

December 8, 2000

Ms. Elaine Baker  
Secretary to the  
Federal Housing Finance Board  
1777 F Street, NW  
Washington, DC 20061

Application for a "Demanded by Convenience" Membership Eligibility Approval

Introduction

The Federal Home Loan Bank of Dallas ("Dallas Bank") is submitting this Application to the Federal Housing Finance Board ("FHFB") pursuant to Section 907.3 of the FHFB Regulations\* seeking approval from the FHFB of Washington Mutual Bank, FA's ("WMBFA") membership application with the Dallas Bank and specifically a determination of WMBFA's eligibility to be a member of the Dallas Bank pursuant to the "demanded by convenience" standard set forth in Section 4(b) of the Federal Home Loan Bank Act ("Bank Act"), 12 U.S.C. § 1424(b) and Section 92.5.18(a)(2) of the FHFB's implementing regulations! In addition, the Dallas Bank is submitting a Resolution of the Executive Committee of the Board of Directors authorizing the submission of this application to the Federal Housing Finance Board.

On November 24, 2000 WMBFA submitted a membership application to the Dallas Bank. WMBFA submitted this application in connection with its acquisition of Bank United, a Dallas Bank member and the Dallas Bank's largest borrower. As stated in

\* The Dallas Bank believes that it is appropriate to treat this matter as an "Application" for "Finance Board approval" under Section 907.3 rather than as a "Petition" for a "case by case determination" under Section 907.8 of the FHFB Regulations because the matter does not involve a determination "for which no controlling statutory, regulatory, or other Finance Board standard previously has been established." The controlling "demanded by convenience" standard is set forth in both the Bank Act and the FHFB Regulations and the FHFB is certainly free to deal with this matter under Section 907.3 as a result. We note that the materials required to be submitted under Section 907.3 and 907.8 are virtually identical. Compare Section 907.6 with Section 907.10.

Exhibit A, the purpose of this application was "simply ....to allow WMBFA to step into the shoes of Bank United within the Dallas District...".

On November 29, 2000, the Dallas Bank granted contingent approval to the application; and found that WMBFA met the legal standards for membership. Attached hereto as Exhibit B is the Membership Digest and Approval. The approval was contingent upon ~ the approval by the FHFB of WMBFA's membership in the Dallas Bank after an FHFB finding that such membership was "demanded by convenience." As established herein, both the statutes and the implementing regulation authorize the FHFB to approve membership by a qualifying institution, whose home office is located in an adjoining district, in another Federal Home Loan Bank where that standard is met.

In support of its Application for Membership, WMBFA submitted two legal memorandums. The first memorandum attached hereto as Exhibit C and incorporated by reference into this application, established that under Section 4(b) of the Bank Act, the FHFB is authorized to permit membership in more than one adjoining Bank District, where the Finance Bank makes a finding that such membership is "demanded by convenience."

The second memorandum establishes that the membership of CFA in the Federal Home Loan Bank of Dallas is "demanded by convenience." This memorandum is attached hereto as Exhibit A and is also incorporated by reference into this Application.

Request for Information'

Harvey Simon  
General Counsel  
Federal Home Loan Bank of Dallas  
8500 Freeport Parkway, South  
Suite 100  
Irving, Texas 75063-2547  
harvey.simonC fhfb.com

Contact Person Information

Harvey Simon  
(see above)

Relief Requested

The relief requested is a determination by the FHFBB that CFA's membership in the Dallas Bank is "demanded by convenience" and approval of such membership.

Statement of Facts and Circumstances  
And Identification of all Legal  
And Factual Issues

The facts and circumstances and the legal and factual issues of this Application are set forth above in the Introduction and are further discussed in Exhibits A, B, and C. An additional matter to be resolved is the scope of WMBFA's membership in the Dallas Bank. As discussed earlier, we would propose to structure this membership in a manner to maintain the status quo with regard to the economic impact of Bank United on the Dallas Bank. In this regard; we would limit WMBFA's ability to borrow to the amount of advances Bank United has outstanding at the time the merger transaction closes, now estimated to be approximately \$7.8 billion, and such amount may be increased only by the amount required to fund on-going operations of the acquired Bank United entity.

Relevant Authorities

The relevant authorities are set forth and discussed in Exhibits A and C.

Relevant Precedent

This application appears to raise matters that have not been previously ruled upon by the . Therefore, there appears to be no applicable administrative precedent.

Certification

I have reviewed the relevant statute and regulation and, based upon this review and the legal analysis set forth in Exhibits A and C attached hereto and incorporated by reference, I hereby opine that the Federal Housing Finance Board has both the authority and the factual basis to approve Washington Mutual Bank, FA's membership in the Federal Home Loan Bank of Dallas under the "demanded by convenience" standard, while permitting Washington Mutual Bank, FA to maintain its existing membership in the Federal Home Loan Bank of San Francisco.

Terry Smith  
President  
Federal Home Loan Bank of Dallas

# EXHIBIT A

November 28, 2000

## MEMORANDUM

TO: Federal Home Loan Bank of Dallas

FROM: Washington Mutual Bank, FA

RE: Membership of WMBFA in the Federal Home Loan Bank of Dallas Is  
"Demanded by Convenience"

Section 4(b) of the Federal Home Loan Bank Act (the "FHLB Act"), 12 U.S.C.

§ 1424(b) ("Section 4(b)") provides that an institution eligible for membership) in a Federal Home Loan Bank ("FHL Bank") may with the approval of the Federal Housing Finance Board ("FHFB") become a member of an FHL Bank in a district adjoining its

home districts "if demanded by convenience." This memorandum is in support of the application by Washington Mutual Bank, FA ("WMBFA") to become a member of the Federal Home Loan Bank of Dallas (the "Dallas FHL Bank") while remaining a member of the Federal Home Loan Bank of San Francisco (the "SF FHL Bank").

This application grows directly out of the proposed merger of Bank United, which is currently a member of the Dallas FHL Bank, with and into WMBFA (the "Member Merger"). To avert an interruption of the business of the Dallas FHL Bank, WMBFA is seeking to become a member of the Dallas FHL Bank by the date of the Member Merger. As discussed more fully in the attached memorandum of our counsel, Gibson, Dunn & Crutcher LLP (the "GDC Memo"), an analysis of the text, legislative history, existing FHFB regulations, and underlying policies of Section 4(b) demonstrates that the FHFB has discretion to approve the proposed dual membership of WMBFA under the "demanded by convenience" standard.

Put most simply, the purpose of this WMBFA application is to allow WMBFA to step into the shoes of Bank United within the Dallas district and the activities of the Dallas FHL Bank. In view of the relative size of the participants and their existing roles in their present FHL Bank districts, the proposed dual membership will effectively

---

1 See 12 U.S.C. § 1424(a); 12 C.F.R. § 925.6.

In this memorandum, "home district" refers to the "district in which is located the institution's principal place of business." See Section 4(b); 12 C.F.R. § 925.18(b)-(c).

preserve the status quo in these two districts. Not to permit dual membership would lead to material and significant change in the Dallas district and cause an unneeded, and potentially burdensome, transfer of activity to the San Francisco district.

