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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 956

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1267

RIN 2590–AA32

Federal Home Loan Bank Investments

AGENCY: Federal Housing Finance Agency; Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is re-organizing and re-adopting existing investment regulations that apply to the Federal Home Loan Banks (Banks) and that were previously adopted by the Federal Housing Finance Board (Finance Board). The regulation is being adopted as a new part in FHFA's regulations. As part of this rulemaking, FHFA will incorporate limits on the Banks' investment in mortgage-backed securities (MBS) and certain asset-backed securities (ABS) that were previously set forth in the Finance Board's Financial Management Policy (FMP). The FMP will terminate as of the effective date of this rule.

DATES: This rule is effective on June 20, 2011.

FOR FURTHER INFORMATION CONTACT: Christina Muradian, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 202–408–2584, 1625 Eye Street, NW., Washington, DC 20006; or Thomas E. Joseph, Senior Attorney-Advisor, 202–414–3095, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Creation of the Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, created FHFA as a new independent agency of the Federal Government, and transferred to FHFA the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Enterprises, the supervisory and oversight responsibilities of the Federal Housing Finance Board (Finance Board) over the Banks and the Office of Finance (OF) (which acts as the Banks' fiscal agent) and certain functions of the Department of Housing and Urban Development. *See id.* at section 1101, 122 Stat. 2661–62. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See id.* at section 1102, 122 Stat. 2663–64. The Enterprises, the Banks, and the OF continue to operate under regulations promulgated by OFHEO and the Finance Board until such regulations are superseded by regulations issued by FHFA. *See id.* at sections 1302, 1312, 122 Stat. 2795, 2798.

B. Investment Requirements and the FMP

Under sections 11(g), 11(h) and 16(a) of the Bank Act, 12 U.S.C. 1431(g), 1431(h), 1436(a), a Bank is specifically authorized, subject to the rules of FHFA, to invest in: (1) Obligations of the United States; (2) deposits in banks and trust companies; (3) obligations, participations or other instruments of, or issued by, Fannie Mae or Government National Mortgage Association (Ginnie Mae); (4) mortgages, obligations or other securities that are or ever have been sold by Freddie Mac; (5) stock of Fannie Mae; (6) stock, obligations or other securities of any small business investment company (SBIC) formed pursuant to 15 U.S.C. 681, to the extent the investment is made for purposes of aiding a Bank member; and (7) instruments that a Bank has determined are permissible investments for fiduciary and trust funds under the laws of the state in which the Bank is located. Part 956 of the Finance Board regulations authorized the Banks to invest in all the instruments specifically identified in the statute, except for stock in Fannie Mae, subject to certain safety and soundness limitations that are also set forth in the regulation. *See* 12 CFR 956.2 and 956.3. The part 956 regulations also allowed the Banks to enter into derivative transactions, standby letters of credit which conform to other regulations, forward asset purchases and sales and commitments to make advances or commitments to make or purchase other loans. *See* 12 CFR 956.5. The regulations further allowed the Banks to enter into derivative contracts only for hedging or other documented, non-speculative purposes, such as intermediating derivative transactions for members, and subjected the Banks to prudential and safety and soundness requirements with regard to derivative transactions. *See* 12 CFR 956.6.

The FMP evolved from a series of policies and guidelines initially adopted by the former Federal Home Loan Bank Board, predecessor agency to the Finance Board, in the 1970s and revised a number of times thereafter. The Finance Board adopted the FMP in 1991, consolidating into one document the previously separate policies on funds management, hedging and interest-rate swaps, and adding new guidelines on the management of unsecured credit and interest-rate risk.[1] Prior to the adoption of the part 956 regulations in 2000, the FMP governed how the Banks implemented their financial management strategies by specifying the types of investments the Banks could purchase. *See* Proposed Rule: *Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances,* 65 FR 25676, 25686 (May 3, 2000). The FMP also established guidelines relating to the funding and hedging practices of the Banks, the management of their credit, interest-rate, and liquidity risks, and the liquidity requirements for the

[1] *See* Fin. Bd. Res. No. 96–45 (July 3, 1996), as amended by Fin. Bd. Res. No. 96–90 (Dec. 6, 1996), Fin. Bd. Res. No. 97–05 (Jan. 14, 1997), and Fin. Bd. Res. No. 97–86 (Dec. 17, 1997). *See also* 62 FR 13146 (Mar. 19, 1997)).

Banks in addition to those required by statute.

