

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on March 6, 1997.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance
Corporation.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 97-18]

Advances to Nonmembers

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) is amending its regulation on Federal Home Loan Bank (FHLBank) advances to nonmembers. The rule establishes uniform eligibility requirements and review criteria for determining whether an entity may be certified as a nonmember mortgagee eligible to receive FHLBank advances and devolves responsibility for making that determination from the Finance Board to the FHLBanks. The Finance Board also is revising the definition of the term "state housing finance agency" (SHFA) to include all tribally designated housing entities (TDHEs). The rule is part of the Finance Board's continuing effort to devolve management and governance responsibilities to the FHLBanks and is consistent with the goals of the National Homeownership Strategy and the Regulatory Reinvention Initiative of the National Performance Review.

EFFECTIVE DATE: The final rule will become effective April 14, 1997.

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SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10b of the Federal Home Loan Bank Act (Bank Act) establishes the requirements for access by nonmember mortgagees to FHLBank advances. See 12 U.S.C. 1430b. In order to be certified as a nonmember mortgagee, an entity must: (1) Be approved by the Department of Housing and Urban Development (HUD) as a "mortgagee" under title II of the National Housing Act; (2) be chartered under law and have succession; (3) be subject to the inspection and supervision of a governmental agency; and (4) lend its own funds as its principal activity in the mortgage field. *Id.* 1430b(a).

Under section 10b(a) of the Bank Act, advances to nonmember mortgagees are not subject to the general collateral requirements of section 10(a) of the Bank Act. *Id.* Instead, a FHLBank may make advances to nonmember mortgagees only upon the security of mortgages insured by the Federal Housing Administration (FHA) of HUD under title II of the National Housing Act. *Id.* The amount of any advance may not exceed 90 percent of the unpaid principal of the collateral pledged as security for the advance. *Id.*

The Bank Act imposes less restrictive collateral requirements on certain advances to nonmember mortgagees that are SHFAs. *Id.* 1430b(b). Under section 10b(b) of the Bank Act, advances to SHFA nonmember mortgagees that facilitate mortgage lending to low- or moderate-income individuals and families (meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code, generally up to 115 percent of the area median income) need not be secured by FHA-insured mortgage loans if the advances otherwise meet the requirements of section 10(a) of the Bank Act and any real estate collateral pledged to secure the advances is comprised of single- or multi-family residential mortgages. *Id.* 1430b(b), 1430(a); 26 U.S.C. 142(d), 143(f). Under section 10(a), the four categories of collateral are eligible to secure advances to members are: (1) Fully disbursed whole first mortgage loans on improved residential real property that are not more than 90 days delinquent or securities representing a whole interest in such mortgages; (2) securities issued, insured, or guaranteed by the United States government or any agency thereof; (3) deposits of a FHLBank; and (4) other real estate

related collateral if such collateral has a readily ascertainable value and the FHLBank can perfect its interest therein.¹

In October 1996, the Finance Board published for comment a proposed rule that would transfer the authority to certify an entity as a nonmember mortgagee eligible to receive FHLBank advances from the Finance Board to the FHLBanks subject to uniform review criteria for determining compliance with statutory and regulatory eligibility requirements. See 61 FR 52727 (Oct. 8, 1996). The 60-day public comment period closed on December 9, 1996. See *id.* The Finance Board received a total of 12 comments in response to the proposed rule, 6 from FHLBanks, 4 from trade associations, and 1 each from a certified SHFA nonmember mortgagee and a federal agency. All of the commenters generally supported the Finance Board's proposal. Specific comments are discussed in Part II of the SUPPLEMENTARY INFORMATION.