In this memorandum, we demonstrate that WMBFA's application for dual membership satisfies the "demanded by convenience" standard that is established in Section 4(b) and the current FHFBS regulation implementing Section 4(b). From the standpoint of each stakeholder -- the FHL Bank System as a whole; the Dallas FHL Bank and the district it serves; the San Francisco FHL Bank and the district it serves; and WMBFA -- the particular facts and circumstances constitute a compelling and uniquely strong basis for finding that WMBFA's dual membership is "demanded by convenience" in compliance with the established statutory and regulatory standard.

### **A. Statutory Framework for Analysis of Facts.**

The full text of Section 4(b) of the FHLB Act states:

(b) An institution eligible to become a member under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the board.

As discussed more fully in the GDC Memo, Section 4(b) may be interpreted to allow an eligible institution to be a member of *both* its home district Bank and an adjoining district Bank. Section 4(b) sets limits on the number of district Banks of which an institution may become a member: the institution's home district Bank "or" the Bank in any adjoining district "if demanded by convenience" and approved by the FHFBS, but no other district Bank. Just as the word "or" in its first use in Section 4(b) is conjunctive (meaning "or both"), so the same word in its second use should be conjunctive in meaning. Certainly, such a reading is permissible.

The present FHFBS regulation implementing Section 4(b) follows this statutory framework. The regulation reiterates the "demanded by convenience" standard that is clearly established by the statute for the FHFBS, in an appropriate case, to approve an application for dual membership in home and adjoining districts.

### **B. Key Facts**

WMBFA's application for membership in the Dallas FHL Bank arises from the pending merger of two existing FHL Bank members: Bank United, the largest member in the Dallas FHL Bank district and WMBFA, the largest member in the San Francisco FHL Bank district.

#### **Bank United's Extensive Involvement in the Dallas FHL Bank**

Bank United is currently the largest member, in terms of both outstanding advances and stock ownership, of the Dallas FHL Bank. Bank United has been a member of the Dallas FHL Bank since its inception, and has continuously used the services of the Dallas FHL Bank.

Bank United borrows from the Dallas FHL Bank on a regular basis. The amount of outstanding advances made by the Dallas FHL Bank to Bank United was \$6,921,300,000 as of September 30, 2000. At year-end 1999, Bank United held 24.4 percent of the total outstanding advances made by the Dallas FHL Bank. Moreover, the amount of business done by Bank United with the Dallas FHL Bank has been growing.

Bank United has participated in the Dallas FHL Bank in a variety of other ways. Bank United maintains a safekeeping account with the Dallas FHL Bank. Bank United also is a major participant (with a \$2 billion commitment) in the Mortgage Partnership Finance Program of the Dallas FHL Bank. Bank United also held 18.6 percent of the total outstanding stock issued by the Dallas FHL Bank at year-end 1999.

As a member, and in furtherance of its community affairs activities, Bank United has been a strong participant in the Dallas FHL Bank's affordable housing program ("ARP") projects. So far, the Dallas FHL Bank has approved Bank United's applications for 16 ARP projects in an aggregate amount of \$3,350,900 to fund 869 units. (Eleven of the 16 projects have been completed, one project is in progress, and four projects, in an aggregate amount of \$213,400 to fund 64 units, have been cancelled). The Dallas FHL Bank currently is reviewing a pending AHP application by Bank United for \$500,000 to rehabilitate a 140-unit apartment complex. Bank United also participated in the Dallas FHL Bank's Helping Hand program, resulting in the funding of \$2,391,690 in grants to more than 1,300 homebuyers. Historically senior Bank United executives also have demonstrated a commitment to the strength and success of the Dallas FHL Bank's activities by playing an active role on its Board, committees, and programs.

Currently, Dallas FHL Bank personnel review Bank United's AHP applications and monitor its AHP projects. The Dallas FHL Bank personnel are familiar with the needs of their district. Familiarity with the geographic area of an AHP project facilitates a thorough review of an AHP project application and enhances the prospects for a favorable response to the application. Moreover, the administration of the AHP project is easier for people who are geographically closer to the project and thus in a better position to monitor the project conveniently. In all these respects, applications and ongoing ARP projects in the Dallas FHL Bank district are well suited for review and monitoring by Dallas FHL Bank personnel.

#### *Constraints on WMBFA's Participation in AHP Projects*

WMBFA already occupies, in the San Francisco FHL Bank, a position similar to the position that Bank United occupies in the Dallas FHL Bank. In some key respects, such as AHP participation, the current constraints on WMBFA may already be greater. WMBFA, formerly known as American Savings Bank, F.A., is the survivor of mergers with Great Western Bank, a Federal Savings Bank ("GWB"), which merged into WMBFA in 1997, Home Savings of America, FSB ("HSA"), which merged into WMBFA in 1998, and Coast Federal Bank, Federal Savings Bank ("Coast FSB"), which had merged into HSA earlier in 1998. Each of these institutions was a large member of the San Francisco FHL Bank. At the beginning of 1997, GWB was the second-largest thrift institution in the United States and HSA was the largest. In the first San Francisco FHL Bank AHP round of 1997 (there are two AHP rounds per year), the per-institution limit of \$2.5 million resulted in an aggregate limit for these four institutions (WMBFA, GWB, HSA and Coast FSB) of \$10.0 million. Three years later, in the first San Francisco FHL Bank AHP round of 2000, the limit on WMBFA's participation was only \$2.5 million due to the mergers of these four members into one.

WMBFA already submits as many AHP project applications to the San Francisco FHL Bank as possible without exceeding the per-institution dollar limit on the aggregate amount of applications in each AHP round. Due to the large number of affordable housing proponents with which WMBFA works, WMBFA always has more AHP applications than a single member of the San Francisco FHL Bank may submit. WMBFA must choose between potential AHP projects and attempt to identify the projects that will receive the better scores upon application to the San Francisco FHL Bank.

In the first AHP round of 2000, WMBFA submitted applications for an aggregate of \$2,303,000 in AHP projects. WMBFA had other applications that WMBFA could not submit, because each was too large to fit in the \$197,000 gap between the aggregate of WMBFA's proposed projects and the \$2.5 million limit. The San

Francisco FHLB raised the per-institution dollar limit to \$3.0 million for the second AHP round of 2000. WMBFA assembled a group of applications that amounted to exactly \$3.0 million, but had to withhold other applications that WMBFA would have submitted if the limit had been higher. Thus, as a result of past mergers, WMBFA already faces severe constraints on WMBFA's AHP participation in the San Francisco district.

### Reasons for Member Merger

The proposal for the Member Merger reflects the operational efficiency that is necessary in a competitive banking environment. WMBFA and Bank United must compete with national banks that have engaged in numerous interstate bank mergers. The consolidation of operations resulting from a merger facilitates administrative simplification and operational efficiencies. To match their competitors' efficiency, WMBFA and Bank United need to merge.

A failure to merge WMBFA with Bank United would result in duplication and potential confusion. For example, as an institution separate from WMBFA, Bank United would need to file its own quarterly Thrift Financial Reports and its own financial reports on Forms 10-Q and 10-K. The Office of Thrift Supervision would need to examine Bank United as a separate institution. In contrast, the Member Merger would halve the number of separate examinations and reports. Moreover, WMBFA already operates 48 branches in Texas. Without a merger, WMBFA and Bank United would need to take special precautions and adopt special procedures so that customers would know which branch is a WMBFA branch and which branch is a Bank United branch.

