

In 1995, the year before The Netherlands was declared free of hog cholera, U.S. pork imports from The Netherlands were valued at \$14.5 million (less than 2 percent of the total value of all U.S. pork imports that year). No live swine or fresh pork were imported from The Netherlands in 1995.

Removing The Netherlands from the list of countries free of hog cholera is not expected to significantly affect U.S. entities, large or small. The value of pork products imported by the United States from The Netherlands is expected to be much the same as it was before The Netherlands acquired hog cholera free status 6 months ago.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.9 [Amended]

2. In § 94.9, paragraph (a) is amended by removing the phrase “The Netherlands,”.

§ 94.10 [Amended]

3. In § 94.10, paragraph (a) is amended by removing the phrase “The Netherlands,”.

Done in Washington, DC, this 21st day of February 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 97-12]

Restrictions on Advances to Non-Qualified Thrift Lenders

AGENCY: Federal Housing Finance Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) is amending its regulations on advances to members that are not qualified thrift lenders to implement certain changes made by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Among other things, the EGRPRA broadened the universe of assets that a savings association may use in meeting its qualified thrift lender (QTL) requirement. Non-savings association members are not directly subject to the QTL requirement, although their ability to obtain advances is restricted if they do not meet the QTL requirement. The amendments should prove beneficial to many non-savings association members by allowing them to report increases in their levels of qualified thrift investments and, in some cases, satisfy the QTL requirement. Because certain of the items authorized by EGRPRA to be included in the QTL calculation are not separately identified on a non-savings association member's published financial reports, such as a call report, the Federal Home Loan Banks (Banks) have no readily available source from which to obtain or verify that information. To allow the Banks to include the newly authorized items when conducting their annual QTL calculation of their non-savings association members, the Finance Board

has determined that the Banks may rely on a certification from their members of any relevant QTL financial information that is not available from published financial reports. Because the Banks must complete the annual QTL calculations for calendar year 1996 no later than April 15, 1997, the Finance Board is issuing this rule as an interim final rule. As the certification process raises a number of questions about how best the Banks can determine the QTL status of their non-savings association members, and because the Office of Thrift Supervision (OTS) is in the process of a rulemaking relating to the EGRPRA amendments, the Finance Board has determined to solicit comments on the interim final rule for a period of 30 days.

DATES: The interim rule is effective on February 27, 1997. Comments must be received by March 31, 1997.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Steven P. Wojtaszek, Financial Analyst, Financial Research Division, Office of Policy, (202) 408-2863, or Neil R. Crowley, Senior Attorney, Office of General Counsel, (202) 408-2990, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

Historically, membership in the Federal Home Loan Bank System (System) had been comprised predominantly of savings associations, which tended to concentrate their investments in residential mortgage loans. In 1987, Congress established the QTL test, which required savings associations to maintain 60 percent of their assets in instruments related to domestic residential real estate or manufactured housing. Competitive Equality Banking Act of 1987, Public Law 100-86, section 104(c), 101 Stat. 571-573 (August 10, 1987). Among other things, a savings association that failed the QTL test was limited in the amount of advances that it could receive from its Bank. *Id.* section 105. In 1989, Congress authorized commercial banks and credit unions, institutions that historically had not been so concentrated in residential mortgage lending, to become members of the System. Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101-73, section 704(a), 103 Stat. 415 (August 9, 1989),

codified at 12 U.S.C. 1424(a). FIRREA also limited the amount of advances that such non-savings association members could obtain from their Bank, and imposed a 30 percent System-wide limit on the aggregate amount of advances that could be outstanding to such non-QTL members. 12 U.S.C. 1430(e).

As a general matter, the QTL test now requires a savings association to maintain 65 percent or more of its portfolio assets in certain designated instruments, which are characterized as "qualified thrift investments." The QTL test requires one to determine an institution's "actual thrift investment percentage" (ATIP), which is obtained by dividing the institution's "qualified thrift investments" by its "portfolio assets." The QTL test applies directly only to savings associations, and OTS, as the principal federal regulator of savings associations, determines their QTL compliance. The QTL test does not apply to commercial banks, credit unions, or insurance companies, although if such institutions become members of the System their ability to obtain advances is restricted if they do not meet the QTL test. 12 U.S.C. 1430(e). The Banks are required to determine the ATIP for each non-savings association member at least annually, between January 1 and April 15, based on financial information as of December 31 of the prior calendar year. 12 CFR 935.13(a)(3).

