

§ 935.1

Agency that released the confidential information to the Bank.

(4) *Disclosure to Board.* (i) Neither this section nor any confidentiality agreement executed between a Bank and a Financial Regulatory Agency shall prevent a Bank from disclosing confidential information in its possession to the Board whenever disclosure is necessary to accomplish the Board's supervision of Bank membership applications or Bank director eligibility issues, or disclosing any confidential information in its possession if such disclosure is made pursuant to an audit conducted pursuant to paragraph (d) of this section or section 20 of the Bank Act.

(ii) The Board shall keep all confidential information received under paragraph (f)(4) of this section in strict confidence.

(g) *Computer data.* This section shall not preclude a bank from arranging with any Financial Regulatory Agency to transmit or allow access to confidential information with the consent of such agency by means of an electronic computer system. Any such arrangement shall insure the security of the computerized data stored in a bank's computer and restrict access to such data in order to preserve confidentiality in a manner agreed upon by the bank and the Financial Regulatory Agency.

[55 FR 50545, Dec. 7, 1990. Redesignated at 60 FR 65516, Dec. 20, 1995]

PART 935—ADVANCES

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

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Subpart A—Advances to Members

§ 935.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

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)) and in the implementing regulations of the OTS at 12 CFR 563.51, 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.

Advance means a loan from a Bank that is:

- (1) Provided pursuant to a written agreement;
- (2) Supported by a note or other written evidence of the borrower's obligation; and
- (3) Fully secured by collateral in accordance with the Act and this part.

Affordable Housing Program or *AHP* means the program described in section 10(j) of the Act (12 U.S.C. 1430(j)) and part 960 of the Board's regulations.

Appropriate Federal banking agency. The term *appropriate Federal banking agency* has the same meaning as used in 12 U.S.C. 1813(q) and for federally insured credit unions shall mean the National Credit Union Administration.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board means the Federal Housing Finance Board established under the authority of the Act, its governing Board of Directors, or an official duly authorized to act on its behalf.

Capital deficient member means a member that fails to meet its minimum regulatory capital requirements as defined or otherwise required by the member's appropriate federal banking agency, insurer or, in the case of members that are not federally insured depository institutions, state regulator.

Combination business or farm property means real property for which the total appraised value is attributable to the combination of residential, and business or farm uses.

Community Investment Program or CIP means the program described in section 10(i) of the Act or a program established pursuant to section 10(j)(10) of the Act (12 U.S.C. 1430(i), (j)(10)).

Depository institution means a bank or savings association, as defined in 12 U.S.C. 1813, or a credit union, as defined in 12 U.S.C. 1752.

Dwelling unit means, for purposes of this part, a single room or a unified combination of rooms designed for residential use by one household.

FDIC means the Federal Deposit Insurance Corporation.

GAAP means Generally Accepted Accounting Principles.

HUD means the Department of Housing and Urban Development.

Improved residential real property means residential real property excluding real property to be improved, or in the process of being improved, by the construction of dwelling units.

Insurer means the Federal Deposit Insurance Corporation for "insured depository institutions" as defined in 12 U.S.C. 1813(c)(2) and the National Credit Union Administration for federally insured credit unions.

Long-term advance means, for the purposes of this part, an advance with an original term to maturity greater than five years.

Manufactured housing means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Member means an institution that has been admitted to membership in a

Bank and, pursuant to requirements established by the Board, has purchased capital stock in the Bank.

Mortgage-backed security means, for purposes of this part:

(1) An equity security representing an ownership interest in:

(i) Fully disbursed, whole first mortgage loans on improved residential real property; or

(ii) Mortgage pass-through or participation securities which are themselves backed entirely by fully disbursed, whole first mortgage loans on improved residential real property; or

(2) A collateralized mortgage obligation, mortgage-backed bond or other debt security backed entirely by the assets described in paragraph (1)(i) or (ii) of this section.

Multifamily property means, for purposes of this part:

(1)(i) Real property that is solely residential and which includes five or more dwelling units; or

(ii) Real property which includes five or more dwelling units with commercial units combined, provided the property is primarily residential.

(2) Multifamily property as defined in this section includes nursing homes, dormitories and homes for the elderly.

Non-Qualified Thrift Lender member means any member that does not meet the Qualified Thrift Lender test as defined in this part.

Nonresidential real property means, for purposes of this part, real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institutions, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board in its discretion.

OCC means the Office of the Comptroller of the Currency.