### No Proposal for Withdrawal from Any FHL Bank

One fact that distinguishes WMBFA's application from previous applications to district Banks and the Board under the established standard of Section 4(b) militates strongly in favor of WMBFA's application. To the best of our knowledge, previous applications for adjoining district membership have represented an effort by an institution to improve its situation within the FHL Bank System by transferring its membership to an adjoining district and give up its exiting membership. WMBFA's application for dual membership, in contrast, will result in no diminution of the two district Banks' jurisdiction, authority, or capacity.

### **C~ The Proposed Dual Membership Is "Demanded by Convenience" from the Perspective of All Significant Stakeholders**

Section 4(b) provides for approval of adjoining district membership "if demanded by convenience" and approved by the FHFBS. As discussed in greater detail in the GDC Memo, these words should be construed according to normal usage.

"Convenience" suggests that a broad range of possible reasons might support a FHFBS determination, while "demanded" suggests that the agency's discretion should not be exercised willy-nilly, but for a good reason in the context of the facts of an application. The statute expressly commits the determination whether the application satisfies the statutory standard to the Board's discretion.

### Convenience of the FHL Bank System

The "demanded by convenience" standard should be applied, at a minimum, with a view to the effect of a proposal on the availability and quality of financing for homes in the FHL Bank system and affected districts. Interpretation of Section 4(b) to permit simultaneous membership in two adjoining FHL Banks is necessary to prevent interstate expansion and consolidation from causing distortions and imbalances in the Bank

System that would impede the expansion of home finance. Congress designed the multi bank FHL Bank system to be responsive to the needs of diverse regions. It was premised on a thrift industry consisting overwhelmingly of relatively small, local institutions serving customers within a single FHL Bank district. Institutions with significant branch networks in multiple FHL Bank districts were probably not contemplated when the F14L Bank Act was enacted.

The passage of time and the substantial restructuring of the thrift industry have not diminished the vitality of the original FHL Bank System vision of a cooperative system of banks serving the particular housing and community needs within each district. However, in the context of multistate institutions, a limitation of membership to one district in all cases would have just the opposite effect. The Bank in the district where a significant institution disappears as a result of a merger will no longer have a financial or other role to play in the successor institution's activities in that district. Instead, the Bank in a distant district will have that responsibility.

An acquiring and expanding institution can only seek new advances from an FHL Bank of which it is a member. When an institution that is a very substantial member of one FHL Bank merges into an institution that is a very substantial member of a different FHL Bank, the admission of the successor institution to dual membership would enable both the affected FHL Banks to maintain their roles and business. There is no statutory, regulatory or policy reason to require that such a substantial amount of business migrate to the FHL Bank of which the acquirer is a member. Simultaneous membership in both FHL Banks is an appropriate solution to the problems that would otherwise be posed by the disappearance of a substantial member.

In the absence of simultaneous membership, the disappearance of substantial member institutions due to consolidation will become increasingly more significant. Significant imbalances are likely to develop within the Bank System as previously independent institutions disappear in mergers. If simultaneous membership is unavailable, imbalance will develop according to the happenstance of where the surviving institution's home office is located. In districts whose members disproportionately disappear in mergers, the membership roles will shrink. The ability of Banks in such districts to advance the housing needs of the residents of the districts, such as affordable housing goals, will become increasingly difficult. We do not believe that Congress could have intended such a result.

To preserve the local orientation and service of the Bank System in an era of consolidation and multistate institutions, the adjoining district membership option should be exercised where appropriate to allow dual district membership. Where it is permitted, dual membership will allow institutions and Banks to match the lending, affordable housing and other programs of the Bank System to where homebuyers are, not to where institutions happen to have their principal office.

---

The recent FHFBS rulemaking notes some of the implications of systemic developments in its discussion of concentration limits of Bank stock ownership and issues related to "joint assets." *See* 65 Fed. Re.,- 43408, 43412 (July 13, 2000).



Permitting multidistrict memberships is plainly consistent with preserving the traditional and highly successful function of the FHL Bank System as a cooperative multi-district system that is able in fact to serve the local housing and home finance needs of communities in every part of the country. In the case of WMBFA's merger with Bank United, where the institution that is to disappear is a substantial member of a FHL Bank, convenience demands the preservation of the disappearing bank's membership in the hands of the surviving institution. The only way to accomplish this goal is to allow WMBFA to step into the shoes of Bank United.

#### Convenience of the Dallas FHL Bank

As noted in Part B above, the facts of the present case are indeed compelling. Bank United is the largest member in the Dallas FHL Bank district. WMBFA is the largest member in the San Francisco FHL, Bank district. The loss of Bank United, in the absence of the addition of WMBFA as a Dallas FHL Bank member, will cause a measurable decrease in the Dallas FHL Bank activities and resources.

We believe that the level of advances is the best single indicator of the actual amount of business between Bank United and the Dallas FHL Bank. As noted above, Bank United held \$6,921,300,000 in outstanding advances made by the Dallas FHL Bank as of September 30, 2000. The amount of their current business provides some indication of the gap that would be created by the termination of Bank United's membership unless WMBFA becomes a member in Bank United's stead. Moreover, as the amount of business done by Bank United with the Dallas FHL Bank has been growing, an allowance for continued growth is necessary.

Bank United also has strongly participated in the Dallas FHL Bank's AHP projects and in other Dallas FHL Bank programs. In brief, Bank United has a strong relationship with the Dallas FHL Bank. After its merger into WMBFA, Bank United will disappear as a Dallas FHL Bank member. The financial and other relationships based upon membership will correspondingly disappear, and the financial and human resources available to the Dallas FHL Bank will diminish correspondingly. The Dallas FHL Bank and its activities will of course continue, but a measurable decrease in its resources will have occurred.

Membership of WMBFA in the Dallas FHL Bank will unquestionably serve the convenience of the Dallas FHL Bank by allowing WMBFA seamlessly to step into the place of Bank United. In contrast to elimination of a member, dual membership would allow a continuation of the growth trend established by Bank United.

The Dallas FHL, Bank has a paramount public policy interest in increasing the availability and quality of financing for homes in its district. In this regard, WMBFA's emphasis on retail origination of residential loans makes WMBFA especially suitable for membership in the Dallas FHL Bank. Bank United makes single-family residential loans mostly through a nationwide network of eleven wholesale loan offices, one of which is in the Dallas district. WMBFA emphasizes retail residential loan originations by WMBFA personnel, in addition to wholesale origination. Accordingly, WMBFA plans to increase the retail origination of residential loans within the Dallas district. Dual membership would allow the Dallas FHL, Bank to assist in this increase.

#### Convenience of the San Francisco FHL Bank

If dual membership is not permitted, the business arising from former Bank United offices necessarily will increase the demands placed on the San Francisco FHL Bank. The volumes of advances to and stockholding by WMBFA in the San Francisco FHL Bank would correspondingly increase. Dual membership will remove the need for such increases.

Dual membership also will avert increases in the operational burdens placed on the San Francisco FHL Bank. For example, dual membership would lessen or eliminate the need for San Francisco FHL Bank personnel to

review WMBFA's applications for AHP projects in the Dallas FHL Bank district. If they do not need to review applications for AHP projects and monitor ongoing AHP projects inside the Dallas FHL Bank district, the AHP personnel of the San Francisco FHL Bank will be able to devote more time to reviewing project applications and monitoring projects inside their own district. In this respect, the convenience of the San Francisco FHL Bank also demands dual membership for WMBFA.

