

- (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 of this subpart.

**§ 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.

**PART 940—[REMOVED]**

2. Part 940 is removed and reserved.

Dated: April 26, 1993.

By the Federal Housing Finance Board  
 Daniel F. Evans, Jr.,  
 Chairman.  
 [FR Doc. 93-11305 Filed 5-19-93; 8:45 am]  
 BILLING CODE 6725-01-0

**FEDERAL HOUSING FINANCE BOARD**

**12 CFR Part 935**

[No. 93-44]

**Advances to Nonmember Mortgagees**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Interim final rule and request for comments.

**SUMMARY:** The Federal Housing Finance Board (Board) is amending its final rule on Federal Home Loan Bank (Bank) advances to establish revised and new requirements governing advances to nonmember mortgagees, and to implement provisions of the Housing and Community Development Act of 1992 (HCDA) making it easier for qualified nonmember mortgagees that are state housing finance agencies (SHFAs) to receive special purpose advances.

**DATES:** *Effective date:* June 22, 1993.

*Comment date:* Comments must be received by July 19, 1993.

**ADDRESSES:** Send comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Christine M. Freidel, Financial Analyst, (202) 408-2976, Thomas D. Sheehan, Assistant Director, (202) 408-2870, District Banks Directorate; James H. Gray Jr., Associate General Counsel, (202) 408-2552, Sharon B. Like, Attorney-Advisor, (202) 408-2930, Charles Szlenker, Attorney-Advisor, (202) 408-2554, Brandon B. Straus, Attorney-Advisor, (202) 408-2589, Office of Legal & External Affairs; Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

On October 1, 1992, the Board published for public comment a proposed rule containing amendments to its regulations governing Bank advances. See 57 FR 45338 (Oct. 1, 1992). The proposed rule included a discussion of the terms and conditions under which the Banks may extend credit in the form of advances to nonmember mortgagees under section 10b of the Federal Home Loan Bank Act (Act). 12 U.S.C. 1430b. Subsequent to

publication of the proposed rule, Congress enacted the HCDA, Pub. L. 102-550, 106 Stat. 3672 (1992). HCDA section 1392 amended section 10b of the Act, 106 Stat. at 4009 (to be codified at 12 U.S.C. 1430b(b)), by recodifying the existing text of section 10b as section 10b(a), and creating a new section 10b(b).

New section 10b(b) of the Act establishes special collateral requirements for advances to SHFAs that are made for the purpose of facilitating mortgage lending that benefits individuals and families meeting the income requirements specified in sections 142(d) or 143(f) of the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 142(d), 143(f).

In general, under section 10b(a) of the Act, eligible nonmember mortgagees may pledge only FHA-insured mortgages or securities backed by such mortgages as collateral for Bank advances. However, pursuant to new section 10b(b) of the Act, an advance to a SHFA eligible under the nonmember mortgagee lending requirements may be secured by collateral other than FHA-insured mortgages, provided the advance proceeds are used for the purpose of facilitating mortgage lending that benefits certain low- and moderate-income individuals and families, the advance otherwise meets the requirements of section 10(a) of the Act, and any real estate collateral pledged as security for the advance is comprised of single family or multifamily residential mortgages.

The HCDA amendment to the Act requires changes to the nonmember mortgagee provisions in the proposed advances rule. Instead of withdrawing the proposed advances rule and reissuing it for comment with these changes incorporated, the Board is addressing the nonmember mortgagee requirements in this interim final rule. The final advances rule, which does not include the nonmember mortgagee provisions, will be published elsewhere in this issue of the Federal Register.

The Board received four comment letters addressing the nonmember mortgagee provisions published in its proposed advances rule. In general, the letters expressed support for the proposed provisions. A discussion of the comment letters is included in the analysis of this interim final rule.

The Board invites comments on all aspects of this interim final rule on nonmember mortgagee advances.

**II. Advances to Nonmember Mortgagees****A. Section by Section Analysis**

This interim final rule amends § 935.20 of the final advances rule to provide that advances to nonmember mortgagees generally shall be subject to the provisions in subpart A of part 935, governing advances to Bank members, except as otherwise provided in § 935.22 of subpart B, which applies specifically to advances to nonmembers. This ensures that advances to nonmembers operate within the same regulatory framework as member advance programs and without special benefits to nonmembers.

Section 935.22(a) of this interim final rule authorizes a Bank, subject to the Act and this part 935, to 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 and § 935.22(b) of the interim final rule.

