.

(j) Information unknown or not reasonably available.

(k) Incorporation of certain information by reference.

(l) Summaries or outlines of documents.

(m) Legibility of materials.

(n) Presentation of information.

(o) Application of amendments to regulations and forms.

(1) * * *

(2) Applications for conversion filed pursuant to this part shall conform to the regulations and forms of this part as revised by the Corporation effective [effective date of this amendment].

(p) Consent of experts.

(q) Consents of persons about to become directors.

(r) Date of filing.

(s) Amendments.

(t) Pre-filing conferences with applicants.

(u) Review of Board action. Any person aggrieved by a final action of the Board or the Corporation which approves, with or without conditions, or disapproves a plan of conversion pursuant to this part may obtain review of such action by filing in the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or in the United States Court of Appeals for the District of Columbia Circuit, a written petition praying that the final action of the Board or Corporation be modified, terminated or set aside. Such petition must be filed within 30 days after publication of notice of such final action in the Federal Register, or upon the mailing by the applicant of the notice to members

as provided for in § 563b.6(c), whichever is later. The further procedure for review is as follows. A copy of the petition is forthwith transmitted to the Board or the Corporation by the clerk of the court and thereupon the Board or the Corporation files in the court the record in the proceeding, as provided in Section 2112 of Title 28 of the United States Code. Upon the filing of the petition, the court has jurisdiction, which upon the filing of the record is exclusive, to affirm, modify, terminate, or set aside in whole or in part, the final action of the Board or the Corporation. Review of such proceedings is had as provided in Chapter 7 of Title 5 of the United States Code. The judgment and decree of the court is final, except that they are subject to review by the Supreme Court upon certiorari as provided in Section 1254 of Title 28 of the United States Code.

(v) Post-Conversion reports.

9. Form PA and the Items thereunder would be amended by revising its Facing Sheet, by changing its title from "Form PA" to "Form AC", by changing its name from "Application for Preliminary Approval of Conversion" to "Application for Conversion", by changing the Board's address from "101 Indiana Avenue, N.W." to "320 First Street, N.W."; by revising paragraph A of the General Instructions to present Form PA by changing the phrases "Form PA" in the title of the paragraph and the first sentence of the paragraph to "Form AC" and deleting the word "preliminary"; by deleting the word "preliminary", where ever it appears in Items 1 and 5; by changing the figure "\$20,000" to "\$40,000" in Items 7; and by adding a new Item 11 immediately after Item 10, as follows:

Item 11. Federally Chartered Stock Association Charter S Association. State whether the converting Federal association is applying to amend its charter and bylaws to read in the form of the charter and bylaws of a Charter S association.

10. The Exhibits under present Form PA would be amended by revising Exhibit 2 by adding a new subdivision (k) immediately after subdivision (j), by revising the last sentence and by redesignating current subdivisions (k), (l), (m), and (n) as (l), (m), (n) and (o); by revising Exhibit 3 by adding a new sentence immediately after subdivision (e); and by revising Exhibit 7 by changing the phrases "§ 563b.8(h)" and "§ 563b.8(h) (2)" in paragraph (a) to "§ 563b.8(j)" and "§ 563b.8(j) (2)", by changing the phrase "§ 563b.8(n) and (o)" in paragraph (b) to "§ 563b.8(p) and (q)", by changing the phrase "§ 563b.8(c) (3)" in paragraph (e) to "§ 563b.8(e) (3)" and by changing the phrase "§ 563b.8(e)" in paragraph (f) to "§ 563b.8(g)", as follows:

Exhibit 2. Copies of Documents, Contracts and Agreements. Furnish the following documents, contracts and agreements:

(k) any charter amendment filed for the purpose of converting a Federal mutual association to a Federal stock association; (l)

any proposed contracts or agreements among the members of a management group or syndicate regarding the purchase of unsubscribed shares; (m) any documents referred to in the answer to Item 10; (n) any trustee agreements or indentures; and (o) any agreements for the making of markets or the listing on exchanges of the stock of the converted insured institution. Documents, contracts and agreements which are furnished in proposed form under this exhibit shall be furnished in final form immediately after the meeting of association members to consider the plan of conversion, except for the documents required by subdivisions (l) and (l) which shall be furnished in substantially final form.

Exhibit 3. Opinion of Counsel. Furnish an opinion of counsel for the applicant regarding each of the following matters: (a) the legal sufficiency of the applicant's proposed certificates and order forms for capital stock and any other securities; (b) State law requirements applicable to the plan of conversion including citations to applicable State law and whether such requirements will be fulfilled by the plan; (c) the legal sufficiency of the applicant's proposed charter and bylaws; (d) the type and extent of each class of voting rights in the applicant after conversion, including any requirement of State law that savings account holders or borrowers having voting rights in the converted insured institution; and (e) the legality and Federal income tax effect to the applicant of any proposed qualified stock option plan described in response to Item 12 of Form PS. Matters listed in subdivisions (b), (c) and (d) of this Exhibit only apply to an applicant which is converting to a State-chartered stock association.