#### Convenience of the FHL Bank Member

Dual membership following the merger of Bank United into WMBFA will result in convenience resulting from administrative simplification and operational efficiencies. The passage of the Riegle-Neal Interstate Banking and Branching Act of 1994 reflects a Congressional recognition of the practical benefits of interstate mergers. The Riegle-Neal Act enabled national banks to catch up with federal thrift institutions in achieving the convenience that result from such mergers. As a result, the need for this convenience is greater than ever, as WMBFA's competitors continue to consolidate and thus to achieve greater economies of scale. These economies would be lost if WMBFA's holding company, Washington Mutual, Inc. ("WMI"), were to hold Bank United as a separate institution after the merger of Bank United's holding company into WMI.

Dual membership following the Member Merger is necessary to avoid constricting WMBFA's participation in AHP projects. Single membership by WMBFA in the San Francisco FHL Bank is likely to impede WMBFA from expanding its participation in AHP projects inside the Dallas FHL Bank district. Currently, as noted in Part B above, WMBFA submits as many AHP project applications as possible without exceeding the per-institution dollar limit on the aggregate amount of applications in each AHP round.

WMBFA already must choose between potential AHP projects and attempt to identify the projects that will receive the better scores upon application to the San Francisco FHL Bank. Due to the limit on WMBFA's participation in the San Francisco FHL Bank ABP rounds, WMBFA anticipates that WMBFA will be unable to increase WMBFA's San Francisco AHP participation to equal Bank United's current ABP participation in the Dallas district. Therefore, dual membership is necessary to ensure WMBFA's full participation in AHP projects in the Dallas district.

#### Conclusion: The Compelling Demand of Convenience

For all the reasons above, WMBFA's application for membership in the Dallas FHL Bank satisfies the "demanded by convenience" statutory and regulatory standard. WMBFA's proposal to join the Dallas FHL Bank while remaining a member of the San Francisco FHL Bank serves the convenience of both district Banks and of the FHL Bank System as a whole. Dual membership will protect the Dallas FHL Bank's strength while preserving the jurisdiction and capacity of the San Francisco FHL Bank. In this case, the financial and operational implications, for the FHL Bank System as a whole and for both affected FHL Banks, of a failure to approve dual membership would be far more troublesome and significant than its approval. In conclusion, convenience demands the approval of the proposed dual membership of WMBFA.

## EXHIBIT B

# FEDERAL HOME LOAN BANK OF DALLAS

## Membership Approval Resolution

WHEREAS, on November 24, 2000 **Washington Mutual Bank, FA** ("Applicant"), located in Stockton, California, submitted an application for membership in the Federal Home Loan Bank of Dallas ("Bank"); and

WHEREAS, the Applicant is authorized under the laws of the United States and the laws of the State of California to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank pursuant to Section 4(b) of the Federal Home Loan Bank Act, as amended, which provides that an institution may become a member of the bank of a district adjoining the district in which is located the institution's place of business, if demanded by convenience, with the approval of the Federal Housing Finance Board; and

WHEREAS, the Applicant meets all of the membership eligibility criteria of the Federal Home Loan Bank Act and Part 933 of the regulations of the Federal Housing Finance Board. The statements contained in the digest are accurate to the best of the Bank's knowledge and are based on a diligent and comprehensive review of all available information identified in the digest; and

WHEREAS, 12 CFR Part 933.3 of the Regulations of the Federal Home Loan Bank System authorizes the Board of Directors of a Federal Home Loan Bank to approve applications for membership that meet the requirements of the Federal Home Loan Bank Act and Part 933 of the Regulations of the Federal Home Loan Bank System; and

WHEREAS, 12 CFR Part 933.3 of the Regulations of the Federal Home Loan Bank System further authorizes the Board of Directors of a Federal Home Loan Bank to delegate authority to approve membership applications to the President; and

WHEREAS, on September 27, 1996, the Board of Directors of the Federal Home Loan Bank of Dallas unanimously adopted the following resolution:

RESOLVED that pursuant to 12CFR Part 933.3 of the regulations of the Federal Housing Finance Board, the Board of Directors of the Federal Home Loan Bank of Dallas hereby delegates to the President, the authority to approve membership applications that meet the criteria set forth in the Federal Home Loan Bank Act and Part 933 of the regulations of the Federal Housing Finance Board.

NOW THEREFORE, BE IT RESOLVED that pursuant to the authority vested in the President by the Board of Directors of the Federal Home Loan Bank of Dallas, I hereby conditionally approve the application for membership in the Federal Home Loan Bank of Dallas submitted by **Washington Mutual Bank, FA**, Stockton, California, to be effective upon consummation of the merger of Bank United into Washington Mutual Bank, FA, contingent upon receipt of approval for membership of the Federal Housing Finance Board pursuant to Section 4(b) of the Federal Home Loan Act, as amended.

Terry Smith  
President

Institution Name	Washington Mutual Bank, FA
Approval Date	
Institution Assets	\$145,786.0 million
Location Address	8200 Oakdale Avenue Chatsworth, CA 91311
Mailing Address	1201 Third Avenue, WW 1706, Seattle, WA 98101
County	San Joaquin
Charter Type	Federal Savings Association
Institution Type	Thrift
Date Incorporated	December 27, 1988
Membership District	Dallas
Parent Company	Washington Mutual Inc.
Merger (Yes/No)	
Disappearing Institution	

Date

Risk-Based	5.59%	06/30/2000
Tier 1 Leverage	10.96%	06/30/2000
Statutory Reserves to Risk Assets Capital and Surplus		

Date

RML Ratio	71.33%	06/30/2000
Docket Number	8551	

---

# MAKES LONG-TERM LOANS: ASSESSMENT WORKSHEET

Applicant Name: Washington Mutual Bank. FA

Call Report Date: 06/30/2000

Part I - The amounts indicated below are for loans reported on the Applicant's books as of the most recent quarter prior to application. Include only those loans with an original maturity of five years or greater. Loans can be fully-, partially-, or non-amortizing.

Loan Description	Total - in thousands
Secured by first liens of 1-4 family residential properties - RCON 5367/SC250	\$ 75.839,230 j
Secured by first liens on multifamily residential properties - RCON 1460/SC256	\$ 14.398,758
Securities: Mortgage-backed securities: - Guaranteed b GNMA/SC210	\$ 14.958,515
- Issued b FNMA/FHLMC	\$
- Private certificate of participation in pools of residential mortgages	\$

Part II - Place an (X) next to all the mortgage loans currently on the Applicant's books (include loans originated that will subsequently be sold within the secondary market and those originated through subsidiaries):

Original Maturity	Fixed Rate	Variable Rate	Amortization Period
5-year balloon:	X	15	yrs.
7-year balloon:			yrs.
10-year balloon:			yrs.
15-year:	X	15	yrs.
30-year:	X	30	yrs.
Other:	X	28	yrs.

**Membership Application Digest**  
**Washington Mutual Bank, FA**  
**Total Assets: \$145,78600 million**

Prepared by the Federal Home Loan Bank of Dallas

In accordance with Section 4 of the Federal Home Loan Bank Act (12 U.S.C. § 1424), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Washington Mutual Bank, FA ("Applicant") is applying to the Federal Home Loan Bank of Dallas ("FHLBank") for membership.