One-to-four family property means any of the following:

(1) Real property containing:

(i) One-to-four dwelling units; or

(ii) More than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row

houses, townhouses or similar types of property;

(2) Manufactured housing if:

(i) Applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property; and

(ii) The loan to purchase the manufactured housing is secured by that manufactured housing;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

OTS means the Office of Thrift Supervision.

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)) and in the implementing regulations of the OTS (12 CFR 563.50). 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)) and in the implementing regulations of the OTS (12 CFR 563.50), 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.

Residential housing finance assets means any of the following:

(1) Loans secured by residential real property;

(2) Mortgage-backed securities;

(3) Participations in loans secured by residential real property;

(4) Loans financed by CIP advances;

(5) Loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or

(6) Any loans or investments which the Board, in its discretion, otherwise determines to be residential housing finance assets.

Residential real property means:

(1) Any of the following:

(i) One-to-four family property;

(ii) Multifamily property;

(iii) Real property to be improved by the construction of dwelling units;

(iv) Real property in the process of being improved by the construction of dwelling units;

(v) Combination business or farm property, provided that at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property.

(2) The term residential real property does not include nonresidential real property as defined in this section.

Savings association means a savings association as defined in section 3(b) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(b)).

State means a state of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

State housing finance agency or *SHFA* means a public agency, authority or publicly sponsored corporation that:

(1) Serves as an instrumentality of any state or any political subdivision of any state; and

(2) Functions as a source of residential mortgage loan financing in that state.

State regulator means a state insurance commissioner or state regulatory entity with primary responsibility for supervising a member borrower that is not a federally insured depository institution.

Tangible capital means:

(1) Capital, calculated according to GAAP, less "intangible assets" except for purchased mortgage servicing rights to the extent such assets are included in a member's core or Tier 1 capital, as reported in the member's Thrift Financial Report for members whose primary federal regulator is the OTS, or as reported in the Report of Condition and Income for members whose primary federal regulator is the FDIC, the OCC, or the Board of Governors of the Federal Reserve System.

(2) Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members which are not regulated by the OTS, the FDIC, the OCC, or the Board of Governors of the Federal Reserve System; provided that a Bank shall include a member's purchased mortgage servicing rights to

the extent such assets are included for the purpose of meeting regulatory capital requirements.

[58 FR 29469, May 20, 1993, as amended at 58 FR 29477, May 20, 1993; 59 FR 2949, Jan. 20, 1994]

§ 935.2 Bank credit mission.

(a) The primary credit mission of the Banks shall be to enhance the availability of residential mortgage credit.

(b) Each Bank shall fulfill its primary credit mission by:

(1) Providing a readily available, economical and affordable source of funds in the form of advances to its members; and

(2) Offering such advances products and programs that satisfy the credit needs of its members.

(c) Notwithstanding paragraph (b) of this section, each Bank shall place such limitations on the making of advances to its members as shall:

(1) Be specifically prescribed by statute, regulation or policy;

(2) Protect the financial integrity of the Bank and accommodate the practical constraints associated with the Bank's ability to raise funds; or

(3) Be required by the Board.

§ 935.3 Bank advances policy.

(a) Each Bank's board of directors shall adopt, and review at least semi-annually, a policy on advances to members consistent with the requirements of the Act, this part, and policy guidelines of the Board. Each Bank shall provide a copy of its advances policy, and any revisions thereto, to the Board.

(b) A Bank's board of directors may designate officers authorized to extend or deny credit and take other action consistent with the Bank's advances policy.

(c) A Bank may make exceptions to its advances policy only with the approval of its board of directors, a committee thereof, or officers specifically authorized by the board of directors to approve such exceptions, provided that any such exceptions shall comply with the Act, this part and policy guidelines of the Board.

(d) A Bank's board of directors shall:

(1) Require the officers designated pursuant to paragraph (b) of this sec-

tion to report promptly to it, or a designated committee of the board, all actions taken under this section; and

(2) Review such actions for compliance with this section.

§ 935.4 Authorization and application for advances; obligation to repay advances.

(a) *Application for advances.* A Bank may accept oral or written applications for advances from its members.

(b) *Obligation to repay advances.* (1) A Bank shall require any member to which an advance is made to enter into a primary and unconditional obligation to repay such advance and all other indebtedness to the Bank, together with interest and any unpaid costs and expenses in connection therewith, according to the terms under which such advance was made or other indebtedness incurred.

(2) Such obligations shall be evidenced by a written advances agreement that shall be reviewed by the Bank's legal counsel to ensure such agreement is in compliance with applicable law.