Exhibit 7. Other Materials. (a) If information required by an appropriate form is not given for the reasons specified in § 563b.8(j), furnish the statement required for each such omission by § 563b.8(j) (2).

(b) Furnish all consents required to be filed by § 563b.8 (p) and (q).

(c) If applicable, furnish the statement required by the instruction to Item 5(e) of Form PS regarding events which occurred within the last ten years to directors of the applicant.

(d) If information required by Item 15(h) of Form PS relating to historical financial information is omitted, furnish the statement required by Item 15(h)(1) of Form PS.

(e) Furnish any powers of attorney employed pursuant to § 563b.8(e) (3).

(f) Furnish the cross reference sheet referred to in § 563b.8(g).

(g) If the applicant wishes to request a waiver of compliance in accordance with § 563b.1(c), furnish the materials required by § 563b.1(c) (2).

11. Form PS would be amended by revising Item 2; by revising paragraphs (a), (d), (e), (f), (g) and (l) of Item 8; by revising paragraph (c) of Item 15; and by amending paragraph (a) of Item 16 by changing the phrase "563b.8(n)" to "563b.8(p)", as follows:

Item 2. Revocability of proxy. State that the person giving the proxy has the power to revoke it before the proxy is exercised at the meeting. If the right of revocation is subject to compliance with any formal procedure, briefly describe such procedure. Briefly describe any charter, bylaw or applicable Federal or State law requirements otherwise restricting voting by proxy. State that the proxy is solicited for that meeting, and any adjournment thereof, and will not be used for any other meeting. (See also Section 563b.5(d) (3)).

PROPOSED RULES

Item 8. Description of the plan of conversion. (a) A statement to the following effect shall be inserted in the proxy statement immediately preceding the information required by this Item: The Federal Home Loan Bank Board has given approval to the plan of conversion, subject to its approval by association members and the satisfaction of certain other conditions. However, such Board approval does not constitute a recommendation or endorsement of the plan by the Board.

(d) With respect to the subscription offering, furnish the following information: (1) the formula to be used for determining the subscription rights of eligible account holders to purchase entitlement and additional shares pursuant to § 563b.3(c)(2) and (3); (2) any minimum share purchase requirements pursuant to § 563b.3(d)(5); (3) the provisions pursuant to § 563b.3(c)(4) for purchase of shares by association members who are not eligible account holders; (4) any optional provisions included in the plan of conversion pursuant to § 563b.3(d) for the purchase of shares of capital stock including the purchase priorities, the total number of shares which may be purchased, and the formula for their allocation; (5) the allocation formulas to be used in the event that there is an oversubscription of shares at any time during the sale of stock under the plan of conversion; and (6) the use and timing of the order forms with respect to the subscription offering.

(e) (1) Set forth on a per share basis the estimated public offering price range of the shares of capital stock to be sold pursuant to the plan of conversion; (2) state that the public offering price will be the pro forma market value of such shares based on an independent valuation; (3) state that all of the shares are required to be sold; and (4) describe briefly the results of the appraisal of the association made by an independent appraiser for the purpose of determining the estimated price range.

(f) Discuss (1) the earnings per share on a pro forma basis of the capital stock to be sold as of the end of the most recent period covered by the statements of operation required by Item 15(b)(1); and (2) the book value per share on a pro forma basis as of the date of the latest statement of financial conditions required by Item 15(a).

Instruction. Earnings and book value per share shall be furnished without giving effect to the estimated net proceeds from the sale of the capital stock, and then after giving effect to such proceeds with all assumptions used clearly stated.

(g) With respect to the subscription offering, state the proposed commencement and expiration dates of the subscription period and describe any provisions in the plan of conversion related to the timing of the subscription offering or extension of the subscription period. Also, state (1) that a maximum subscription price will be set forth in the offering circular used for the subscription offering; (2) that the actual subscription price will be the public offering price; (3) that the actual subscription price will not exceed the maximum subscription price shown on the order form; and (4) that any difference between the maximum and actual subscription prices will be refunded.

(1) (1) State whether the plan of conversion provides for the capital stock not purchased in the subscription offering to be offered to the public through underwriters. If such is the case, provide the information to the extent known required by Item 6 of Form OC and indicate the proposed timing of the underwritten offering. (2) State whether the plan of conversion provides for a private distribution of any shares not purchased in the subscription offering. If such is the case, provide the information, to the extent known, required by Item 6 of Form OC and indicate the proposed timing of the private distribution.

Item 15. Financial Statements.

(c) **Statements of changes in financial position.** Furnish certified statements of changes in financial position (1) for each of the three fiscal years preceding the date of the latest statement of financial condition filed under paragraph (a) and (2) furnish a statement for the period if any, between the close of the latest of such fiscal years and the date of the latest statement of financial condition filed under paragraph (a). This additional statement need not be certified.

Item 16. Consents of experts and reports.
(a) The proxy statement shall briefly describe

all consents of experts filed pursuant to § 563b.8(p).