We have analyzed the application and supporting information of Applicant Institution (see list of supporting information included following this report). It is our opinion that this institution meets the statutory eligibility and review criteria for delegated authority approval set forth by the Federal Housing Finance Board ("Finance Board") for membership in the Federal Home Loan Bank System ("FHLBank System") subject to the approval for membership of the Finance Board pursuant to Section 4(b) of the Federal Home Loan Bank Act, as amended.

We have reviewed the following information:

- Board of director's resolution authorizing application for FHLBank membership;
- Calculation of Applicant's holdings of qualified mortgage assets as a percent of total assets;
- Most recent two quarters Thrift Financial Reports (TFRs) filed with the Office of Thrift Supervision (OTS)
- Annual Report and the Form 10-K as of December 31, 1999
- Audited financial statements of the Applicant and its subsidiaries for the years ended December 31, 1999 and 1998, prepared by Deloitte & Touche, LLP.
- Most recent Report of Examination which concluded prepared by the Office of Thrift Supervision (OTS)
- A Management's Report dated February 25, 2000, prepared by Deloitte & Touche, LLP
- A Community Reinvestment Performance Evaluation which concluded December 4, 1998, prepared by the OTS.
- Loan policy; and
- Certificate of Management.

**Objective Statutory Eligibility Criteria (Noncompliance Not Rebuttable):**

1. Duly Organized (933.7). The Applicant is a Federally Chartered Savings Association, FDIC-insured, thrift institution located in Stockton, California. The institution was incorporated on December 27, 1988, under the banking laws of the State of California. It is a stock institution wholly owned by a holding company structure. Washington Mutual Inc. is located in Seattle, Washington. On October 3, 1998, the Applicant acquired Home Savings of America, FSB. Currently, the Applicant has submitted an application to the OTS for approval of a merger with Bank United with the Applicant as the surviving institution. The applicant has over 700 branches centered in California, Florida and Texas.

2. Subject to Inspection and Regulation (933.8). The Applicant is subject to inspection and regulation by the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the State of Washington, Department of Financial Institutions. The Applicant's deposit accounts are FDIC-insured.

2. Long-term Mortgage Lending (933.9). The Applicant originates Fixed Rate and Variable Rate mortgage loans on residential real estate with a maximum term of maturity of 30 years.

**Membership Eligibility Criteria:**

1. Insured Depository Institution with at least 10% of Total Assets in Residential Mortgage Loans (933.10) (Noncompliance Not Rebuttable). The Applicant had total assets of \$145,786.0 million of which 71.33 percents were in residential mortgage loans.

2. Financial Condition Such That Advances May Be Safely Made (933.11) (Rebuttable Presumption). We have reviewed the Applicant's financial condition. Based on extensive analysis of the documentation reviewed, we have concluded that the Applicant is in satisfactory financial condition. The Applicant holds adequate levels of eligible collateral to secure advances. The FHLBank of Dallas will be a secured lender; contingent on approval for membership, the amount and terms of the advances made will determine the appropriate level of collateral.

---

This calculation includes mortgage-backed securities. CMOs and home equities in addition to single and multifamily residential loans as discussed by the legal counsel of the FEIFB.

**A. Review Requirements (933.11(a)(1m3))**

Regulatory Financial Reports. From the analysis of the regulatory financial reports, we have determined the Applicant is profitable, has adequate asset quality, and meets regulatory capital requirements.

CAIVMI. Rating

**Capital Compliance.** The Applicant meets the minimum regulatory capital requirements established by its federal regulator. Capital and capital requirements were:

- a. Risk-Based capital 10.96% FDIC requirement 8.00%
- b. Tier 1 Leverage 5.59% FDIC requirement 3.00%

Auditor's Opinion. The Applicant received an "unqualified" opinion on its audited statements for the years ended December 31, 1999 and 1998, prepared by Deloitte & Touch, LLP.

**B. Standards for adequate "financial condition" (933.11(b)(1-3)(i):**

Performance Trend Criteria.

PERFORMANCE RATIOS	Current Quarter	Qtr. #2	Qtr. #3	Qtr. #4	Qtr. #5	Qtr. #6
Net Income ,(4 out of 6 quarters) (in OOOs)	445,993	395,374	386,257	376,511	367,207	366,994
Nonperforming loans + OREO/ Total loans + OREO < 10.00 (current qtr. Only)	0.71	0.76	0.77	0.78	0.90	1.06
ALLL/Nonperforming Loans >= 60.00 % (4 out of 6 qtrs.)	135.96	133.48	136.70	131.48	127.58	116.05

**Recommendation:**

We hereby certify that the above information is accurate and that it is based on a diligent and comprehensive review of all available information. We are aware of nothing of a material nature that would otherwise bear upon the delegated approval of the application of **Washington Mutual Bank, FA** for membership in the Federal Home Loan Bank of Dallas other than the approval for membership of the Finance Board pursuant to Section 4(b) of the Federal Home Loan Bank Act, as amended.

Prepared by:  
Margaret K. Mkimbo  
Manager  
Credit Operations

Reviewed by:  
Arnie Miller  
Senior Vice-President  
Capital Markets Division



**TO:** Membership Application File  
**FROM:** Bank Counsel '  
**DATE:** November 30, 2000  
**RE:** Washington Mutual Bank, FA  
Stockton, California

I am the Bank Counsel for the Federal Home Loan Bank of Dallas ("FHLBank") and have reviewed the application for membership from the above-referenced institution ("Applicant").

Based on my review, it is my opinion that the Applicant is legally authorized to buy stock in, do business with, maintain deposits in, and become a member of the FHLBank, subject to the approval for membership of the Federal Housing Finance Board pursuant to Section 4(b) of the Federal Home Loan Bank Act, as amended. To the best of my knowledge, there are no outstanding legal issues which should adversely affect the FHLBank's decision to approve under delegated authority for membership. I render no legal opinion or business judgment as the institution's financial condition.

Allyn Dixon  
Associate General Counsel

# EXHIBIT C

November 28, 2000  
C 95206-00071

## MEMORANDUM

TO: William A. Longbrake

FROM: C. F. Muckenfuss, III  
Robert C. Eager

RE: "Convenience" Membership in an Adjoining Federal Home Loan Bank

---

Section 4(b) of the Federal Home Loan Bank Act (the "FHLB Act"), 12 U.S.C. § 1424(b) ("Section 4(b)") provides that an institution eligible for membership in a Federal Home Loan Bank ("FHLB") may with the approval of the Federal Housing Finance Board ("FHFB") become a member of a Bank in a district adjoining its home district "if demanded by convenience." You have asked us to advise you on the scope and meaning of Section 4(b) and the scope of the FHFB's discretion in applying it.

---

See 12 U.S.C. § 1424(a); 12 C.F.R. § 925.6.

Herein, "home district" refers to the "district in which is located the institution's principal place of business." See Section 4(b); 12 C.F.R. § 925.18(b)-(c).

The full text of Section 4(b) states:

(b) An institution eligible to become a member under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of *the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the board.* The italicized language is the focus of your inquiry.