Under section 10b(a) of the Act, as amended, a Bank may make advances to nonmembers that are approved mortgagees under title II of the National Housing Act (NHA), 12 U.S.C. 1707 *et seq.* See 12 U.S.C. 1430b(a). The administration of title II of the NHA is the responsibility of the Federal Housing Administration (FHA), a unit of the Department of Housing and Urban Development (HUD). HUD approval of an entity as a mortgagee authorizes such entity to buy and sell FHA-insured mortgages.

Section 935.22(b) of the interim final rule incorporates the four statutory eligibility requirements that an entity must meet in order to be designated a nonmember mortgagee eligible to borrow from a Bank:

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

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

(3) The mortgagee must lend its own funds as its principal activity in the mortgage field; and

(4) The mortgagee must be approved by HUD pursuant to HUD's regulations (24 CFR part 202), under title II of the NHA (12 U.S.C. 1707 through 1715z-20).

One comment letter recommended that the language in the Act defining nonmember mortgagees specifically include the mortgage banking subsidiaries of member institutions.

Such a change would require amendment of the Act by Congress. However, Bank advances may be available to such entities under the Banks' authority to lend to eligible nonmember mortgagees, if they meet the eligibility criteria set forth in the Act and in this interim final rule.

The Act provides that advances made under section 10b(a) are not subject to certain other provisions of the Act. See 12 U.S.C. 1430b(a). For example, such advances are not subject to member stock purchase and collateral requirements, or to restrictions on Bank lending to members that are not Qualified Thrift Lenders (QTLs). See, e.g., 12 U.S.C. 1426(b), 1430(a), 1430(e)(1)-(3). However, as noted above and as provided in the proposed advances rule, § 935.20 of the interim final rule makes the regulatory requirements applicable to the Banks' member advances programs also applicable to their nonmember advances programs, except as specifically provided in § 935.22 of the interim final rule. The Board expects the Banks to apply the advance application requirements, credit underwriting standards, collateral and safekeeping procedures, restrictions on lending to institutions without positive tangible capital, advance maturity requirements, prepayment fees, and other requirements applicable to members under subpart A of part 935 and the Board's policy guidelines, no less stringently to eligible nonmember mortgagees.

Section 935.22(c) of the interim final rule establishes the procedure by which an entity qualifies as a nonmember mortgagee eligible to receive Bank advances under section 10b of the Act. An entity seeking to establish its eligibility for advances as a nonmember mortgagee is required to submit documentation evidencing that it meets all of the requirements set forth in § 935.22(b), to the Bank whose district includes the state in which the entity maintains its principal place of business. The Bank also shall require any financial or other documentation needed to enable the Bank to determine that advances may be safely made to the entity. Further, an entity seeking to qualify as a SHFA must submit documentation evidencing that it meets the definition of a SHFA under § 935.1 of this part. The Bank shall then forward the documentation, along with its evaluation of the applicant's financial condition, to the Board. The Board will review the documentation and notify the Bank of its determination regarding the nonmember's eligibility to receive advances under section 10b (a) and (b).

This provision is a change from the proposed advances rule, under which the Banks would have had the responsibility for determining nonmember mortgagee eligibility. This interim final rule retains the authority to determine nonmember mortgagee eligibility with the Board to ensure that a uniform review process is developed to determine nonmember mortgagee eligibility.

Section 935.22(d)(1) of the interim final rule implements the Act by providing that nonmember mortgagee advances shall, in general, be collateralized by FHA-insured mortgages. See 12 U.S.C. 1430b(a). This section permits a Bank to additionally accept as collateral, securities representing an interest in the principal and interest payments due on a pool of FHA-insured mortgage loans, provided the Bank obtains evidence from the nonmember mortgagee that the securities are backed solely by FHA-insured mortgages.

Section 935.22(d)(2) of the interim final rule implements the special collateral requirements applicable to certain advances to SHFAs under section 10b(b) of the Act. Such advances may be secured by collateral other than FHA-insured mortgages, provided that the advances otherwise meet the requirements of section 10(a) of the Act and any real estate-related collateral is comprised of single family or multifamily residential mortgage loans as described specifically in § 935.22(d)(2)(i) herein. In order for advances to qualify for the expanded collateral treatment, the advance proceeds must be used for the purpose of facilitating mortgage lending that benefits individuals or families with income levels specified in sections 142(d) or 143(f) of the IRC. See 26 U.S.C. 142(d), 143(f).