II. Analysis of Public Comments and the Final Rule

A. Definitions

The final rule amends the definition of the term "state housing finance agency" that appears in § 935.1 to include TDHEs² established under both tribal and state law as SHFAs. This will permit every TDHE nonmember mortgagee that makes mortgage loans to low- and moderate-income members of the Indian community to take advantage of the more flexible collateral requirements for securing advances to SHFA nonmember mortgagees. See *supra* part I; 12 U.S.C. 1430b(b). Each of the eight commenters addressing this issue expressly supported inclusion of all TDHEs in the definition and it is being adopted as proposed. A trade association commenter suggested that entities other than SHFAs should not be

¹ See 12 U.S.C. 1430(a)(1)-(4). Other acceptable real estate related collateral includes, but is not limited to: privately issued mortgage-backed securities other than those eligible under category 1; second mortgage loans, including home equity loans; commercial real estate loans; and mortgage loan participations. See 12 CFR 935.9(a)(4)(ii). The aggregate amount of outstanding advances secured by such collateral may not exceed 30 percent of a FHLBank member's GAAP capital. See 12 U.S.C. 1430(a)(4); 12 CFR 935.9(a)(4)(iii).

² Congress enacted the Native American Housing Assistance and Self Determination Act of 1996 in October 1996. See Pub. L. 104-330, 101 Stat. 4016 (Oct. 26, 1996). The Act authorizes Indian tribes to establish TDHEs to run their housing programs. See *id.* sec. 102(c)(4)(K), 110 Stat. 4025. TDHEs include all existing Indian Housing Authorities as well as other entities created by Indian tribes to provide assistance for affordable housing for tribal members. See *id.* sec. 4(21), 110 Stat 4021.

eligible for certification as nonmember mortgagees. However, because section 10b of the Bank Act clearly sets forth two classes of nonmember mortgagees, one composed of SHFAs and one composed of non-SHFAs, see 12 U.S.C. 1430b, the suggestion would be contrary to the Bank Act and the Finance Board has not adopted it in the final rule.

The Finance Board received two responses to a specific request for comments regarding the inclusion of other groups in the definition of SHFA. One commenter noted its belief that the definition as written is sufficiently broad to cover the Department of Hawaiian Homelands, a Hawaii state agency with responsibility for administering the Hawaiian Homes Commission Act on behalf of Native Hawaiians. Without additional detailed information, the Finance Board cannot determine whether a particular entity meets the requirements of the SHFA definition. Under the final rule, the Banks would make this determination at the time an entity applies for certification as a nonmember mortgagee. The other commenter suggested including certain nonprofit community development financial institutions (CDFIs) in the SHFA definition. The Finance Board based its definition of SHFA on the meaning given that term for purposes of other provisions in the Bank Act. As defined elsewhere in the Bank Act, the term SHFA requires the entity to be a government instrumentality. See *id.* 1441a(c)(9)(P), 1441a-1(1). Accordingly, the Finance Board's definition of SHFA requires an entity to be a government instrumentality. Since nonprofit CDFIs are not government instrumentalities, they cannot be certified as SHFA nonmember mortgagees. However, nonprofit CDFIs that meet the eligibility requirements currently may be certified as nonmember mortgagees.

B. Advances to the Savings Association Insurance Fund

The Finance Board received no comments on § 935.20 and is adopting the section as proposed. Section 935.20, which implements section 31(k) of the Bank Act, see *id.* 1431(k), provides that an FHLBank may make advances to the Federal Deposit Insurance Corporation for the use of the Savings Association Insurance Fund under certain circumstances and subject to specific conditions.

C. Scope

Section 935.21 provides that advances to nonmember mortgagees generally are subject to subpart A of part 935, which governs advances to FHLBank members.

See 12 CFR 935.1-935.19. A trade association commenter suggested that the final rule prevent the FHLBanks from applying requirements, terms, and conditions to nonmember mortgagees that are not also applied to members. The Finance Board believes that this provision should achieve that result. One exception to this general requirement relates to the non-qualified thrift lender (non-QTL) provisions of the Finance Board's advances regulation. See *id.* § 935.13. Since the statutory limit on aggregate FHLBank lending applies only to advances to non-QTL members, see 12 U.S.C. 1430(e)(2) (emphasis added), and nonmember mortgagees are not FHLBank members, advances to nonmember mortgagees need not be included in the aggregate limit on advances to non-QTLs. A trade association commenter strongly supported this provision as offering assurance that nonmember mortgagees would not limit non-QTL members' access to advances.