Beginning in 2000, many of the provisions contained in the FMP were superseded by regulations adopted by the Finance Board including regulations that implemented the new capital structure for the Banks that had been mandated by the Gramm-Leach-Bliley Act of 1999, Public Law No. 106–102, 113 Stat. 1338 (Nov. 12, 1999) (GLB Act). Among other things, the new capital structure incorporated risk-based capital requirements to support the risks in the Banks' activities, and therefore eliminated the need for most of the FMP restrictions on investments. *See* 12 CFR part 932. In approving the capital plans that each Bank was required to adopt under provisions of the GLB Act, the Finance Board issued separate orders providing that upon a Bank's implementation of its capital plan and its full coverage by the capital regime in part 932 of the regulations, the Bank would be exempted from future compliance with all provisions of the FMP except for a few specific restrictions related to the Bank's investment in mortgage-backed and certain asset-backed securities along with some related restrictions on entering into some derivative transactions.[2] *See, e.g.,* Fin. Bd. Res. No. 2002–11 (Mar. 13, 2002). Currently, all the Banks but the Federal Home Loan Bank of Chicago (Chicago Bank) have implemented their capital plans and are fully subject to the part 932 capital provisions.[3] Thus, only a few of the provisions of the FMP remain applicable to all the Banks.

C. Considerations of Differences Between the Banks and the Enterprises

Section 1201 of HERA requires the Director, when promulgating regulations relating to the Banks, to consider the following differences between the Banks and the Enterprises: Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. *See* section 1201 Public Law 110–289, 122 Stat. 2782–83 (*amending* 12 U.S.C. 4513). The Director also may consider any other differences that are deemed appropriate. In preparing this rule, FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors.

Section 1201 also specifically provides that its requirements shall not apply if the Director is reissuing any regulation, advisory document or examination guidance previously issued by the Finance Board. While most of this final rule is re-issuance of existing Finance Board regulations, the rule also incorporates into regulations provisions from the FMP. The FMP itself is not a substantive rule or interpretative guidance on existing regulations issued by the Finance Board, but instead has been described as a list of general guidelines. *See, Texas Savings.* v. *Federal Housing Finance Bd.,* 201 F.3d 551, 556 (5th Cir., 2000). Therefore, incorporation of the FMP guidelines into regulations does not firmly fit within the section 1201 exception for reissuance of existing Finance Board rules or advisory documents.

FHFA therefore has considered the differences between the Banks and the Enterprises as required by section 1201 of HERA in developing this final rule. As part of its proposed rulemaking, FHFA also specifically requested comments from the public about whether differences related to these factors should result in any revisions to the proposal, but received no specific comments in response to that request.

II. The Final Rule

A. The Proposed Rule

On May 4, 2010, FHFA published for comment a proposed rule that would re-organize the investment regulation and re-adopt it as part 1267 of FHFA's regulations. It also would have incorporated into the rule certain limits that are now set forth in the FMP and made other conforming changes. *See* Proposed Rule: Federal Home Loan Bank Investments, 75 FR 23631 (May 4, 2010) (*hereinafter* Proposed Rule). The rule, as proposed, would not have substantively altered regulatory requirements applicable to Bank investments.

In the **SUPPLEMENTARY INFORMATION** to the proposed rule, however, FHFA noted its concern with the financial condition of some Banks and the negative performance of the Banks' private-label MBS (PLMBS), in part because the Banks' investment policies and pre-purchase analytics were deficient. As a result, FHFA requested comments on whether it should adopt additional restrictions, or lower the overall limit, on the Banks' investment in MBS generally, and in PLMBS in particular, as part of the final rule. *Id.* at 23633–34. Among other things FHFA asked if there should be a separate limit or additional restriction on the purchase of PLMBS (*e.g.,* a limit of one or two times capital, or a separate limit linked to retained earnings or some other basis), including whether FHFA should prohibit the purchase of PLMBS in the final rule, or if FHFA should restrict purchases of PLMBS based on collateral characteristics. *Id.*

FHFA received 10 comment letters on the proposed rule. Nine of the Banks submitted comments, and one comment letter was submitted by a trade association. Except for a suggested clarification made by some of the Banks on the calculation of the proposed 300 percent of capital investment limit for MBS, the comments mainly addressed FHFA's questions concerning additional restrictions on MBS investment. The letters also provided some general comments on the Banks' authority to invest in MBS. The comments are discussed more fully below.