(c) *Secured advances.* (1) Each Bank shall make only fully secured advances to its members as set forth in the Act, the provisions of this part and policy guidelines established by the Board.

(2) The Bank shall execute a written security agreement with each borrowing member which establishes the Bank's security interest in collateral securing advances.

(3) Such written security agreement shall, at a minimum, describe the type of collateral securing the advances and give the Bank a perfectible security interest in the collateral.

(d) *Approval*—(1) *By the Bank's board of directors.* Applications for advances, advances agreements and security agreements shall be in substantially such form as approved by the Bank's board of directors, or a committee thereof specifically authorized by the board of directors to approve such forms.

(2) *By the Board.* Each Bank's forms for all advances applications, advances agreements and security agreements are deemed approved by the Board if such forms are consistent with the requirements of this part. Each Bank

shall provide copies of its current forms for all advances agreements and security agreements, and any substantive revisions thereto, to the Board.

§935.5 Limitations on access to advances.

(a) *Credit underwriting.* A Bank, in its discretion, may:

(1) Limit or deny a member's application for an advance if, in the Bank's judgment, such member:

- (i) Is engaging or has engaged in any unsafe or unsound banking practices;
- (ii) Has inadequate capital;
- (iii) Is sustaining operating losses;
- (iv) Has financial or managerial deficiencies, as determined by the Bank, that bear upon the member's credit-worthiness; or
- (v) Has any other deficiencies, as determined by the Bank; or

(2) Approve a member's application for an advance subject to such additional terms as the Bank may prescribe, pursuant to the provisions of the Act, this part and any policy guidelines of the Board; and

(3) Make advances and renewals only if the Bank determines that it may safely make such advance or renewal to the member, including advances and renewals made pursuant to this section.

(b) *New advances to members without positive tangible capital.* (1) A Bank shall not make a new advance to a member without positive tangible capital unless the member's appropriate federal banking agency or insurer requests in writing that the Bank make such advance. The Bank shall promptly provide the Finance Board with a copy of any such request.

(2) A Bank shall use the most recently available Thrift Financial Report, Report of Condition, and Income or other regulatory report of financial condition to determine whether a member has positive tangible capital.

(c) *Renewals of advances to members without positive tangible capital*—(1) *Renewal for 30-day terms.* A Bank may renew outstanding advances, for successive terms of up to 30 days each, to a member without positive tangible capital; provided, however, that a Bank shall honor any written request of the

appropriate federal banking agency or insurer that the Bank not renew such advances.

(2) *Renewal for longer than 30-day terms.* A Bank may renew outstanding advances to a member without positive tangible capital for a term greater than 30 days at the written request of the appropriate federal banking agency or insurer.

(d) *Advances to capital deficient but solvent members.* (1) Except as provided in paragraph (d)(2)(i) of this section, a Bank may make a new advance or renew an outstanding advance to a capital deficient member that has positive tangible capital.

(2)(i) A Bank shall not lend to a capital deficient member that has positive tangible capital if it receives written notice from the appropriate federal banking agency or insurer that the member's use of Bank advances has been prohibited. The Bank shall promptly provide the Finance Board with a copy of any such notice.

(ii) A Bank may resume lending to such a capital deficient member if the Bank receives a written statement from the appropriate federal banking agency or insurer which re-establishes the member's ability to use advances.

(e) *Reporting.* (1) Each Bank shall provide the Finance Board with a monthly report of the advances and commitments outstanding to each of its members.

(2) Such monthly report shall be in a format or on a form prescribed by the Finance Board.

(3) Each Bank shall, upon written request from a member's appropriate federal banking agency or insurer, provide to such entity information on advances and commitments outstanding to the member.

(f) *Members without federal regulators.* In the case of members that are not federally insured depository institutions, the references in paragraphs (b), (c), (d) and (e) of this section to "appropriate federal banking agency or insurer" shall mean the member's state regulator acting in a capacity similar to an appropriate federal banking agency or insurer.

(g) *Advance commitments.* (1) In the event that a member's access to advances from a Bank is restricted pursuant to this section, the Bank shall not fund outstanding commitments for advances not exercised prior to the imposition of the restriction. This requirement shall apply to all advance commitments made by a Bank after August 25, 1993.

(2) Each Bank shall include the stipulation contained in paragraph (g)(1) of this section as a clause in either:

- (i) The written advances agreement required by §935.4(b)(2) of this part; or
- (ii) The written advances application required by §935.4(a) of this part.