D. Nonmember Mortgagee Eligibility Requirements

1. Eligibility Criteria

Section 935.22(a) authorizes the FHLBanks to make advances to an entity that is not a member of the FHLBank if the FHLBank certifies the entity as a nonmember mortgagee. Section 935.22(b) sets forth the eligibility requirements an entity must meet in order to be certified as a nonmember mortgagee. In addition to the four statutory eligibility criteria discussed in part 1 of the **SUPPLEMENTARY INFORMATION**, to ensure the safety and soundness of the FHLBanks, the Finance Board has incorporated a financial condition criterion that requires an applicant's financial condition to be such that an FHLBank may safely lend to it. This is the same financial condition criterion that applies currently to applicants for membership in an FHLBank. See *id.* 1424(a)(2)(B); 12 CFR 933.6(a)(4). The Finance Board received no comments on these provisions and is adopting them without change from the proposal.

2. Review Criteria

Section 935.22(c) establishes uniform review criteria the FHLBanks must apply to determine whether an applicant meets the eligibility requirements for certification as a nonmember mortgagee. If an applicant fulfills each criterion to the satisfaction of the FHLBank to which it has applied, it will be deemed to meet the eligibility requirements. Conversely, failure to fulfill each criterion to the satisfaction

of the FHLBank will render the applicant ineligible, subject to appeal to the Finance Board, to be certified as a nonmember mortgagee.

Under § 935.22(c)(1), an applicant is deemed to meet the requirement that it be approved under title II of the National Housing Act if it submits a current HUD Yearly Verification Report or other documentation issued by HUD stating that the applicant is an approved FHA mortgagee.

Under § 935.22(c)(2), an applicant is deemed to meet the requirement that it be a chartered institution having succession if it provides evidence satisfactory to the FHLBank that it is a government agency, or is chartered under state, federal, local, tribal, or Alaska Native village law as a corporation or other entity that has rights, characteristics, and powers similar to those granted a corporation. An FHLBank commenter noted that satisfactory evidence, such as statutory and regulatory materials, is usually readily available to the FHLBanks, and therefore suggested that the final rule require an applicant to provide only a citation to, rather than copies of, appropriate documents. For that reason, and to reduce the paperwork burden imposed on nonmember mortgagee applicants, the Finance Board has deleted the requirement that an applicant provide "documentary" evidence in the final rule. Of course, if an FHLBank should require copies of statutes, regulations, or other relevant documents, it has authority to require their submission under § 935.23(c)(1). See *infra*. In any case, an FHLBank must include copies of all documents upon which it relied in making its certification decision as part of the certification file required under § 935.23(c)(3). See *infra*.

Under § 935.22(c)(3), an applicant is deemed to meet the requirement that it be subject to the inspection and supervision of some governmental agency if it provides evidence satisfactory to the FHLBank that, pursuant to statute or regulation, it is subject to the inspection and supervision of a federal, state, local, tribal, or Alaska Native village governmental agency. Satisfactory evidence generally consists of a citation to, or copies of, relevant statutory and regulatory materials. For the same reasons as discussed above for § 935.22(c)(2), the Finance Board has deleted the requirement that an applicant provide "documentary" evidence in the final rule.

In order to establish an appropriate standard for the FHLBanks to determine whether an applicant meets the

inspection and supervision requirement, the Finance Board recast the illustrative examples in the proposal as standards for meeting the inspection and supervision requirements. The rule provides that an applicant will be deemed to meet the subject to inspection by a governmental agency requirement if there is a statutory or regulatory requirement that the applicant's books and records be audited or examined periodically by a governmental agency or an external auditor. This audit factor was listed as an example of inspection by a governmental agency in the proposed rule. The rule provides that an applicant will be deemed to meet the supervision by a governmental agency requirement if the governmental agency has statutory or regulatory authority to remove an applicant's officers or directors for malfeasance or misfeasance or otherwise exercise enforcement or administrative control over actions of the applicant. This removal factor was identified as an example of supervision by a governmental agency in the proposed rule.