In EGRPRA (Public Law 104-208, 110 Stat. 3009, September 30, 1996), Congress made it easier for all members to achieve QTL compliance by broadening the universe of "qualified thrift investments" that may be included in calculating an institution's ATIP. Those changes could benefit non-savings association members by allowing them to increase their ATIP, possibly to the point of satisfying the QTL test. Even those members that do not meet the QTL requirement should benefit from the amendments because an increase in their ATIP should allow them to obtain a greater amount of advances based on their existing level of Bank stock. Under the amendments made by EGRPRA, a member now may include without limit as "qualified thrift investments" the full amount of its loans for educational purposes, loans to small businesses, and loans made through credit cards or credit card accounts. In addition, institutions may include an increased amount of consumer loans, subject to certain aggregate limits. For purposes of the EGRPRA amendments, the director of OTS is required to define the terms "small business," "small business loans," and "credit card," which the

OTS has done by means of an interim final rule. 61 FR 60179 (November 27, 1996), to be codified at, 12 CFR 560.3.

Although EGRPRA clearly specifies the types of additional assets that may be included as qualified thrift investments (and OTS has defined small business loans), the Banks cannot readily incorporate those items into their annual QTL calculations because the call reports of the commercial bank and credit union members, and the comparable reports of insurance company members, do not separately identify those items. The absence of these QTL items from the available regulatory financial reports of the non-savings association members complicates the Banks' annual task of determining the ATIP for those members. As a consequence of the additional items added by EGRPRA, the number of elements within the QTL calculation for which the Banks lack accurate and readily available data has increased, which introduces a greater element of uncertainty into the accuracy of the Banks' QTL determinations. This is not so much of a concern with respect to savings association members because OTS routinely examines the associations for QTL compliance, and the Finance Board and the Banks can rely on those OTS determinations. With respect to the non-savings association members, however, the principal federal regulators do not conduct examinations for QTL compliance and the Banks cannot look to those regulators as a source for the required QTL information.

For example, a commercial bank's outstanding credit card loans are separately stated on its Report of Condition and Income (Call Report), but its education loans and small business loans (at least as defined for QTL purposes) are not separately identified. Although the Call Report includes information about small business loans, that information does not correspond to the information that the Banks require when making the annual QTL calculations for their non-savings association members. The OTS regulation defines the term "small business loans" by incorporating the definitions from the Small Business Act and its implementing regulations promulgated by the Small Business Administration (SBA). Thus, for QTL purposes, a small business loan is one made to a "small business." Under the SBA regulations, a "small business" is an entity the gross receipts of which (or the number of its employees) fall below certain thresholds specified by SBA. By comparison, the Call Report defines a small business loan based on the size of

the loan, not the size of the borrowing entity. Thus, the Banks' use of the "small business loan" information that is available from the Call Report likely will overstate the amount of "small business loans" that are eligible to be used in determining a commercial bank member's QTL status. The same problem exists with respect to the reports submitted by credit union and insurance company members, neither of which separately identify the amount of loans meeting the SBA definition of small business loans.

This disparity between the statutory requirements of the QTL test and the information that is readily available to the Banks is not limited to the items added by EGRPRA. For example, the QTL test includes within a member's "portfolio assets" certain government, agency, and other debt securities with specified maturities (from two to five years), none of which is separately identified by maturity on the published financial statements. Similarly, the QTL test includes within a member's "qualified thrift investments" certain construction loans related to one-to-four-family residential properties, 50 percent of residential mortgage loans sold during a calendar quarter, 200 percent of affordable housing-related loans, and 200 percent of service facility loans, none of which is separately identified on the available reports.

The Finance Board believes that non-savings association members can benefit from the newly authorized qualified thrift investments, and that it is appropriate to allow the Banks to incorporate the new classes of investments into their ATIP calculations for the calendar year ending December 31, 1996. Of supervisory concern to the Finance Board, however, is how best to ensure that the Banks conduct their annual QTL determinations consistently with Section 10(e) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1430(e). The Finance Board believes that it would be imprudent for the Banks to confer QTL status on non-savings association members that cannot demonstrate that their qualified thrift investments actually include the claimed amount of the newly authorized investments.

One means of ensuring this result would be through an examination process. The Finance Board believes that it has the authority, under Sections 2A(a)(3), 2B(a), and 22, of the Bank Act, 12 U.S.C. 1422a(a)(3), 1422b(a), and 1442(a), to examine, or to require the Banks to request an examination of, individual members if necessary to ensure that the Banks operate in compliance with the law. The Finance

Board believes, however, that the more reasonable and efficient approach is to allow the Banks to obtain that information from their members. As a matter of practice, some Banks already obtain from their members information regarding certain QTL items that are not separately identified on the published financial reports. For example, some Banks obtain all QTL-related financial data from the member and use the published financial reports, such as a Call Report, to confirm the general accuracy of the information. Other Banks calculate a member's ATIP as a service to their members using the most recently published financial reports and either obtain any additional data from the member or estimate it from other known sources.