## I. Background and Overview

In 1932 in response to the Great Depression, Congress established the FHL Bank System ("Bank System") to restore public confidence and create a credit system to ensure the availability of funding for home finance. Thrifts and other housing lenders **that met** statutory eligibility requirements were allowed to become stockholders of the FHL Banks and to receive advances to support their home lending. In recognition of the localized housing markets, twelve FHL Banks were chartered to serve districts made up of two or more states.

As discussed below, beginning with the original bill introduced into the Senate in January 1932, it was intended that in keeping with the localized nature of housing and home finance, eligible institutions as a general rule, but not necessarily in all cases, would be members "only" of the FHL Bank for the district in which they were located and did business. Because all thrifts at that time were state-chartered (the federal system was not created until the next year), if thrifts had branches at all, they were in-state. A system of regional banks made up of localized housing lenders doing business in a state in that region would match each FHL Bank with a discrete population of lenders.

At the same time that the Bank System legislation expresses a preference for how the Bank System on the whole would be structured, it also included language contemplating that an eligible institution might be a member of a bank "of a district adjoining" its home district. We are aware of no explanation for the inclusion of this possibility in either the original bill, or (with an amendment requiring prior administrative approval) in the bill as enacted and in force today. One fact, however, is clear. From its origin Section 4(b) contained two distinct concepts: home district preference and the possibility of adjoining district membership.

The FHFBS's current implementing regulation tracks this statutory text: first, it states the general rule of "only" home district membership at 12 C.F.R. § 925.18(a)(1), and then provides an exception for adjoining district membership under a "demanded by convenience" statutory standard. See § 925.18(a)(2). This regulation on its face provides that the Board is not limited by the use of "only" in the general rule and may in addition permit adjoining district memberships in appropriate cases.

In the following discussion, we parse the statutory structure and language and consider the sparse legislative history on this particular issue, the FHFBS regulations, and finally the scope of the FHFBS's discretion under the statutory language and implementing regulation. This review demonstrates that the particular statutory language in fact does not convey a Congressional direction limiting all eligible institutions to membership in a single district and may be interpreted to allow membership in more than one district.

Accordingly, in view of the FHFBS's general interpretive authority as the agency delegated to implement the FHLB Act, its overarching role in advancing the best interests of the Bank System, and the express delegation under the statutory "demanded by convenience" standard in Section 4(b), the FHFBS has unquestionable discretion to approve an application by an eligible institution to be a member of both its home district and one or more adjoining districts if such multiple membership would be consistent with the mission of the Bank System. Further, the development of interstate savings institutions should clearly support such a determination at this time.

## II. Statutory Structure and Language ,

On first reading, the words of Section 4(b) might appear to suggest that an eligible institution may be a member of its home district or alternatively an adjoining district. Nevertheless, as discussed below, when read more closely the words of this section in fact permit limited, multi-district membership. There is a fundamental ambiguity embedded in the structure of Section 4(b), which has remained constant since the first version of

this provision was introduced in 1932. Taking this structure into account is necessary for understanding the statutory language and its intended meanings

#### **A. Structure of Section 4(b)**

Section 4(b) was enacted as part of the original FHLB Act in 1932.<sup>6</sup> This legislation was introduced by Senator Watson as S. 2959 in January 1932. As introduced, Section 4(b) stated:

(b) An institution eligible to become a member under this section may become a member only of the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district. (Emphasis added.)

---

4 The bill proposed by the Hoover Administration and introduced as S. 35 in late 1931 had no parallel provision and was silent on this subject.

5 Indeed, under standard rules of statutory construction an agency or the courts may rely on the statutory context to reject even the "most natural reading" of a statutory phrase. See, e.g., McCarthy v. Bronson, 111 S. Ct. 1737, 1740 (1991) (Court relies on context to reject "the most natural reading" of a statutory phrase); Crandon v. United States, 494 U.S. 152, 158 (1990) ("In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy."); Associated General Contractors v. California State Council of Carpenters, 459 U.S. 519, 530 (1983) ("A proper interpretation of the section cannot . . . ignore the larger context in which the entire statute was debated.").

6 See Act of July 22, 1932, c. 522, 47 Stat. 725 (1932).

The general rule stated in the first part of this provision is straightforward: an institution may "only" become a member of its home district Bank. The general rule was consistent with the small size of thrift institutions at the time, their localized business and the adoption of a regional Bank System structure. There can be little doubt that the home district preference expressed by this provision represented the *general* (but not exclusive) rule intended to govern the Bank System.

In this light, it is hard to understand the intent of the language highlighted above beginning with "or." This set of phrases appears to allow an eligible institution the opportunity based upon its own choice to become a member of an adjoining district Bank as an alternative to, or in addition to, its home district Bank. Indeed, since most Bank districts have more than one adjoining district, these words themselves allow membership in multiple adjoining districts.

We have found no stated purpose for this language, and it would appear conceptually inconsistent with a Bank System in which each regional Bank supports home lenders in its region. Giving eligible institutions any opportunity to choose freely membership in one or more adjoining districts that may be in fact quite distant from the institution's home locale seems at odds with membership consisting of small thrift institutions conducting their localized business. However inscrutable it may be, the fact remains that the adjoining district opportunity was included by the original drafters.

The initial language was amended at the next legislative stage, but not fundamentally clarified. On June 15, 1932, S. 2959 was reported to the Senate from the Committee on Banking and Currency with a substitute text inserted in place of the text as originally introduced. In this text, the entire original language of Section 4(b) was retained with two significant additions, which are indicated in bold face:

(b) An institution eligible to become a member under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the board.

With these changes, Section 4(b) was passed by Congress. Five weeks after being reported by the Senate the bill became law as the Act of July 22, 1932, c. 522. The use of all the original language plus the added language with respect to Bank membership points strongly to a Congressional intention that as a general rule an eligible institution should be a member of only its home district Bank, but also that in some circumstances an institution could seek Federal Home Loan Bank Board (the "FHLBB"), now FHFB, approval to become a member of one or more adjoining district Banks. The language as amended does not state on its face whether the adjoining district opportunity is to be in place of home district membership or in addition to it.

There is no accompanying explanation of this additional language, but the lack of a contemporaneous explanation is made less significant as a practical matter by the express delegation to the Board under Section 4(b). The statute allows the FHLBB to make all determinations with respect to adjoining district membership under the "demanded by convenience" standard. While the general rule is that eligible institutions would be members of the Bank in their home districts only, there was flexibility built into the new system because of the FHLBB's, now FHFB's, express discretion to allow membership in any adjoining district under the "demanded by convenience" standard.

## **B. Statutory Language**

This structure of Section 4(b) sheds light on the apparent ambiguity of its wording. As indicated above, this ambiguity centers on the meaning of the second "or" and the word "only" in this subsection. As discussed

below, the words of the section themselves in no way preclude the FHFB's ability to allow multiple Bank memberships and indeed are wholly consistent with the current FHFB regulation.

"Or. " The language permits membership in the home district Bank "or" (with approval) an adjoining district Bank. In ordinary usage, "or" by itself can have either a disjunctive meaning (this or that, but not both), or a conjunctive meaning (either or both).

Unless the context is clear, "or" by itself is often ambiguous. That is the case in Section 4(b).

Of course, if the drafter wants to give "or" a clear disjunctive meaning and specify a choice between two options, that can be stated unmistakably by saying, "either . . . or." Section 4(b) does not use such phrasing. Moreover, the use of a comma before the "or" in Section 4(b) is inconsistent with an "either . . . or" structure and thus supports the possibility of an "either or both" reading of Section 4(b).