[58 FR 29469, May 20, 1993, as amended at 59 FR 2949, Jan. 20, 1994]

§935.6 Terms and conditions for advances.

(a) *Advance maturities.* Each Bank shall offer advances with maturities of up to ten years, and may offer advances with longer maturities consistent with the safe and sound operation of the Bank.

(b) *Advance pricing—(1) General.* Each Bank shall price its advances to members taking into account the following factors:

- (i) The marginal cost to the Bank of raising matching maturity funds in the marketplace; and
- (ii) The administrative and operating costs associated with making such advances to members.

(2) *Differential pricing.* (i) Each Bank may, in pricing its advances, distinguish among members based upon its assessment of:

(A) The credit and other risks to the Bank of lending to any particular member; or

(B) Other reasonable criteria that may be applied equally to all members.

(ii) Each Bank shall include in the advances policy required by §935.3(a) of this part, standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3) *Affordable Housing Program advances.* The advance pricing policies and procedures contained in paragraph (b)(1) of this section shall not apply in the case of a Bank's AHP advances

made pursuant to part 960 of this chapter.

(c) *Authorization for pricing advances.* (1) A Bank's board of directors, a committee thereof, or the Bank's president, if so authorized by the Bank's board of directors, shall set the rates of interest on advances consistent with paragraph (b) of this section.

(2) A Bank president authorized to set interest rates on advances pursuant to this paragraph (c) may delegate any part of such authority to any officer or employee of the Bank.

(d) *Putable advances—(1) Disclosure.* A Bank that offers a putable advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable advance funding. The disclosure should include detail sufficient to describe such risks.

(2) *Replacement funding.* If a Bank terminates a putable advance prior to the stated maturity date of such advance, the Bank shall offer to provide replacement funding to the member.

(i) *Term to maturity.* At the option of the member, a Bank shall offer replacement funding:

(A) For the remaining term to maturity of the putable advance; or

(B) For a term to maturity agreed upon between the Bank and the member.

(ii) *Interest rate.* At the option of the member, a Bank shall price replacement funding:

(A) At the market rate of interest; or

(B) At a predetermined rate of interest agreed upon between the Bank and the member.

(iii) *Conversion.* For purposes of this part, replacement funding shall be considered the conversion of an outstanding advance, and shall not be considered the renewal of an existing advance or the extension of a new advance.

(3) *Definition.* For purposes of this paragraph (d), the term *putable advance* means an advance that a Bank may, at its discretion, terminate and require the member to repay prior to the stated maturity date of the advance.

[58 FR 29469, May 20, 1993, as amended at 61 FR 52687, Oct. 8, 1996]

§ 935.7 Interest rates on Community Investment Program advances.

Each Bank shall price its CIP advances as provided in § 935.6 of this part, provided that the cost of such CIP advances shall not exceed the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs.

§ 935.8 Fees.

(a) *Fees in advances policy.* All fees charged by each Bank and any schedules or formulas pertaining to such fees shall be included in the Bank's advances policy required by § 935.3(a) of this part. Any such fee schedules or formulas shall be applied consistently and without discrimination to all members.

(b) *Prepayment fees.* (1) Each Bank shall establish and charge a prepayment fee pursuant to a specified formula which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

(2) Prepayment fees are not required for:

(i) Advances with original terms to maturity or repricing periods of six months or less;

(ii) Advances funded by callable debt; or

(iii) Advances which are otherwise appropriately hedged so that the Bank is financially indifferent to their prepayment.

(3) The board of directors of each Bank, a designated committee thereof, or officers specifically authorized by the board of directors, may waive a prepayment fee only if such prepayment will not result in an economic loss to the Bank. Any such waiver must subsequently be ratified by the board of directors.

(4) A Bank, in determining whether or not to waive a prepayment fee, shall apply consistent standards to all of its members.

(c) *Commitment fees.* Each Bank may charge a fee for its commitment to fund an advance.

(d) *Other fees.* Each Bank is authorized to charge other fees as it deems necessary and appropriate.

§ 935.9 Collateral.

(a) *Eligible security for advances.* At the time of origination or renewal of an advance, each Bank shall obtain, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

(1) *Mortgage loans and privately issued securities.* (i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; or

(ii) Privately issued mortgage-backed securities, excluding the following:

(A) Securities which represent a share of only the interest payments or only the principal payments from the underlying mortgage loans;

(B) Securities which represent a subordinate interest in the cash flows from the underlying mortgage loans;

(C) Securities which represent an interest in any residual payments from the underlying pool of mortgage loans; or

(D) Such other high-risk securities as the Board in its discretion may determine.