Three commenters addressed the inspection and supervision requirement. A trade association commenter asked the Finance Board to include expressly legislative audits to meet the inspection requirement and removal by the governor to meet the supervision requirement. To accomplish the same end, a FHLBank commenter suggested defining the term "governmental agency" broadly to include the legislature and the governor. In response to these comments and to afford greater flexibility, the Finance Board has added a definition of the term "governmental agency" for purposes of this paragraph that includes the governor, legislature, and any other component of a federal, state, local, tribal, or Alaska Native village government with authority to act for or on behalf of that government. The third commenter asked whether a specific lender consortium that is examined jointly by federal and state financial institution regulators satisfies the supervision and inspection requirement. Without additional detailed information, the Finance Board cannot determine whether a particular entity meets the requirement. Under the final rule, the Banks would make this determination at the time an entity applies for certification as a nonmember mortgagee.

Under § 935.22(c)(4), an applicant is deemed to meet the mortgage activity requirement if it provides documentary evidence satisfactory to the FHLBank that it lends its own funds as its principal activity in the mortgage field.

A financial statement that includes mortgage loan assets and their funding liabilities generally will provide adequate documentary evidence. Since this type of financial information is not readily available to the FHLBanks, the requirement for an applicant to submit documentation remains in the final rule. For purposes of this requirement, the Finance Board considers the purchase of whole mortgage loans tantamount to "lending" an applicant's funds. In the case of a federal, state, local, tribal, or Alaska Native village government agency, the Finance Board considers appropriated funds to be an applicant's "own funds." An applicant will be deemed to satisfy this requirement even though the majority of its operations are unrelated to mortgage lending if its mortgage activity conforms to the regulatory criteria. A trade association commenter expressly supported the provision, stating that an applicant 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 this requirement.

Under § 935.22(c)(5), an applicant is deemed to meet the financial condition requirement if the FHLBank determines that advances may be extended safely to the applicant. In order to make that determination, the final rule requires an applicant to submit its most recent regulatory audit or examination report and external audit report. The Finance Board added a requirement to submit these specific financial documents in the final rule because a FHLBank commenter pointed out that applicants for FHLBank membership generally must submit such documents as part of their membership application, see 12 CFR 933.11, and that the information provided is often critical to analysis of an applicant's financial condition. The Bank also can require the applicant to submit additional documentary evidence, such as financial or other information.

3. State Housing Finance Agencies

In addition to meeting the eligibility requirements in § 935.22(b), any applicant seeking to take advantage of the more flexible collateral requirements for advances used to facilitate residential or commercial mortgage lending to certain low- and moderate-income families or individuals, must provide evidence satisfactory to the FHLBank that it is a SHFA as defined in § 935.1. See *supra* part II(A). Under § 935.22(d), satisfactory evidence generally consists of a copy of, or a citation to, the statutory and/or regulatory provisions outlining the

applicant's structure and responsibilities. For the same reasons as discussed above for § 935.22(c)(2), the Finance Board has deleted the requirement that an applicant provide "documentary" evidence in the final rule.

E. Nonmember Mortgage Applications

1. Devolution

As part of the Finance Board's continuing effort to devolve management and governance responsibilities to the FHLBanks, § 935.23(a) authorizes the FHLBanks to approve or deny all applications for certification as a nonmember mortgagee, subject to the requirements of the Bank Act and Finance Board regulations. Although all six commenters addressing this issue expressly supported devolution of decision making authority to the FHLBanks, one trade association commenter suggested delaying devolution until the FHLBanks have some experience in administering the final rule. Since the basis for the review criteria in the final rule is the standards previously applied by the FHLBanks and the Finance Board, no delay in devolution is required.