B. Final Rule Provisions

1. Incorporation of the FMP Provisions Into the Investment Regulation

Most comments indicated that it was important for the Banks to maintain their current authority to invest in MBS. These commenters believed that the Banks' investment in MBS was consistent with the Banks' mission and provided support for mortgage market liquidity and stability especially in the period of current market stress. A number of commenters also thought that continued Bank investment in PLMBS could play a limited but important role in helping to revive the private label

[2] The restrictions in question are found in sections II.C.2., 3., 4. and 5. and section V.C.5. of the FMP. These limits, among other things, prohibit investment in residual interest and interest accrual classes of securities and in interest-only and principal-only stripped securities, and limit a Bank's investment in MBS and ABS to 300 percent of a Bank's total capital. The provisions also limit an increase in a Bank's holdings of MBS and ABS to no more than 50 percent of its total capital in any calendar quarter. The restrictions also prohibit the Bank from entering into swap transactions that would amortize similar to residual interest or interest accrual classes of securities or to interest-only and principal-only stripped securities.

In March 2008, the Finance Board temporarily expanded the Banks' authority to invest in MBS guaranteed by the Enterprises by an additional three times total capital, subject to certain conditions. *See* Fin. Bd. Res. No. 2008–08 (Mar. 24, 2008). The temporary authority expired on March 31, 2010. The Finance Board believed that the temporary increase in the Banks' investment authority would help address severe liquidity and other constraints that were affecting the housing finance markets in early 2008.

[3] In addition to the FMP provisions already discussed and applicable to all the Banks, the Chicago Bank remains subject to FMP provisions related to prudential limits on investments (other than MBS or ABS) and interest rate risk guidelines. The latter have been subsumed into the risk management and hedging guidelines that the Chicago Bank was required to submit for review and approval (and update as necessary) under Article III of the *Consent Order to Cease and Desist* entered into with the Finance Board on October 10, 2007, and which remains in effect. *See* 2007–SUP–01.

secondary mortgage market. One Bank agreed with FHFA's stated concern with the performance of some Banks' MBS investment portfolios and believed it was important to continue to limit Bank investment in MBS and require adequate retained earnings as a cushion against potential losses from such investments. Another Bank specifically supported a prohibition on future investment in PLMBS investment, although most other comment letters specifically objected to such a ban.

Almost all comments also supported the incorporation of the FMP limits, including the 300 percent of capital limit, into the investment rule. A number of commenters also felt that it would be premature to institute additional restrictions on Banks' MBS investment at this time, given the extensive regulatory and market changes now taking place. One commenter, however, believed the 300 percent of capital limit on MBS investment was inflexible and out of date and believed it should be reconsidered or eliminated, especially when applied to investment in agency MBS.

FHFA also received a number of comments supporting a limit on MBS investment based on retained earnings to either supplement or replace the current limit based on a Bank's total capital. Some comments suggested that FHFA undertake a study to identify an appropriate retained earnings limit or that FHFA consider such a limit only as part of a future rulemaking.

A number of commenters supported incorporating limits on MBS based on the underlying characteristics of the loans if such requirements incorporated the principles in FHFA Advisory Bulletins 2007–AB–01 and 2008–AB–02 [4] and in the interagency guidance published by Federal banking regulators, *Interagency Guidance on Nontraditional Mortgage Product Risks* (71 FR 58609 (Oct. 4, 2006)), and *Statement on Subprime Mortgage Lending* (72 FR 37569 (July 10, 2007)). Other commenters, however, felt that given the new standards being implemented for the secondary mortgage markets and the changes that this market is expected to undergo, it ultimately may prove unnecessary to incorporate this prior guidance into the regulation. Nevertheless, commenters felt that collateral backing future Bank purchases of MBS should be expected to comply with the highest standards of prudent and sustainable lending and that the current FHFA Advisory Bulletins on this issue should remain in effect.

After consideration of all these comments, FHFA has determined to adopt the 300 percent of capital limit from the FMP into its regulations. Contrary to suggestions that the 300 percent of capital limit was inflexible and out-dated, FHFA believes the limit reasonably serves to control Bank investment activity that does not directly advance the Banks' primary statutory mission of making advances to members, as well as limit the potential losses that can arise from this type of investment. As FHFA noted when proposing this rule, this FMP limit addressed both mission and safety and soundness concerns, 75 FR at 23633, and FHFA believes that it would be reasonable to adopt this longstanding limit into its regulations at this time in consideration of these concerns.