(2) *Agency securities.* Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation mortgage-backed securities, as defined in § 935.1 of this part, issued or guaranteed by:

(i) The Federal Home Loan Mortgage Corporation;

(ii) The Federal National Mortgage Association; or

(iii) The Government National Mortgage Association.

(3) *Deposits.* Deposits in a Bank.

(4) *Other collateral.* (i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank if:

(A) Such collateral has a readily ascertainable value; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

(b) *Bank restrictions on eligible collateral.* A Bank at its discretion may further restrict the types of eligible collateral acceptable to the Bank as security for an advance, based upon the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria.

(c) *Additional collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraph (a) of this section or section 10 of the Act (12 U.S.C. 1430).

(d) *Bank stock as collateral.* (1) Pursuant to section 10(c) of the Act (12 U.S.C. 1430(c)), a Bank shall have a lien upon, and shall hold, the stock of a member in the Bank as further collateral security for all indebtedness of the member to the Bank.

(2) The written security agreement used by the Bank shall provide that the borrowing member's Bank stock is assigned as additional security by the member to the Bank.

(3) The security interest of the Bank in such member's Bank stock shall be entitled to the priority provided for in section 10(f) of the Act (12 U.S.C. 1430(f)).

(e) *Collateral security requiring formal approval.* No home mortgage loan otherwise eligible to be accepted as collateral for an advance by a Bank under this section shall be accepted as collateral for an advance if any director, offi-

cer, employee, attorney or agent of the Bank or of the borrowing member is personally liable thereon, unless the board of directors of the Bank has specifically approved such acceptance by formal resolution, and the Board has endorsed such resolution.

§935.10 Banks as secured creditors.

(a) Except as provided in paragraph (b) of this section, notwithstanding any other provision of law, any security interest granted to a Bank by a member, or by an affiliate of such member, shall be entitled to priority over the claims and rights of any party, including any receiver, conservator, trustee or similar party having rights of a lien creditor, to such collateral.

(b) A Bank's security interest as described in paragraph (a) of this section shall not be entitled to priority over the claims and rights of a party that:

(1) Would be entitled to priority under otherwise applicable law; and

(2) Is an actual bona fide purchaser for value of such collateral or is an actual secured party whose security interest in such collateral is perfected in accordance with applicable state law.

§935.11 Pledged collateral; verification.

(a) *Collateral safekeeping.* (1) A Bank may permit a member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided that the Bank and such member have executed a written security agreement pursuant to §935.4(c) of this part whereby such collateral is retained solely for the Bank's benefit and subject to the Bank's control and direction.

(2) A Bank shall take any steps necessary to ensure that its security interest in all collateral pledged by non-depository institutions for an advance is as secure as its security interest in collateral pledged by depository institutions.

(3) A Bank may at any time perfect its security interest in collateral securing an advance to a member.

(b) *Collateral verification.* Each Bank shall establish written procedures, with standards similar to those established by the Auditing Standards Board of the American Institute of Certified

Public Accountants, for verifying the existence of collateral securing the Bank's advances, and shall regularly verify the existence of the collateral securing its advances in accordance with such procedures.

§ 935.12 Collateral valuation; appraisals.

(a) Each Bank shall establish written procedures for determining the value of the collateral securing the Bank's advances, and shall determine the value of such collateral in accordance with such procedures.

(b) Each Bank shall apply the valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

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

(a) *Restrictions on advances to non-QTL members.* (1) Except as provided in paragraphs (a)(4) and (a)(5) of this section, a Bank may make or renew an advance to a non-QTL member only under the following conditions:

(i) The advance is for the purpose of purchasing or funding new or existing residential housing finance assets, as determined pursuant to paragraph (a)(2) of this section;

(ii) The member holds Bank stock at the time it receives the advance in an amount equal to at least five percent of the outstanding principal amount of the member's total advances, divided by such member's ATIP, calculated pursuant to paragraph (a)(3) of this section; and

(iii) Making the advance will not cause the aggregate amount of advances issued by the twelve Banks to non-QTL members to exceed 30 percent of the aggregate amount of the twelve Banks' total outstanding advances.

(2) Prior to approving an application for an advance by a non-QTL member, a Bank shall determine that the principal amount of all advances outstand-

ing to the member at the time the advance is requested does not exceed the total book value of residential housing finance assets held by such member, which shall be determined using the most recent Report of Condition and Income or financial statement made available by the member.

(3) 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.