Four FHLBank commenters requested the authority to delegate application approvals to a committee of the FHLBank's board of directors, the FHLBank president, or a senior officer who reports directly to the president other than an officer responsible for business development. This would be consistent with the Finance Board's membership regulation and such authority is included in the final rule. See 12 CFR 933.3(a). Also consistent with the membership regulation, the final rule requires that only the FHLBanks' board of directors may deny certification as a nonmember mortgagee.

2. Application Process

The remainder of § 935.23 sets forth the procedures for submission and review of nonmember mortgage applications. Section 935.23(b) requires an applicant to submit an application that satisfies the requirements of the Bank Act and this subpart to the FHLBank of the district in which the applicant's principal place of business, as determined in accordance with 12 CFR 933.18, is located.

To ensure expeditious action on applications for certification as a nonmember mortgagee, § 935.23(c)(1) requires a FHLBank to act on an application within 60 calendar days of the date the FHLBank deems the application complete. To make certain that the time period provided for review

is not unduly restrictive, an application is deemed complete, thus triggering the 60-day time period, only after the FHLBank has obtained all required information and any other information it considers necessary to process the application. The rule permits the FHLBank to stop the 60-day period if it determines during the review process that additional information is necessary to process the application. The FHLBank must restart the 60-day time period where it stopped upon receiving the additional required information. The FHLBank must notify applicants in writing when the 60-day time period begins, stops, and starts again. One FHLBank commenter pointed out that under a parallel provision in the Finance Board's membership regulation, written notices are not required and requested similar treatment in this regulation. See 12 CFR 933.3(c). Written notice is necessary in order to provide an appropriate record for appellate and compliance review, therefore, the Finance Board is adopting the written notice requirement as proposed. Further, the Finance Board intends to clarify its membership regulation by including a written notice requirement in any future amendment.

Section 935.23(c)(2) requires the board of directors of the FHLBank, a duly delegated committee of the FHLBank's board of directors, the FHLBank president, or a senior officer who reports directly to the FHLBank president other than an officer with responsibility for business development to approve, or the board of directors of the FHLBank to deny, each application for certification as a nonmember mortgagee by a written decision resolution that states the grounds for the decision. In the proposed rule, the FHLBanks could not delegate certification approvals. As stated above, see *supra* part II(E)(1), the final rule prohibits delegation only of certification denials. The FHLBank must provide a copy of the decision resolution to the applicant and the Finance Board within three business days of the date of the decision on an application.

In order to provide an appropriate record for consideration of certification denial appeals and for determination by Finance Board examiners of a FHLBank's compliance with statutory and regulatory requirements, the Finance Board has added a new § 935.23(c)(3) that requires a FHLBank to maintain a certification file for each applicant. At a minimum, the certification file must include all documents submitted by the applicant or otherwise obtained or generated by the FHLBank concerning the applicant,

all documents the Bank relied upon in making its certification determination, including copies of statutes and regulations, and the decision resolution. The FHLBank must retain the certification file for at least three years after the date of its decision to approve or deny certification or the date the Finance Board resolves any appeal, whichever is later. The Finance Board's membership rule includes a similar recordkeeping requirement. See 12 CFR 933.2(c).

To ensure that the FHLBanks apply the nonmember mortgagee eligibility requirements and review criteria uniformly and fairly and treat similarly situated applicants in a consistent manner, § 935.23(c)(4) establishes a process by which applicants may appeal FHLBank certification denials to the Finance Board. This provision appeared at § 935.23(c)(3) in the proposed rule. Within 90 calendar days of the date of a FHLBank's certification denial, an applicant may submit a written appeal to the Finance Board with a copy to the FHLBank. The appeal must include the FHLBank's decision resolution and a statement of the basis for the appeal with sufficient facts, information, analysis, and explanation to support the applicant's position. The FHLBank whose action has been appealed must submit to the Finance Board a complete copy of the applicant's certification file as well as any relevant new materials it receives while the appeal is pending. The rule authorizes the Finance Board to request any additional information or supporting arguments it may require to decide the appeal. The Finance Board must make its decision within 90 calendar days of the date the applicant files an appeal.