Section 935.22(d)(2)(i)(A) of the interim final rule provides that SHFAs using advances for the special purpose described above may pledge collateral eligible under sections 10(a) (1) or (2) of the Act, *i.e.*, fully disbursed, whole first mortgages on improved residential real property, agency and privately issued mortgage-backed securities, and government securities. See 12 U.S.C. 1430(a) (1), (2). SHFAs may not pledge deposits in a Bank, generally eligible under section 10(a)(3) of the Act, *see id.* section 1430(a)(3), because SHFAs generally are not eligible under the Act to maintain such deposits, except for the limited purpose of maintaining compensating balances as discussed below. See 12 U.S.C. 1431(e)(1).

Special purpose advances may, to a limited extent, be secured by collateral

eligible under section 10(a)(4) of the Act, see *id.* section 1430(a)(4), provided the collateral is comprised of single family or multifamily residential mortgage loans and, pursuant to section 10(a)(4) of the Act, a security interest in such collateral can be perfected. Consistent with the limit on category (4) collateral pledged by members under section 10(a)(4) of the Act, § 935.22(d)(2)(i)(B) of the interim final rule limits collateral pledged under this section to 30 percent of a SHFA's capital, calculated according to Generally Accepted Accounting Principles (GAAP), as determined by the Bank.

Section 935.22(d)(2)(ii) of the interim final rule requires that a Bank, prior to funding an advance pursuant to paragraph (d)(2), obtain written certification from the SHFA that the proceeds of the advance shall be used for the purposes described in section 10(b) of the Act. The interim final rule does not provide for the use of a proxy mechanism, similar to that used in the final advances rule to ensure that advances to non-QTLs are used only for residential housing finance purposes because, unlike commercial banks and savings associations, SHFAs do not produce uniform financial statements on a regular basis. See 12 CFR 935.13.

Section 935.22(e)(1) of the interim final rule provides that 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). As in the proposed advances rule, § 935.22(e)(2) requires the Banks to price advances to nonmember mortgagees to cover the funding, operating and administrative costs associated with making such advances. The pricing may reflect the credit risk associated with lending to the nonmember mortgagee, and other reasonable differential pricing criteria, provided that the Bank applies the criteria for such differential pricing equally to all nonmember mortgagee borrowers. One Bank comment letter expressed support for these pricing provisions.

Consistent with the proposed advances rule, § 935.22(e)(2)(ii) of the interim final rule provides that the pricing of advances to a nonmember mortgagee shall compensate the Bank for the absence of a capital stock investment by the nonmember mortgagee in the Bank. A Bank may implement this provision by requiring the nonmember mortgagee to maintain a compensating balance with the Bank. In response to a Bank comment letter requesting clarification as to whether a

compensating balance maintained by a nonmember mortgagee may be interest bearing, the interim final rule provides the Banks with the discretion to make such a determination.

Section 935.22(e)(3) of the interim final rule provides that, in accordance with section 10(b) of the Act, the principal amount of any advance made to a nonmember mortgagee may not exceed 90 percent of the unpaid principal of FHA mortgage collateral pledged as security. This requirement does not apply to collateral pledged by SHFAs to secure special purpose advances as described in § 935.22(d)(2).

Section 935.22(f)(1) of the interim final rule provides that a Bank shall require a nonmember mortgagee applying for an advance to agree in writing to inform the Bank promptly of any change in its status as a nonmember mortgagee. The Bank will not be required to call outstanding advances to an entity that loses its HUD-approved mortgagee status or otherwise ceases to fulfill the eligibility qualifications for a nonmember mortgagee under § 935.22(b) of the interim final rule.

However, pursuant to § 935.22(f)(2) of the interim final rule, the Bank may not extend a new advance or renew an existing advance to the entity, until the Board is satisfied that the entity again fulfills the requirements in § 935.22(b).

Section 935.22(g) of the interim final rule provides that a Bank may, from time to time, require a nonmember mortgagee borrower to provide evidence that it continues to satisfy all of the qualifications and requirements contained in this section.

A comment letter from a trade association recommended that advances to nonmember mortgagees be included in the statutory 30 percent Bank System limit on advances to members that are not QTLs. See 12 U.S.C. 1430(e)(2), as amended. However, the Act does not require that advances to nonmembers be included in the aggregate limit on Bank advances to non-QTLs. The non-QTL borrowing restrictions in the Act apply only to members, and the eligible mortgagees that borrow funds from the Banks under the authority of section 10(b) are not members. Therefore, advances to nonmember mortgagees have not been made subject to this requirement.

### III. Notice and Public Participation

#### A. Administrative Procedure Act

For the reasons discussed below, the Board is not required by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, to publish a general notice of proposed rulemaking for this interim final rule. However, the Board

considers comments from the public helpful in formulating clear and effective regulations. Accordingly, the Board is requesting public comment on this interim final rule.