(4) The requirements of paragraphs (a) (1), (2), and (3) of this section shall not apply to:

(i) A savings bank, as defined in section 3(g) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(g)); or

(ii) A Federal savings association in existence as such on August 9, 1989 that:

(A) Was a state chartered savings bank or cooperative bank before October 15, 1982; or

(B) Acquired its principal assets from an institution that was a state chartered savings bank or cooperative bank before October 15, 1982.

(5) The requirements of paragraph (a)(2) of this section shall not apply to applications from non-savings association members for AHP or CIP advances.

(b) *Priority for QTL members.* (1) Except as provided in paragraph (b)(3) of this section, if a Bank is unable to meet the aggregate advance demand of all of its members, the Bank shall give priority to applications for advances from its QTL members, subject to the following considerations:

(i) The effect of making the advances on the financial integrity of the Bank;

(ii) The member's creditworthiness;

(iii) The availability of funding with maturities compatible with advances applications; and

(iv) Any other factors that the Bank determines to be relevant.

(2) The institutions identified in paragraph (a)(4) of this section shall be treated as QTLs for purposes of this paragraph (b).

(3) The requirement of paragraph (b)(1) of this section shall not apply to a Bank's special, or otherwise limited, advance offerings.

(c) *Additional restrictions on advances to non-QTL savings associations.* (1) Either the Bank's written advances agreement required by §935.4(b)(2) of this part or the written advances application authorized in §935.4(a) of this part shall require that each savings association member, which pursuant to the QTL requirements of the OTS becomes ineligible for Bank advances, immediately provide its Bank with written notification of its ineligibility.

(2) Except as requested in writing by the OTS, or as authorized in §935.18(c) of this part, a Bank shall not make an advance to a savings association member after receiving written notification from such member or from the OTS that such member is ineligible for advances pursuant to the QTL requirements of the OTS.

(d) *Repayment of advances by non-QTL savings association members.* (1) Each Bank, if informed by a savings association member or the OTS that the member has failed to regain its QTL status and is required to repay said member's advances prior to maturity, shall, in conjunction with the non-QTL savings association member, develop a schedule for the prompt and prudent repayment of any outstanding advances held by that member, consistent with the member's and the Bank's safe and sound operations.

(2) The schedule agreed to under paragraph (d)(1) of this section shall be provided promptly by the Bank to the Board and the OTS.

(e) *Advance commitments.* Either the Bank's written advances agreement required by §935.4(b)(2) of this part or the written advances application authorized in §935.4(a) of this part shall stipulate that the Bank shall not honor advance commitments previously made to members whose access to advances is subsequently restricted pursuant to paragraphs (a) or (c) of this section.

§935.14 Limitations on long-term advances.

(a) A Bank shall make long-term advances only for the purpose of enabling a member to purchase or fund new or

existing residential housing finance assets.

(b) (1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member.

(2) Applications for AHP and CIP advances are exempt from the requirements of this section.

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

(a) *Capital stock requirement for advances.* (1) At no time shall the aggregate amount of outstanding advances made by a Bank to a member exceed 20 times the amount paid in by such member for capital stock in the Bank.

(2) A non-QTL member shall hold stock in the Bank at the time it receives an advance in an amount equal to at least the amount of stock required to be held pursuant to §935.13(a)(1)(ii) of this part.

(b) *Unilateral redemption of excess stock.* A Bank, after providing 15 calendar days advance written notice to a member, may unilaterally redeem that amount of the member's Bank stock that exceeds the stock requirements set forth in paragraph (a) of this section or, in the case of a non-QTL member, the stock requirements set forth in §935.13(a)(1)(ii) of this part, provided the minimum amount required in sections 6(b)(1) and 10(e)(3) of the Act is maintained. The Banks shall have the discretion to determine the timing of such unilateral redemption, provided that the Bank's redemption policy is consistent with the requirement of section 7(j) of the Act (12 U.S.C. 1427(j)) which provides for fair and impartial treatment of all members.

§935.16 Advance participations.

A Bank may allow any other Bank to purchase a participation interest in

any advance, and any other Bank may accept a participation interest therein, together with an appropriate assignment of security therefor, subject to the approval of the boards of directors of the relevant Banks.

§ 935.17 Intradistrict transfer of advances.

(a) *Advances held by members.* A Bank may allow one of its members to assume an advance extended by the Bank to another of its members, provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

(b) *Advances held by nonmembers.* A Bank may allow one of its members to assume an advance held by a nonmember, provided the advance was originated by the Bank and provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

[59 FR 2950, Jan. 20, 1994]

§ 935.18 Special advances to savings associations.