F. Advances to Nonmember Mortgagees

Section 935.24 establishes the terms and conditions under which a FHLBank may make advances to a nonmember mortgagee. Under § 935.24(a), a FHLBank may lend only to a nonmember mortgagee whose principal place of business is located in the FHLBank's district.

1. Collateral Requirements in General

Section 935.24(b) sets forth the collateral requirements for advances to nonmember mortgagees. Pursuant to section 10(b)(a) of the Bank Act, 12 U.S.C. 1430b(a), and § 935.24(b)(1) of the final rule, a FHLBank may make advances to any nonmember mortgagee upon the security of FHA-insured mortgages, including securities representing a whole interest in a pool of FHA-insured mortgages, if the nonmember mortgagee provides evidence satisfactory to the

FHLBank that the securities are backed solely by qualifying mortgages.

2. SHFA Collateral Requirements

Section 935.24(b)(2) implements the less restrictive collateral requirements applicable to advances to a SHFA nonmember mortgagee, the proceeds of which will be used to facilitate mortgage lending that benefits certain low- and moderate-income individuals or families. See *supra* part I; 12 U.S.C. 1430b(b). Under § 935.24(b)(2)(i), a FHLBank may secure qualifying advances with: the collateral described in § 935.24(b)(1); collateral eligible under categories 1 or 2 of Bank Act section 10(a), 12 U.S.C. 1430(a)(1)-(2), as described in 12 CFR 935.9(a)(1) or (2); or, collateral eligible under category 4 of Bank Act section 10(a), 12 U.S.C. 1430(a)(4), as described in 12 CFR 935.9(a)(4), provided that such collateral is comprised of mortgage loans on one-to-four or multi-family residential property and the acceptance of such collateral will not increase the total amount of advances outstanding to the SHFA secured by such collateral beyond 30 percent of its GAAP capital, as computed by the FHLBank. A FHLBank commenter recommended that the rule specifically include as acceptable collateral for SHFA advances, collateral pledged by a FHLBank member to secure its obligations under a standby letter of credit issued for the benefit of a FHLBank that makes a SHFA nonmember mortgagee advance. The current Finance Board regulation concerning collateral for advances does not address this type of collateral. See 12 CFR 935.9. The Finance Board plans to consider this issue as part of a future rulemaking concerning FHLBank advances.

The proposed rule asserted that SHFA nonmember mortgagees would not have any Bank Act section 10(a) category 3 collateral available to secure FHLBank advances since a FHLBank may accept deposits only from FHLBank members, other FHLBanks, or other instrumentalities of the United States. See 12 U.S.C. 1430(a)(3), 1431(e)(1); 61 FR 52731. Three FHLBank commenters found this interpretation of the Bank Act overly restrictive. For the following reasons, the Finance Board agrees.³ Section 10(b) of the Bank Act

³The statement in the preamble to the proposed rule regarding acceptance of deposits from nonmember mortgagees was not meant to preclude a FHLBank from accepting deposits under section 11(e)(2) of the Bank Act for the purpose of providing correspondent banking services, provided that the nonmember mortgagee is an institution eligible to make application to become a FHLBank member. See 12 U.S.C. 1431(e)(2).

authorizes the FHLBanks to accept collateral that meets the requirements of section 10(a) to secure qualifying advances to SHFA nonmember mortgagees. See 12 U.S.C. 1430b(b). Section 10(a) of the Bank Act includes specifically deposits in a FHLBank as acceptable collateral. See *id.* 1430(a). The Finance Board believes that there is statutory authority to allow SHFA nonmember mortgagees to secure qualifying advances with cash collateral in the form of FHLBank deposits. Accordingly, the Finance Board has added a new paragraph, § 935.24(b)(2)(B), authorizing the FHLBanks to accept deposits in a FHLBank as security for SHFA nonmember mortgagee advances. Pursuant to the FHLBanks' incidental authority to do all things necessary to carry out the provisions of the Bank Act, see 12 U.S.C. 1431(a), (e)(1), and to facilitate acceptance of such collateral, the rule permits the FHLBanks to establish cash collateral accounts for SHFA nonmember mortgagees. This interpretation is consistent with the restriction on acceptance of deposits by the FHLBanks contained in section 11(e)(1) of the Bank Act, see *id.* 1431(e)(1), since the SHFA nonmember mortgagee will use the cash collateral account at the FHLBank only to secure advances and not to take advantage of FHLBank deposit programs, *i.e.*, SHFA nonmember mortgagees will not be able to use a FHLBank as a substitute for a commercial bank.