In the case of Section 4(b), there is unmistakable internal evidence that its drafters understood the conjunctive use of "or." The final (June 1932) version expressly provided the ability of members to obtain advances from Banks by inserting the words, "or secure advances" in Section 4(b) (emphasis added). With this amendment, institutions were allowed to become members *and* secure advances. In view of the fact that the first usage of "or" in Section 4(b) is clearly conjunctive, the language of the sentence itself supports reading the second "or" in that same sentence in the conjunctive.

Accordingly, there is a textual basis for the reading that an eligible institution may be a member of both its home district and any adjoining district.

"Only." The word "only" is an adjective or adverb that clearly means "sole." In the sentence at hand, this word is plainly intended to limit the primary district choice to an institution's home district as part of the general rule. The further issue is whether it is to serve in addition as a substitute for "either" and thus require a choice between the home district and an adjoining district.

Reading "only" as a substitute for "either" does not seem the better reading for four reasons. First, Congressional drafters are unquestionably capable of using "either" when they intend to require a choice. Second, a conjunctive reading still gives effect to all the words of Section 4(b) and does not treat any word as surplusage, as Section 4(b) sets limits on the number of district Banks of which an institution may become a member: the institution's home district Bank "or" the Bank in any adjoining district "if demanded by convenience" and approved by the FHFB, but no other district Bank. Third, in view of the intended regional home district based operation of the Bank System, a secondary function of "only" is to emphasize the general rule that an eligible institution has only one option that it may exercise on its own volition - to seek membership in its home district Bank. Finally, a conjunctive reading is more consistent with the statutory objective of fostering private home ownership through creation of a Bank System capable of expanding the availability of home finance in the future, as discussed in more detail below. Thus, Section 4(b) limits on the number of district Banks of which an institution may become a member, even with FHFB approval, and isolates the choice that the institution may pursue as a matter of statutory right.

---

See DeSylva v. Ballentine, 351 U.S. 570, 571 (1956) ("We start with the proposition that the word 'or' is often used as a careless substitute for the word 'and' . . ."). But see Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979) ("Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise.").

Taken as a whole, the Section 4(b) structure and words tilt in favor of a reading that provides an eligible institution the ability to seek Bank membership as a matter of right only in its home district, or (with approval) alternatively in the Bank in an adjoining district, or (with approval) both. Since more than one reading of the statute is possible, the task falls to the FHFBB to provide authoritative construction in the context of an application.

### III. FHFBB Regulations

Until 1993, regulations implementing Section 4(b) simply repeated the statutory language, without any accompanying discussion or gloss in the rulemaking process. In 1993, the FHFBB regulation adopted the current regulatory language, which is now codified at 12 C.F.R. § 925.18(a). Section 925.18(a) states [we have used bold face to show language that is identical to the statutory language (or conforming words with substantively the same meaning), and italics to show words added in the regulation]:

**"(1) An institution eligible to become a member of a Bank under the Act may become a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section ....**

*"(2) An institution eligible to become a member of a Bank under the Act and this part may become a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of the Finance Board.*

This provision largely tracks the statutory text, but makes noteworthy changes: it omits the ambiguous "or" and structures the provision so that the adjoining district possibility is an exception to the home district bank "only" language in the first clause of Section 4(b).

In the regulation, paragraph (a)(1) tracks the first part of the Section 4(b) language and states that an eligible institution may become a member "only" of its home district Bank. By deleting the ambiguous "or" in the regulation, it eliminates the possibility of an "either . . . or" construction. The general rule stated in paragraph (a)(1) is home district membership. But paragraph (a)(1) goes on to provide for exceptions "as provided in paragraph (a)(2)." Paragraph (a)(2) states that an eligible institution may become a member of an adjoining district Bank "if demanded by convenience and then only with the approval of the Finance Board."

[See e.g., 12 C.F.R. § 523.3-2(a) (1989). We would note that in a 1982 rulemaking redefining "principal place of business" to address effects on the Bank System from interstate expansion of savings associations, the FHLBB made a passing reference to multi-district membership. In the discussing the final rule, but without specific reference to Section 4(b), the FHLBB noted "that multiple bank membership was considered as a possible alternative to the present proposal, but it was preliminarily determined that supervision of an interstate institution with multiple district bank memberships would become administratively cumbersome." 47 Fed. Reg. 56314 (Dec. 16, 1982). This statement suggests that the FHLBB must have believed it had a legal basis to permit multiple district memberships. We would further note that the reasons why the FHLBB did not pursue this approach no longer have any factual basis. In 1982, supervision of savings associations was delegated to the FHL Banks, and thus multiple district membership would have raised fundamental supervisory issues. This system was changed in 1989 to give the OTS direct supervisory authority over all federal savings institutions. Multiple district membership today does not raise the issues that gave the FHLBB concern then.

There is no accompanying discussion explaining this 1993 revision.<sup>10</sup> While any intent underlying these changes is undisclosed, the face of the regulation in its plain language provides that the FHFB may permit exceptions to the general rule of home district membership by allowing an eligible institution also to become a member of any adjoining district Bank. Thus, at a minimum the current regulation is consistent with the conclusion that membership in both a home and any adjoining district is permitted under Section 4(b). Indeed deletion of "or" in the current FHFB regulation reinforces the conclusion that it should be read in the conjunctive to permit multiple district membership.

#### IV. "Demanded by Convenience"

In view of the clear discretion and authority of the FHFB to permit an eligible institution also to become a member of an adjoining district Bank, the question then is the application of the "demanded by convenience" statutory standard. The statute itself gives no further content to this standard. We have found no legislative history or other authoritative document shedding light on this phrase, although there are similar words used in other federal banking statutes. The broad purpose of the FHLB Act does provide a contemporaneous starting point and context for understanding its intended function.

##### A. Legislative History

The legislative history of the FHLB Act supports the view that the FHFB, like its predecessor, is intended to have discretion to make decisions with respect to membership that are consistent with the best interests of the Bank System and housing finance. This act was rushed through Congress in response to the deepening economic depression and the desire to foster private home ownership through creation of a set of regional banks dedicated to housing finance. There is no legislative history concerning Section 4(b) other than as discussed above, but the purpose of the Act as a whole lends support to the conclusion that Congress intended to build a measure of flexibility into the Bank system by giving the FHLBB discretion to approve an application for multiple bank membership in an appropriate case.

The FHLB Act gave the FHLBB plenary authority to supervise the Bank System and carry out its purposes. "Broad powers are given to the Federal home loan bank board in regulating the activities of the banks and in providing for the orderly conduct of home-financing activities throughout the country."

In proposing the legislation to create a Bank System, President Hoover outlined its purposes and missions:

1. For the present emergency purpose of relieving the financial strains upon sound building and loan associations, savings banks, deposit banks, and farm-loan banks that have been giving credit through the medium of small mortgage loans upon urban and farm properties used for homes. Thereby to relieve pressures upon home and farm owners.

---

<sup>10</sup> See id. at 43532, 43544.

<sup>11</sup> Federal Home Loan Bank Act § 17, 12 U.S.C. § 1437(x) (1989); repealed by Pub. L. 101-73,

Title VII, § 703(x), Aug. 9, 1989, 103 Stat. 415, and replaced with 12 U.S.C. § 1422a(a)(1), which provides that the Federal Housing Finance Board "shall succeed to the authority of the Federal Home Loan Bank Board with respect to the Federal Home Loan Banks."