New § 1267.3(c)(1) incorporates the restriction in section II.C.2 of the FMP that limited a Bank's level of investment in authorized MBS or ABS to 300 percent of its total capital.[5] It clarifies that a Bank is not required to divest securities solely to bring the level of its holdings into compliance with the limit, provided that the original purchase of the securities complied with these limits. New § 1267.3(c)(2) further restricts a Bank's purchase of authorized MBS or ABS in any calendar quarter such that a Bank's total holdings of allowable MBS cannot increase by more than 50 percent of its total capital as of the beginning of such quarter, a limit that also was set forth in section II.C.2 of the FMP.

Although FHFA is adopting the 300 percent of capital limit as part of its regulations and has determined not to place additional limits on Bank investment in MBS at this time, it continues to have concerns with Bank investment in MBS from both a safety and soundness and mission stand point. With regard to the latter issue, despite the suggestions of some commenters to the contrary, FHFA still questions the extent to which Bank investment in MBS furthers the System's housing finance mission. FHFA considers it more appropriate to take into account the mission aspect of the Bank investment authority overall and not in segments by addressing only one class of investment.[6]

FHFA is likely, therefore, to reconsider questions related to Bank investment in MBS as part of a future rulemaking that would address and consider all aspects of the Banks' investment authority, including the mission relevance of various types of investments that are allowed under existing rules. Such considerations are beyond this current rulemaking, which was more modest in its scope and intended only to incorporate the remaining provisions of the FMP into the regulations and to transfer the existing Finance Board's investment rules into the FHFA's regulations.

FHFA also is incorporating into the regulations the other restrictions on MBS investment now set forth in the FMP, generally as proposed. Thus, new § 1267.3(a)(5) through (7) sets forth restrictions found in section II.C.3 through C.5 of the FMP related to investment in MBS, including the prohibition on investment in residual interest and interest accrual classes of securities and interest-only and principal-only stripped MBS. The final rule also adopts new § 1267.4(b) which incorporates the remaining applicable limitations on derivative transaction found in section V.C.5 of the FMP. These FMP restrictions prevent the Banks from using derivatives to create exposures or investments similar to residual interest and interest accrual

[4] Advisory Bulletin 2007–AB–01 (Apr. 12, 2007) established expectations for the Banks' pre-purchase analysis and periodic reviews of MBS investments. It advised the Banks' boards of directors to establish: (1) Limits on the level of MBS with underlying nontraditional or subprime mortgage collateral; (2) requirements for the level of credit protection for particular credit tranches when purchased at the time of original issuance of the security, and (3) limits on concentrations by geographic area, issuer, servicer, and size. Advisory Bulletin 2008–AB–02 (July 1, 2008) set forth the expectation that the Banks' purchases of PLMBS would be limited to securities in which the underlying mortgage loans complied with all aspects of the Federal banking agencies' *Interagency Guidance on Nontraditional Mortgage Product Risks,* and *Statement on Subprime Mortgage Lending.*

[5] As adopted, § 1267.3(c)(1) refers to MBS or ABS "otherwise authorized under this part". FHFA intends this reference to encompass future purchases of agency or government guaranteed MBS or ABS that are authorized under part 1267 as well as Banks' existing holdings of MBS or ABS to the extent that they were authorized by part 956. Thus, in calculating compliance with the limits under § 1267.3(c), Banks will be expected to include all MBS and ABS purchased and currently held under the authority that had existed in part 956.

[6] An overall re-consideration of the investment authority in light of the Bank System's mission was also raised by the United States Department of the Treasury and the United States Department of Housing and Urban Development in a recent report to Congress:

Similar to Fannie Mae and Freddie Mac, several of the FHLB[anks] were allowed to build up large investment portfolios. These portfolios should be reduced and their composition altered to better serve the FHLB[anks'] mission of providing liquidity and access to capital for insured depository institutions. We support FHFA's efforts to address this issue, and we will work with Congress to provide clarity to the FHLB[ank's] investment authority.

The Department of the Treasury and U.S. Department of Housing and Urban Development, "Reforming America's Housing Finance Market: A Report to Congress," p. 15 (Feb. 2011).

classes of securities, interest-only and principal-only stripped MBS and ABS, or other investments that are currently prohibited by Section II.C of the FMP (and continue to be prohibited by new § 1267.3(a)(5) through (7)).