(a) *Eligible institutions.* (1) A Bank, upon receipt of a written request from the Director of the OTS, may make short-term advances to a savings association member.

(2) Such request must certify that the member:

(i) Is solvent but presents a supervisory concern to the OTS because of the member's financial condition; and

(ii) Has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

(b) *Terms and conditions.* Advances made by a Bank to a member savings association under this section shall:

(1) Be subject to all applicable collateral requirements of the Bank, this part and section 10(a) of the Act (12 U.S.C. 1430(a)); and

(2) Be at the interest rate applicable to advances of similar type and maturity that are made available to other members that do not pose such a supervisory concern.

§ 935.19 Liquidation of advances upon termination of membership.

If an institution's membership in a Bank is terminated, the Bank shall determine an orderly schedule for liquidating any indebtedness of such member to the Bank; this section shall not require a Bank to call any such indebtedness prior to maturity of the advance. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment.

Subpart B—Advances to Nonmembers

§ 935.20 Scope.

The requirements of subpart A of this part apply to this subpart, except as otherwise provided in § 935.21 and § 935.22 of this subpart.

[58 FR 29477, May 20, 1993]

§ 935.21 Advances to the Savings Association Insurance Fund.

(a) A Bank may, upon receipt of a written request from the FDIC, make advances to the FDIC for the use of the Savings Association Insurance Fund. The Bank shall provide a copy of such request to the Board.

(b) Such advances shall:

(1) Bear a rate of interest not less than the Bank's marginal cost of funds, taking into account the maturities involved and reasonable administrative costs;

(2) Be for a maturity acceptable to the Bank;

(3) Be subject to any prepayment, commitment or other appropriate fees of the Bank; and

(4) Be adequately secured by collateral acceptable to the Bank.

§ 935.22 Advances to nonmember mortgagees.

(a) *Authority.* Subject to the provisions of the Act and this part, a Bank may make advances to an entity that is not a member of the Bank if the entity qualifies as a nonmember mortgagee pursuant to section 10b(a) of the Act, as amended (12 U.S.C. 1430b(a)), and paragraph (b) of this section. A Bank may lend only to a nonmember

mortgagee whose principal place of business, as defined in part 933 of this chapter, is located in the Bank's district.

(b) *Eligible nonmember mortgagee.* To qualify for an advance as a nonmember mortgagee, an entity must meet the following requirements:

(1) *Charter.* It must be chartered under law and have succession. A corporation, another entity that has rights, characteristics and powers under applicable law similar to those granted a corporation, or a government agency, meets this requirement;

(2) *Regulation.* It must be subject, pursuant to statute or regulation, to the inspection and supervision of a Federal, state or local government agency;

(3) *Housing finance activity.* (i) The entity's principal activity in the mortgage field must consist of lending its own funds, which may include appropriated funds in the case of a Federal, state or local government agency;

(ii) An entity meets the requirement in paragraph (b)(3)(i) of this section, notwithstanding that the majority of its total operations are unrelated to mortgage lending, if the majority of its mortgage activity conforms to this requirement;

(iii) An entity that acts principally as a broker for others making mortgage loans, or whose principal activity is to make mortgage loans for the account of others, does not meet the requirement in paragraph (b)(3)(i) of this section; and

(4) *HUD approval.* The entity must be approved by the Department of Housing and Urban Development (HUD) as a "mortgagee" pursuant to HUD regulations (24 CFR part 202), under title II of the National Housing Act (12 U.S.C. 1707 through 1715z-20).

(c) *Determination of nonmember mortgagee and SHFA eligibility.* (1) To qualify for advances under section 10b of the Act (12 U.S.C. 1430b), an applicant must be certified as an eligible nonmember mortgagee by the Board or its designee.

(2) A nonmember seeking access to advances under section 10b of the Act shall submit to the appropriate Bank:

(i) Documentation evidencing that it meets all of the requirements in §935.22(b) of this part; and

(ii) Financial or other information, as required by the Bank, that will enable the Bank to determine that advances may be safely made to the nonmember.

(3) A nonmember seeking access to advances as a SHFA under section 10b(b) of the Act (12 U.S.C. 1430b(b)) shall submit to the appropriate Bank documentation evidencing that it is a SHFA as defined in §935.1 of this part.

(4) The appropriate Bank shall be the Bank whose district includes the state where the nonmember's principal place of business, as defined in part 933 of this chapter, is located.