Accordingly, through this interim final rule the Finance Board will allow the Banks to accept from their non-savings association members supplemental QTL information that does not appear in the published financial statements. The chief executive officer (CEO) of the member must certify to the Bank that the information is accurate and complete as of the date provided. The Finance Board believes that such an arrangement strikes an appropriate balance between its need to ensure that the Banks base their QTL calculations on accurate financial information, and the practice of allowing the Banks to manage their own business. To allow the Banks to make use of the newly authorized QTL categories prior to the April 15, 1997, deadline for their QTL calculations, the Finance Board has determined to issue this rule as an interim final rule, but also is soliciting comments on the specific provisions of the rule. The Finance Board appreciates that OTS may yet revise the QTL definitions established through its recent interim rule, and intends to monitor the OTS rulemaking proceeding. The Finance Board anticipates that it will make corresponding changes to its advances regulation should the OTS further amend the QTL regulation in any material respect.

II. Description of the Interim Final Rule

The interim rule amends the definitions of "actual thrift investment percentage," "Qualified Thrift Lender," and "Qualified Thrift Lender test," in the Finance Board's advances regulation, 12 CFR 935.1, to delete references to OTS regulations that no longer exist. The interim rule also amends the Finance Board's advances regulations, 12 CFR 935.13(a)(3), to direct the Banks to use the financial information from the call report (which

term is defined to include the published financial reports submitted by credit union and insurance company members) as the primary source for QTL determinations. In those cases in which not all of the information needed to perform an accurate QTL calculation is included in the call report, the Bank may accept other information submitted by the member, provided that the CEO of the member certifies in writing that the information is accurate and complete as of the relevant date. As it appears to have been the practice of some Banks to obtain the required financial information for the QTL calculation from their members and then compare that information to the call report, the rule allows the Banks to continue to obtain information from their members as the first step in the process, provided that any information not in the call report must be subject to the same certification requirement. By requiring the formality of a certification from the CEO the Finance Board believes that the Banks will have sufficient assurance that the information on which they conduct their determinations is accurate, which is the minimum effort required to ensure compliance with the Bank Act.

The Finance Board does not intend to require the Banks to obtain a CEO certification from every non-savings association member as a matter of course. Such a certification is necessary only when a member wishes the Bank to include in its annual ATIP calculation qualified thrift investments or portfolio assets that do not appear in its published financial reports. If a member has no such investments or assets, then the Bank need not require a certification from the member. Similarly, if a member has a portfolio of small business loans or education loans, but the inclusion of those items in the calculation would not materially change the member's ATIP, then a member could elect not to provide a certification. If a member were to have a substantial portfolio of education loans, for example, but only minor investment in small business loans, the member could opt to certify the number of education loans and omit, or indicate a zero balance, for the category of small business loans. The Finance Board specifically requests public comment on the certification process, as well as the content and format for the certification.

III. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, the Banks are not "small entities." *Id.* 601(6). As the interim final rule would apply only to the Banks, it does not impose any

additional regulatory requirements on small entities of the type contemplated by the RFA. Thus, in accordance with the provisions of the RFA, the Board of Directors of the Finance Board hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. *Id.* 605(b).

IV. Paperwork Reduction Act

The Finance Board has submitted to the Office of Management and Budget (OMB) an analysis of the collection of information contained in § 935.13 of the interim rule, described more fully in the **SUPPLEMENTARY INFORMATION**. The Banks will use the information collection to determine whether a non-savings association member satisfies the statutory QTL requirement. Only Bank members that meet the QTL standards may maintain unrestricted access to long-term Bank advances. See 12 U.S.C. 1430(e). Responses are required to obtain or retain a benefit. See *id.* The Finance Board will maintain the confidentiality of information obtained from respondents pursuant to the collection of information as required by applicable statute, regulation, and agency policy.

Likely respondents and/or recordkeepers will be non-savings association members of a Bank. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. See 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents ...	4,272
b. Total annual responses	4,272
Percentage of these responses collected electronically	0
c. Total annual hours requested	3,930
d. Current OMB inventory ..	0
e. Difference	3,930

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs	0
b. Total annual costs (O&M)	0
c. Total annualized cost requested	\$126,660
d. Current OMB inventory ..	0
e. Difference	\$126,000

The Finance Board has submitted the collection of information to OMB for review in accordance with section 3507 of the Paperwork Reduction Act of 1995. See 44 U.S.C. 3507. Comments regarding the collection of information may be submitted in writing to the

Finance Board at the address above, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503 by March 31, 1997.

V. Other Procedural Requirements

The interim final rule does not meet the criteria for a "significant regulatory action" under Executive Order 12866.