2. Clarification of the Calculation of the 300 Percent of Capital Limit on MBS

Seven commenters requested that the wording of the provision adopting the 300 percent of capital limit be amended to clarify how the limit will be calculated. Specifically, the commenters requested that the value of the securities in question be based on amortized historical cost for held-to-maturity (HTM) and available-for-sale (AFS) securities and fair value for trading securities, and total capital used for the calculation of the limit should be as defined in FHFA regulation § 1229.1. Section 1267.1 of the rule, both as proposed and as being adopted, already defines total capital as having the same meaning as set forth in § 1229.1 of FHFA regulations and thus, FHFA already made clear that the investment limits in § 1267.3(c) are to be calculated based on regulatory total capital.[7]

After considering the comments, FHFA also agrees that it would be appropriate to clarify how the value of relevant MBS and ABS will be calculated for purposes of the limit and, therefore, is adopting the suggestions of the commenters in § 1267.3(c)(3) of the final rule. This provision provides that for purposes of applying the limits in § 1267.3(c), the value of a Bank's MBS and ABS shall be calculated based on amortized historical costs for securities classified as HTM or AFS [8] and on fair value for trading securities.

The approach being adopted in the final rule differs somewhat from how these securities would be valued under generally accepted accounting principles (GAAP) in that under GAAP, AFS securities would be recorded at fair value, with changes in value (not related to other-than-temporary credit impairment charges) run through accumulated other comprehensive income (AOCI).[9] However, because the Bank's regulatory total capital is not adjusted for AOCI, the total capital component of the limit would not reflect changes in the value of AFS. This can lead to certain paradoxical results in applying the limit, if GAAP standards were used to value the ASF securities when applying the investment limit.

For example, as the market value of AFS securities declines, the Banks would have more "room" under the limit to make new investments in MBS/ABS relative to the actual pay down in their current portfolio as a result of such market value losses. At the same time, in periods of rising market values, the Banks' investment limits would become more restrictive relative to the pay down in the portfolio, restricting their ability to replace their existing investments as they pay down. Similarly, the same security held by different Banks would be valued differently in the calculation of the limit depending on whether a Bank classifies the security as HTM or AFS, creating an opportunity to game the limit. The clarification being adopted should help eliminate these outcomes as well as provide greater certainty for Banks in planning and implementing long term investment strategies, as the limit and the Banks' abilities to invest in allowable MBS/ABS will not be affected by (non-credit related) price volatility in securities classified as AFS.

FHFA has also added language to § 1267.3(c)(1) and § 1267.3(c)(2) to clarify that for purposes of determining compliance with the restrictions in these sections, the Banks shall determine the aggregate value of its investment in MBS and ABS as of the transaction trade date for any new purchase of such securities.[10]

3. Reorganization of the Investment Rule

The final rule also reorganizes the investment regulation as proposed. The final rule will combine into new § 1267.2 former § 956.2 and § 956.5, which respectively provided a list of authorized investments and authorization for derivative and other transactions. This will consolidate all authority for investments and other transactions into a single section but does not otherwise substantially alter the former part 956 provisions. The final rule will also carry over former § 956.3, which set forth a list of prohibited investments and other prudential requirements, as new § 1267.3, and incorporate into this new section the restrictions on MBS investment from the FMP, as previously highlighted. It will adopt former § 956.6 as new § 1267.4, and former § 956.4 as new § 1267.5.

4. References to Credit Ratings and Credit Rating Organizations

Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires Federal agencies to review regulations that require the use of an assessment of the credit-worthiness of a security or money market instrument, or any references to, or requirements in, such regulations regarding credit ratings issued by NRSROs, and to remove such references or requirements. *See* section 939A, Public Law 111–203, 124 Stat. 1887 (July 21, 2010)). This provision also requires an agency, to the extent feasible, to adopt uniform standards of credit-worthiness in its regulations, taking into account the entities regulated by it and the purpose for which such regulated entities would rely on the credit-worthiness standard. *Id.*

The Proposed Rule was published prior to the passage of the Dodd-Frank Act. FHFA did not seek comment on replacing references to or requirements based on specific credit ratings in those investment rules that it proposed to carry over from the existing Finance Board regulations. Among those references or requirements are those included in § 1267.3(a)(3), § 1267.3(a)(4)(iii) and § 1267.5, as well as certain definitions in § 1267.1. Such references and requirements will need to be removed pursuant to section 939A of the Dodd-Frank Act.