Publication of notice of a proposed rulemaking is not required because the Board finds good cause that notice and comment procedure is impractical, unnecessary, and contrary to the public interest in this instance. See 5 U.S.C. 553(b)(B). Compliance with public procedure requirements in the adoption of this interim final rule would be contrary to the public interest. HCDA section 1392 amended the Act to expand the availability of Bank credit to SHFAs eligible to borrow from the Banks as eligible nonmember mortgagees and who are engaged in lending that supports a specific public purpose. The Board believes that it is important to expedite SHFA access to Bank advances in order to facilitate the flow of funds for the development of housing for low- and moderate-income individuals and families.

Compliance with public notice and comment procedures also would be impractical because the amendments made by the interim final rule are part of a group of amendments to the Board's regulations on Bank advances that were published as a final rule in May 1993, and that will become effective in June 1993. The burden on the Banks, their members, nonmember mortgagees and others seeking to understand and comply with the Board's regulations is made easier by having all of the regulations pertaining to Bank advances considered concurrently. In order to preserve the regulatory process initiated by the Board's revisions to its advances regulations, the interim final rule should be published concurrently with the final advances rule.

In addition, publication of portions of this interim final rule for notice and comment is unnecessary because those provisions of the interim final rule incorporated from the previously published proposed rule on advances have already been subject to public notice and comment procedures. See 57 FR 45338 (Oct. 1, 1992).

The Board therefore finds good cause that compliance with notice and comment procedures in adoption of this interim final rule would be impractical, unnecessary and contrary to the public interest. See 5 U.S.C. 553(b)(B).

#### B. Effective Date

The Board is adopting this rule as an interim final rule, to be effective on June 22, 1993. However, the Board is incorporating a 60-day comment period from the date of publication of this rule

in the Federal Register, because the Board recognizes the importance and value of public input on Bank System operations. The comments received during this 60-day period may result in revisions to this rule after its effective date.

**Regulatory Flexibility Act**

The Board is not required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, to prepare a regulatory flexibility analysis for this interim final rule. The Regulatory Flexibility Act requires that a regulatory flexibility analysis be prepared whenever an agency promulgates a proposed or final rule after being required by APA section 553, *id.* at sec. 553, to publish a general notice of proposed rulemaking. See 5 U.S.C. 603(a), 604(a). The Board is not required to publish a general notice of proposed rulemaking for this interim final rule, because the Board has found good cause that notice and comment is

impractical, unnecessary and contrary to the public interest in the adoption of this interim final rule. See *id.* sec. 553(b)(B), and III.A. above. Accordingly, the Board is not required to prepare such an analysis for this interim final rule.

**Paperwork Reduction Act**

The information collection requirements contained in this interim final rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. The Finance Board has requested that OMB approve the information collection by the date this interim final rule becomes effective.

The information collection is entitled "Evidence of Nonmember Mortgagee Status," and is described in more detail in the discussion of § 935.22 (b) and (c) of this part. Any institution that is not a member of a Bank that seeks advances as a nonmember mortgagee will be

required to provide documentation to the Board evidencing that the nonmember meets the eligibility requirements to receive Bank advances as a nonmember mortgagee described in § 935.22(b) of this part.

Further, a nonmember mortgagee that seeks to qualify as a SHFA in order to use the additional collateral eligible for special advances to SHFAs must provide documentation to the Board evidencing that it qualifies as a SHFA pursuant to § 935.22(c)(3) of this part.

Any comments on this information collection should be sent to Gary Waxman, Paperwork Reduction Project, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

In accordance with 5 CFR 1320.12 and 1320.15, the following table discloses the estimated annual reporting burden for the collection of information in this interim final rule:

**ESTIMATED ANNUAL REPORTING BURDEN**

Description of information collected	Average number of respondents	x	Average number of responses per respondent	=	Total average responses	x	Average hours per response	=	Total average hours
Evidence of nonmember mortgagee status .....	20		1		20		5		100
Total .....	20		1		20		5		100

**List of Subjects in 12 CFR Part 935**

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Board hereby amends title 12, chapter IX, subchapter B, part 935, Code of Federal Regulations, as set forth below.

**SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM**

**PART 935—ADVANCES**

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

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

2. Section 935.1 is amended by adding the definition of "State housing finance agency" in appropriate alphabetical order to read as follows:

**§ 935.1 Definitions.**

\* \* \* \* \*  
 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.

3. Section 935.20 is revised to read as follows:

**§ 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.

4. Section 935.22 is added to read as follows:

**§ 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 mortgagee 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.

Dated: April 26, 1993.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,  
Chairman.

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