The Finance Board has determined that the notice and comment procedure ordinarily required by the Administrative Procedure Act (APA) is not required in this instance. The APA authorizes agencies to waive the notice and comment procedures when the agency "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). The Finance Board has determined that compliance with the APA procedure in this instance would be impracticable, unnecessary, and contrary to the public interest because it effectively would deny the Banks the opportunity to incorporate the newly authorized QTL investments into their annual QTL calculations for the current year. As described in the SUPPLEMENTARY INFORMATION, the Banks must calculate the QTL ratio of each non-savings association member between January 1 and April 15 of each year. If the Finance Board were to observe the notice and comment procedures, it is unlikely that the Finance Board could promulgate a final rule sufficiently in advance of the April 15 deadline for the Banks to incorporate its provisions into their current QTL calculations. Nonetheless, because the Finance Board believes that public comments aid in effective rulemaking, it will accept written comments on the interim rule until March 31, 1997.

The Finance Board also has determined that the 30-day delay of the effectiveness provisions of the APA may be waived in these circumstances. Section 553(d) of the APA permits waiver of the 30-day delayed effective date requirement, among other things, where a substantive rule relieves a restriction, or otherwise for good cause found by the agency. As with the APA notice and comment procedures, described above, the Finance Board finds that there is good cause for making the interim rule effective on February 27, 1997, because it will allow the Banks to take advantage of the EGRPRA's amendments in calculating the QTL ratios for the current year. Moreover, the absence of accurate call report information about the categories

of newly authorized QTL assets impairs the ability of the Banks to implement the EGRPRA's amendments, which problem is remedied by the interim rule. By eliminating a practical impediment to the implementation of the QTL amendments the interim rule relieves a restriction that might otherwise prevent the Banks from realizing the benefits intended by Congress.

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks.

Accordingly, the Board of Directors of the Federal Housing Finance Board hereby amends title 12, chapter IX, part 935 of the Code of Federal Regulations, as follows:

PART 935—ADVANCES

1. The authority citation for part 935 continues to read as follows:

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

2. Section 935.1 is amended by republishing the introductory text and revising the definitions for "Actual thrift investment percentage", "Qualified Thrift Lender", and "Qualified Thrift Lender test" to read as follows:

§ 935.1 Definitions

As used in this part:

* * * * *

Actual thrift investment percentage or *ATIP* has the same meaning as used in section 10(m)(4) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)), except that the ATIP will be calculated and applied for purposes of this part to all members of the Banks, whether or not they are savings associations.

* * * * *

Qualified Thrift Lender or *QTL* means the term as defined in section 10(m)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(1)). A non-savings association member which meets the QTL test as applied by the Banks will be treated as a QTL for purposes of this part.

Qualified Thrift Lender test or *QTL test* means the asset test described in section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)), except that the QTL test will be applied for purposes of this part to all members of the Banks, whether or not they are savings associations.

* * * * *

3. In § 935.13, paragraph (a)(3) is revised to read as follows:

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders

(a) Restrictions on advances to non-QTL members. * * *

(3)(i) A Bank shall calculate each non-savings association member's ATIP at least annually, between January 1 and April 15, based upon financial data as of December 31 of the prior calendar year. The Bank may, in its discretion, calculate a member's ATIP more frequently than annually.

(ii) In determining a non-savings association member's annual ATIP, a Bank shall use the financial information from the member's December 31 call report as the primary source of information. A Bank making ATIP determinations more frequently than annually shall use the member's most recent call report. If any information necessary for determining the member's ATIP is not separately identified on a member's call report, the Bank may rely on a written certification provided by the member as to the dollar amount and composition of those other assets that meet the definitions of "qualified thrift investments" or "portfolio assets." Notwithstanding the preceding two sentences, a Bank may, at its option, accept a certification from a non-savings association member as to the dollar amount and composition of all assets that meet the definitions of "qualified thrift investments" or "portfolio assets." In any case in which a Bank relies on a certification from a non-savings association member as to its level of "qualified thrift investments" or "portfolio assets," the certification must be in writing and signed by the chief executive officer of the member.

(iii) As used in this section, the term "call report" shall include:

(A) With respect to a commercial bank, the annual or quarterly "Report of Condition and Income" submitted to its appropriate Federal banking agency;

(B) With respect to a credit union, the quarterly or semi-annual call report submitted to the National Credit Union Administration; and

(C) With respect to an insurance company, its National Association of Insurance Commissioners annual regulatory filing.

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Dated: February 6, 1997.

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

Bruce A. Morrison,
Chairperson.

[FR Doc. 97-4795 Filed 2-26-97; 8:45 am]

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