To that end, FHFA recently issued an advance notice of proposed rulemaking (ANPR) that sought comments on a range of issues related to implementation of section 939A of the Dodd-Frank Act, including what standards would be appropriate to replace existing credit rating references and requirements in the investment rule. *See* Advance Notice of Proposed Rulemaking; Alternatives to Use of Credit Ratings in Regulations Governing the Federal National Mortgage

[7] Section 1229.1 defines "total capital" as:

The sum of the Bank's permanent capital, the amount paid-in for its Class A stock, the amount of any general allowances for losses, and the amount of any other instruments identified in a Bank's capital plan that the Director has determined to be available to absorb losses incurred by such Bank. For a Bank that has issued neither Class A nor Class B stock, the Bank's total capital shall be the measure of capital used to determine compliance with its minimum capital requirement.

[8] The amortized historical cost for the HTM and AFS securities would generally be calculated as the sum of the initial investment, less cash collected, less write-downs plus yield accreted to date. *See* Master Glossary of FASB Accounting Standards Codification 2009.

[9] While the FMP does not specify how securities should be valued for purposes of the three times capital limit, this limit has generally been applied based on the carrying value of the securities calculated under GAAP.

[10] The language in § 1267(c)(1) has also been revised to clarify that for purposes of determining compliance with this provision total capital shall be based on the amount most recently reported by a Bank to FHFA. Currently, the Banks report their regulatory total capital to FHFA in their monthly call reports. These clarifications are consistent with how compliance had been determined under the FMP. No further clarification was needed with regard to the measure of total capital in § 1267(c)(2), given that the provision, as proposed and adopted, states clearly that compliance is determined based on total capital as of the beginning of each calendar quarter.

Association, the Federal Home Loan Mortgage Corporation and the Federal Home Loan Banks, 76 FR 5292, 5295 (Jan. 31, 2011). FHFA has determined to carry over the investment rules as proposed on a temporary basis, pending completion of the ANPR process, rather than attempt to adopt changes at this time to provisions in part 1267 that continue to reference specific credit ratings or base their requirements on such ratings. FHFA believes that this approach will best allow it to implement the Dodd-Frank requirements that it adopt uniform standards of credit-worthiness in its regulations while not delaying the completion of this rulemaking process. Thus, FHFA will propose changes to relevant sections of part 1267 as part of a future rulemaking designed to remove references to, or requirements based on, specific credit ratings, as required by the Dodd-Frank Act.

5. Cancellation of the FMP

Finally, FHFA confirms that the FMP is hereby cancelled and rescinded as of the effective date of this final rule, and thereafter, none of its provisions will be applicable to any Bank.

III. Paperwork Reduction Act

The rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The rule applies only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, FHFA certifies that this final rule will not have significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 956

Federal home loan banks, Investments.

12 CFR Part 1267

Community development, Credit, Federal home loan bank, Housing, Reporting and recordkeeping requirements.

Accordingly, for reasons stated in the preamble and under the authority of 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526, FHFA is amending subchapter G of chapter IX and subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

Subchapter G—Federal Home Loan Bank Assets and Off-Balance Sheet Items

PART 956—[REMOVED]

■ 1. Remove part 956.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter D—Federal Home Loan Banks

■ 2. Add part 1267 to subchapter D to read as follows:

PART 1267—FEDERAL HOME LOAN BANK INVESTMENTS

Sec.
1267.1 Definitions.
1267.2 Authorized investments and transactions.
1267.3 Prohibited investments and prudential rules.
1267.4 Limitations and prudential requirements on use of derivative instruments.
1267.5 Risk-based capital requirements for investments.

Authority: 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526.

§ 1267.1 Definitions.

As used in this part:

Asset-backed security means a debt instrument backed by loans, but does not include debt instruments that meet the definition of a mortgage-backed security.

Bank, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act, as amended (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Consolidated obligation means any bond, debenture or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and in accordance with any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

Deposits in banks or trust companies means:

(1) A deposit in another Bank;

(2) A demand account in a Federal Reserve Bank;

(3) A deposit in or sale of Federal funds to:

(i) An insured depository institution, as defined in section 2(9) of the Bank Act, that is designated by the Bank's board of directors;

(ii) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation and is designated by the Bank's board of directors; or

(iii) A U.S. branch or agency of a foreign Bank as defined in the International Banking Act of 1978, as amended, (12 U.S.C. 3101 *et seq.*) that is subject to supervision of the Board of Governors of the Federal Reserve System and is designated by the Bank's board of directors.

Derivative contract means generally a financial contract the value of which is derived from the values of one or more referenced assets, rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate derivative contracts, foreign exchange rate derivative contracts, equity derivative contracts, precious metals derivative contracts, commodity derivative contracts and credit derivatives, and any other instruments that pose similar risks.