2. To put the various types of institutions loaning on mortgage in a position to assist in the revival of home construction in many parts of the country and with its resultant increase in employment.
3. To safeguard against the repetition of such experiences in the future.
4. For the long-view purpose of strengthening such institutions in the promotion of home ownership, particularly through the financial strength thus made available to building and loan associations.

The hearings held on this legislation focused on the country's economic needs and these missions of the proposed Bank System, not the details of the bill such as the "adjoining district" language in Section 4(b). Created in response to economic crisis, the FHLBB was tasked with both responding to the immediate needs and to supervising a Bank System capable of providing strength to the system of home finance into the distant future. It is against this statutory backdrop that the FHFBB should approach the construction of Section 4(b).

### **B. A Broad Standard To Be Applied By The FHFBB In Its Discretion**

We have found no written interpretation or application of the "demanded by convenience" standard by either the FHFBB or its predecessor. The words themselves are somewhat in tension: "convenience" suggests a broad range of possible reasons might support a FHFBB determination, while "demanded" suggests that the agency's discretion should not be exercised willy-nilly, but for a good reason. **The statute expressly commits** the determination of the appropriate factual threshold to the Board's discretion.

*"Convenience.*" The use of this word in Section 4(b) does suggest a wide variety of circumstances or public benefits might be found sufficient. Had Congress wished to provide greater guidance and a higher threshold, it could have used words such as "necessity," "the public interest," or "safety and soundness," instead of "convenience."

When statutory words are undefined courts often look to ordinary usage. One standard general usage dictionary defines "convenience" to mean "fitness or suitability for performing an action or fulfilling a requirement," and "convenient" to mean "suited to a particular situation; affording accommodation or advantage."<sup>14</sup> In the same vein, Black's Law Dictionary defines "public convenience and necessity" to mean "fitted or<sup>15</sup> suited to the public need."

---

<sup>12</sup> Hearings on H. Res. 12280, 75 Cong. Rec. 12588 (June 10, 1932). (statement of Mr. Steagall).

President Herbert Hoover's Statement Accompanying the Introduction of S.35, Federal Home Loan Discount Bank Act, 72nd Cong., 75 Cong. Rec. 207 (December 9, 1931).

Phraseology somewhat similar to Section 4(b) may be found in the various federal banking statutes dealing with acquisitions of depository institutions or their holding companies, and the interpretation of these provisions by the federal banking agencies is pertinent. The Bank Holding Company ("BHC") Act, the Bank Merger Act, and the Home Owners Loan Act each require the appropriate regulator to consider the "convenience and needs of the community" when considering acquisition applications. 16 Similar to the phrase in question, this phrase uses two words that are somewhat in tension, combining the word "convenience" with "needs." The Federal Reserve Board ("Fed") has recently summarized the construction of this term in the BHC Act context: "[T]he convenience and needs factor has been consistently interpreted by the federal banking agencies, the courts, and the Congress to relate to the effect of the proposal on the availability and quality of banking services in the community.",<sup>17</sup> This approach thus indicates that the Fed and other federal banking agencies apply these words flexibly in light of the broad statutory purposes of the underlying act.

**"Demanded."** In parallel fashion, the FHFBS can apply the "demanded by convenience" standard with a view to its effect on the availability and quality of home finance provided through the Bank System. The implementation of Section 4(b) to permit multiple district membership in the year 2000 will advance this mission.

Under the present legal structure, interstate expansion and consolidation are

increasingly causing distortions and imbalances in the Bank System. 18 Acquiring and expanding institutions can seek new FHL Bank advances only from the Bank to which they belong. Thus, when an institution located in one district acquires and consolidates another in a different district, the FHL Bank of the acquired institution loses a member and the business previously done by that merged institution with that Bank now will migrate to the Bank to which the acquirer belongs.

This migration becomes increasingly more significant with greater consolidation. It threatens to create significant imbalances within the Bank System as the business base in districts in which previously independent institutions disproportionately disappear in mergers. The ability of Banks in such districts to advance the housing needs of its residents, including affordable housing goals, becomes more difficult. The general rule of one member-one district that ensured proportionate Bank System capacity throughout the country at the time of its creation may now have just the opposite effect, due to the disappearance of members in interstate mergers.

---

14 Merriam-Webster's Collegiate Dictionary, 10th ed., (1995) at 253.

15 Black's Law Dictionary, 6th ed. (1990) at 1228. It defines "convenient" as "proper; just; suitable; fit. . ." Id. at 330.

16 See 12 U.S.C. §§ 1467a(e)(2)(B); 1828(c); 1842(c)(2). Since the enactment of the FHLB Act, the phrase "convenience and needs of the community" has been used in a number of statutes and the phrase "demanded by convenience" has not been re-used. See 12 U.S.C. §§ 1816(6) [Federal Deposit Insurance Act], 2901(a)(2) [Community Reinvestment Act]. Even taking into account the various contexts, it appears that the "convenience and needs" phraseology may have been adopted to serve a similar purpose as the earlier "demanded by convenience" language.

To preserve the local orientation and service of the Bank System in an era of consolidation and multistate institutions, the FHFB has clear legal discretion to apply the "demanded by convenience" standard to allow multiple district membership. Multiple membership will allow institutions and Banks to match the lending and other programs of the Bank System to where homebuyers are, not to where institutions happen to have their principal office.

Permitting multidistrict membership is plainly consistent with preserving the traditional and highly successful function of the Federal Home Loan Bank System as a cooperative multi-district system that is able in fact to serve the local housing and home finance needs of communities in every part of the country. Indeed, multidistrict membership is essential to prevent interstate mergers from causing distortions and imbalances that would impede the Bank System's achievement of the statutory objective of expanding the availability of home finance

---

17 NationsBank Corp./BankAmerica Corp., 84 Fed. Res. Bull. 858, 876 n. 84 (1998). See Heller and Fein, Bank Holding Company Act, Rev. Ed. (1996, 2000) at 3--21-22. See also, Heller, Bank Holding Company Act (1986, 1991) at 3-119-126.

18 The recent FHFB rulemaking notes some of the implications of systemic developments in its discussion of concentration limits of Bank stock ownership and issues related to "joint assets." See 65 Fed. Reg. 43408, 43412 (July 13, 2000).

# RESOLUTION

CERTIFIED RESOLUTION  
OF THE EXECUTIVE COMMITTEE  
OF THE BOARD OF DIRECTORS  
FEDERAL HOME LOAN BANK OF DALLAS

I hereby certify that the Resolution set forth below is a true and correct copy of a Resolution adopted by the Executive Committee of the Board of Directors of the Federal Home Loan Bank of Dallas on November 29, 2000.

"RESOLVED, that the Executive Committee of the Board of Directors of the Federal Home Loan Bank of Dallas, acting on behalf of the Board, hereby authorizes the filing of a membership application from Washington Mutual Savings Bank F.A. with the Federal Housing Finance Board for a determination that Washington Mutual Savings Bank's membership in the Federal Home Loan Bank of Dallas is 'demanded by convenience' pursuant to the Federal Home Loan Bank Act."

Harvey Simon  
Secretary the Board of Directors

(seal)