12. Form OC would be amended by adding the words "and use of" to the title of Item 1; by revising Item 4; and by deleting the phrase "or prices" from paragraph (h) of Item 6, as follows:

Item 1. Information required by and use of Form OC.

Item 4. Preliminary offering circular. The outside front cover page of any preliminary offering circular shall bear, in red ink, the caption "Preliminary Offering Circular", the date of its issuance, and the following statement printed in type as large as that used generally in the body of such offering circular.

"This offering circular has been filed with the Federal Savings and Loan Insurance Corporation, but has not been authorized for use in final form. Information contained herein is subject to completion or amendment. The shares covered hereby may not be sold nor may offers to buy be accepted prior to the time the offering circular is declared effective by the Federal Savings and Loan Insurance Corporation. This offering circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these shares in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

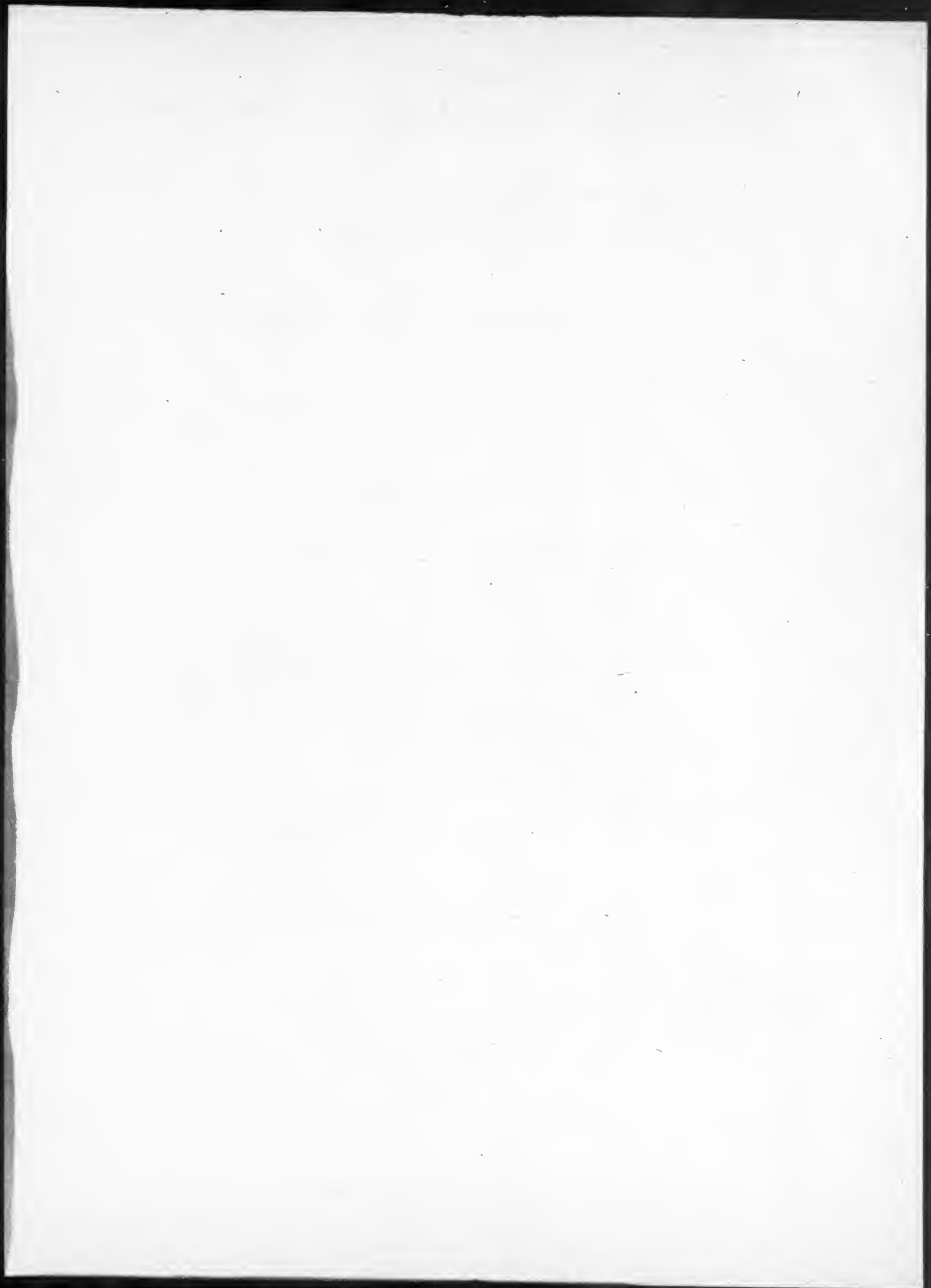
13. Form FA would be deleted.

(Sec. 105, Pub. L. 92-495, October 28, 1974; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730; Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] GRENVILLE L. MILLARD, JR.,
Assistant Secretary.

[FR Doc.75-2461 Filed 1-28-75;8:45 am]



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