(5) The documentation submitted to the Bank by the nonmember, and the Bank's evaluation of the nonmember's financial condition, shall be forwarded by the Bank to the Board for review and approval.

(6) The Board will notify the Bank of the Board's determination regarding the nonmember's eligibility to receive advances under section 10b(a) and (b) of the Act.

(d) *Eligible collateral for advances to nonmember mortgagees—(1) General.* A Bank may grant an advance to a nonmember mortgagee pursuant to this section on the security of the following collateral:

(i) Mortgage loans insured by the Federal Housing Administration of HUD, pursuant to title II of the National Housing Act (12 U.S.C. 1707 through 1715z-20); or

(ii) Securities representing an interest in the principal and interest payments due on a pool of mortgage loans, all of which mortgage loans meet the requirements of paragraph (d)(1)(i) of this section. A Bank shall require a nonmember mortgagee using collateral as described in this paragraph (d)(1)(ii) to provide evidence that such securities are backed solely by mortgages of the type described in paragraph (d)(1)(i) of this section.

(2) *Additional eligible collateral for special advances to SHFAs—(i) Eligible collateral.* Advances made to SHFAs for the purpose of facilitating mortgage lending that benefits individuals or

families meeting the income requirements set forth in 26 U.S.C. 142(d) or 143(f) may also be secured by:

(A) Collateral described in §935.9(a) (1) or (2) of this part; or

(B) Other real estate-related collateral, eligible under §935.9(a) (4) of this part, provided such collateral is comprised of mortgage loans on one-to-four family or multifamily property and the acceptance of such collateral will not increase the total amount of advances to such SHFA secured by such collateral beyond 30 percent of the SHFA's GAAP capital, as computed by the Bank.

(ii) *Use of funds.* Prior to making an advance pursuant to this paragraph (d)(2), a Bank shall obtain written certification from the SHFA that the advance proceeds shall be used for the purpose described in paragraph (d)(2)(i) of this section.

(e) *Terms and conditions—(1) General.* A Bank, in its discretion, shall determine whether, and on what terms, it will make advances to eligible nonmember mortgagees, subject to the provisions of this paragraph (e).

(2) *Advance pricing—(i) Costs.* Each Bank making an advance to a nonmember mortgagee:

(A) Shall price such advance to cover the funding, operating and administrative costs associated with making the advance; and

(B) May price such advance to reflect the credit risk of lending to the nonmember mortgagee, and may apply other reasonable differential pricing criteria associated with such lending, provided each Bank applies such pricing criteria equally to all of its nonmember mortgagee borrowers.

(ii) *Compensation for lack of capital investment.* (A) The price of an advance to a nonmember mortgagee shall compensate the Bank for the lack of a capital stock investment by the nonmember mortgagee in the Bank.

(B) A Bank may satisfy this requirement by requiring the nonmember mortgagee to maintain with the Bank a compensating balance. At the discretion of the Bank, such compensating balance may bear interest.

(3) *Limits on advances.* The principal amount of any advance made to a nonmember mortgagee may not exceed 90

percent of the unpaid principal of the mortgage loans or securities described in paragraph (d)(1) of this section that are pledged as security for the advance. This requirement does not apply to collateral pledged by SHFAs to secure special advances as described in §935.22(d) (2) of this part.

(f) *Loss of eligibility.* (1) A Bank shall require each nonmember mortgagee that applies for an advance under this section to agree in writing to inform the Bank promptly of any change in its status as a nonmember mortgagee.

(2) If a nonmember mortgagee borrower ceases to fulfill the eligibility requirements for a nonmember mortgagee pursuant to paragraph (b) of this section, a Bank may not extend a new advance or renew an existing advance to such entity, until the entity has satisfied the Board that the entity again fulfills the requirements for a nonmember mortgagee contained in this section.

(g) *Verification of nonmember mortgage requirements.* A Bank may, from time to time, require a nonmember mortgagee borrower to provide evidence that such institution continues to satisfy all of the qualifications and requirements contained in this section.

[58 FR 29477, May 20, 1993]

PART 936—COMMUNITY SUPPORT REQUIREMENTS

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AUTHORITY: 12 U.S.C. 1422a, 1422b, 1429, 1430 (a), (g), (i), and (j), and 1432(a).

SOURCE: 56 FR 58647, Nov. 21, 1991, unless otherwise noted.

§ 936.1 Definitions.

(a) *Advance* means a loan, provided pursuant to a formal agreement supported by a promissory note and fully