GAAP means the United States generally accepted accounting principles.

Indexed principal swap means an interest rate swap agreement in which the notional principal balance amortizes based upon the prepayment experience of a specified group of mortgage-backed securities or asset-backed securities or the behavior of an interest rate index.

Interest-only stripped security means a class of mortgage-backed or asset-backed security that is allocated only the interest payments made on the underlying mortgages or loans and receives no principal payments.

Investment grade means:

(1) A credit quality rating in one of the four highest credit rating categories by an NRSRO and not below the fourth highest credit rating category by any NRSRO; or

(2) If there is no credit quality rating by an NRSRO, a determination by a Bank that the issuer, asset or instrument is the credit equivalent of investment grade using credit rating standards available from an NRSRO or similar standards.

Mortgage-backed security means a security or instrument, including collateralized mortgage obligations (CMOs), and Real Estate Mortgage Investment Trusts (REMICS), that represents an interest in, or is secured by, one or more pools of mortgage loans.

NRSRO means a credit rating organization registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization.

Principal-only stripped security means a class of mortgage-backed or asset-backed security that is allocated only the principal payments made on the underlying mortgages or loans and receives no interest payments.

Total capital shall have the meaning set forth in § 1229.1 of this chapter.

§ 1267.2 Authorized investments and transactions.

(a) In addition to assets enumerated in parts 1266 and 955 of this title and subject to the applicable limitations set forth in this part, and in part 1272 of this chapter, each Bank may invest in:

(1) Obligations of the United States;

(2) Deposits in banks or trust companies;

(3) Obligations, participations or other instruments of, or issued by, the Federal National Mortgage Association or the Government National Mortgage Association;

(4) Mortgages, obligations, or other securities that are, or ever have been, sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454 or 1455);

(5) Stock, obligations, or other securities of any small business investment company formed pursuant to 15 U.S.C. 681, to the extent such investment is made for purposes of aiding members of the Bank; and

(6) Instruments that the Bank has determined are permissible investments for fiduciary or trust funds under the laws of the state in which the Bank is located.

(b) Subject to any applicable limitations set forth in this part and in part 1272 of this chapter, a Bank also may enter into the following types of transactions:

(1) Derivative contracts;

(2) Standby letters of credit, pursuant to the requirements of part 1269 of this title;

(3) Forward asset purchases and sales;

(4) Commitments to make advances; and

(5) Commitments to make or purchase other loans.

§ 1267.3 Prohibited investments and prudential rules.

(a) *Prohibited investments.* A Bank may not invest in:

(1) Instruments that provide an ownership interest in an entity, except for investments described in § 1265.3(e) and (f) of this chapter;

(2) Instruments issued by non-United States entities, except United States branches and agency offices of foreign commercial banks;

(3) Debt instruments that are not rated as investment grade, except:

(i) Investments described in § 1265.3(e) of this chapter; and

(ii) Debt instruments that were downgraded to a below investment grade rating after acquisition by the Bank;

(4) Whole mortgages or other whole loans, or interests in mortgages or loans, except:

(i) Acquired member assets;

(ii) Investments described in § 1265.3(e) of this title;

(iii) Marketable direct obligations of state, local, or Tribal government units or agencies, having at least the second highest credit rating from an NRSRO, where the purchase of such obligations by the Bank provides to the issuer the customized terms, necessary liquidity, or favorable pricing required to generate needed funding for housing or community lending;

(iv) Mortgage-backed securities, or asset-backed securities collateralized by manufactured housing loans or home equity loans, that meet the definition of the term "securities" under 15 U.S.C. 77b(a)(1) and are not otherwise prohibited under paragraphs (a)(5) through (a)(7) of this section, and

(v) Loans held or acquired pursuant to section 12(b) of the Bank Act (12 U.S.C. 1432(b)).

(5) Residual interest and interest accrual classes of securities;

(6) Interest-only and principal-only stripped securities; and

(7) Fixed rate mortgage-backed securities or eligible asset-backed securities or floating rate mortgage-backed securities or eligible asset-backed securities that on the trade date are at rates equal to their contractual cap, with average lives that vary more than six years under an assumed instantaneous interest rate change of 300 basis points, unless the instrument qualifies as an acquired member asset under part 955 of this title.

(b) *Foreign currency or commodity positions prohibited.* A Bank may not take a position in any commodity or foreign currency. The Banks may issue consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, provided that the Banks meet the requirements of § 1270.9(d) of this chapter, and all other applicable requirements related to issuing consolidated obligations.

(c) *Limits on certain investments.*—(1) A purchase, otherwise authorized under this part, of mortgage-backed securities or asset-backed securities, may not cause the aggregate value of all such securities held by the Bank to exceed 300 percent of the Bank's total capital. For purposes of this limitation, such aggregate value will be measured as of the transaction trade date for such purchase, and total capital will be the most recent amount reported by a Bank to FHFA. A Bank will not be required to divest securities solely to bring the level of its holdings into compliance with the limits of this paragraph, provided that the original purchase of the securities complied with the limits in this paragraph.

(2) A Bank's purchase of any mortgage-backed or asset-backed security may not cause the value of its total holdings of mortgage-backed and asset-backed securities, measured as of the transaction trade date for such purchase, to increase in any calendar quarter by more than 50 percent of its total capital as of the beginning of such quarter.

(3) For purposes of applying the limits under this paragraph (c), the value of relevant mortgage-backed or asset-backed securities shall be calculated based on amortized historical costs for securities classified as held-to-maturity or available-for-sale and on fair value for trading securities.

§ 1267.4 Limitations and prudential requirements on use of derivative instruments.

(a) *Non-speculative use.* Derivative instruments that do not qualify as hedging instruments pursuant to GAAP may be used only if a non-speculative use is documented by the Bank.

(b) *Additional Prohibitions.*—(1) A Bank may not enter into interest rate swaps that amortize according to behavior of instruments described in § 1267.3(a)(5) or (6) of this part.

(2) A Bank may not enter into indexed principal swaps that have average lives that vary by more than six years under an assumed instantaneous change in interest rates of 300 basis points, unless they are entered into in conjunction with the issuance of consolidated obligations or the purchase of permissible investments or entry into a permissible transaction in which all interest rate risk is passed through to the investor or counterparty.

(c) *Documentation requirements.*—(1) Derivative transactions with a single counterparty shall be governed by a single master agreement when practicable.

(2) A Bank's agreement with the counterparty for over-the-counter derivative contracts shall include:

(i) A requirement that market value determinations and subsequent adjustments of collateral be made at least on a monthly basis;

(ii) A statement that failure of a counterparty to meet a collateral call will result in an early termination event;

(iii) A description of early termination pricing and methodology, with the methodology reflecting a reasonable estimate of the market value of the over-the-counter derivative contract at termination (standard International Swaps and Derivatives Association, Inc. language relative to early termination pricing and methodology may be used to satisfy this requirement); and

(iv) A requirement that the Bank's consent be obtained prior to the transfer of an agreement or contract by a counterparty.

§ 1267.5 Risk-based capital requirements for investments.

Any Bank which is not subject to the capital requirements set forth in part 932 of this title shall hold retained earnings plus general allowance for losses as support for the credit risk of all investments that are not rated by an NRSRO, or are rated or have a putative rating below the second highest credit rating, in an amount equal to or greater than the outstanding balance of the investments multiplied by:

(a) A factor associated with the credit rating of the investments as determined by FHFA on a case-by-case basis for rated assets to be sufficient to raise the credit quality of the asset to the second highest credit rating category; and

(b) 0.08 for assets having neither a putative nor actual rating.

Dated: May 13, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–12358 Filed 5–19–11; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA–2006–N–0045; Formerly Docket No. 2006N–0109]

Medical Devices; Reclassification of the Topical Oxygen Chamber for Extremities; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of April 25, 2011 (76 FR 22805). The document announced that FDA is reclassifying the topical oxygen chamber for extremities (TOCE) from class III to class II. The document published inadvertently used outdated contact information. This document corrects that error.

DATES: Effective May 25, 2011.

FOR FURTHER INFORMATION CONTACT: Charles N. Durfor, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G424, Silver Spring, MD 20993–0002, 301–796–6438.

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–9899 appearing on page 22805 in the **Federal Register** of Monday, April 25, 2011, the following correction is made: 1. On page 22805, in the third column, the **FOR FURTHER INFORMATION CONTACT** section is corrected to read as follows:

FOR FURTHER INFORMATION CONTACT: Charles N. Durfor, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. G424, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–6438.

Dated: May 17, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–12410 Filed 5–19–11; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0030; FRL–9308–3]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) source categories for the MDAQMD. We are approving these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 19, 2011 without further notice, unless EPA receives adverse comments by June 20, 2011. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0030, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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