If a SHFA nonmember mortgagee wishes to pledge other than FHA-insured collateral, § 935.24(b)(2)(ii) requires it to certify first in writing to the FHLBank that it will use the proceeds of the advance so secured to facilitate qualifying mortgage lending. The final rule clarifies that qualifying mortgage lending includes both residential and commercial mortgage lending. A trade association commenter expressly supported this provision because it will allow SHFA nonmember mortgagees to help small businesses and promote economic development efforts.

3. Terms and Conditions for Advances

Section 935.24(c) outlines the terms and conditions for advances to nonmember mortgagees. Under § 935.24(c)(1), a FHLBank may exercise its discretion to determine whether, and on what terms, it will make advances to nonmember mortgagees. Section 935.24(c)(2) addresses advance pricing. The provision in the proposed rule requiring the FHLBanks to apply pricing criteria other than cost and credit risk to nonmember mortgagee advances in the same manner as they apply those

criteria to member advances was intended to make clear that the FHLBanks must treat all of their member and nonmember borrowers equally. One commenter thought the rule should expressly require the FHLBanks to price advances to SHFA nonmember mortgagees, given their public purpose, at the same rate as member advances. To ensure equal treatment, the final rule specifically applies the advance pricing requirements applicable to member advances to nonmember mortgagee advances. Accordingly, paragraph (c)(2)(i) requires a FHLBank to price advances to nonmember mortgagees in accordance with the requirements of § 935.6(b), the advance pricing requirements for member advances. It provides that the term "member" as used in § 935.6(b), also means "nonmember" for purposes of this section. Paragraph (c)(2)(ii) of the final rule requires a FHLBank to apply the pricing criteria that appear in § 935.6(b)(2), including credit and other risks of lending to a particular borrower and other reasonable differential pricing criteria, equally to all of its member and nonmember borrowers. The pricing criteria that appeared in the proposed rule are included in § 935.6(b).

The Finance Board proposed deleting the current requirement that nonmember mortgagee advances be priced to compensate a FHLBank for the lack of a capital stock investment in the FHLBank by the nonmember mortgagee. See 12 CFR 935.22(e)(2)(B)(ii); 61 FR 52731. The preamble to the proposed rule stated that such compensation was unnecessary since the additional earnings achieved through advances not supported by capital should enhance a FHLBank's return on equity. Seven commenters addressed this issue. Two commenters supported the proposal because the compensation mark-up strongly discourages nonmember mortgagees from using FHLBank advances. Four commenters recommended deletion of the requirement and replacement with a provision giving the FHLBanks discretion to adjust nonmember mortgagee advance prices by either requiring a compensating balance or including compensation for the lack of a capital stock investment as a reasonable pricing differential criteria in § 935.24(c)(3)(iii). One commenter believed that the requirement should remain in the rule.

The comments advocating a special mark-up on nonmember mortgagee advances generally highlighted three concerns. The first concern was that the added leverage associated with

nonmember mortgagee advances creates additional risk for which members should be compensated. For the following reasons, the Finance Board finds this argument to be unpersuasive. In order for nonmember lending to have a material impact on a FHLBank's leverage, the amount of advances outstanding to nonmember mortgagees would have to increase significantly over current levels. For example, advances to nonmember mortgagees at the FHLBank with the largest volume of such advances outstanding at the end of 1996 represented 0.1 percent of the FHLBank's total assets and 2 percent of its capital. In addition, fully secured nonmember mortgagee advances involve minimal credit risk. Therefore, the mark-up necessary to compensate members for any increased risk resulting from greater leverage would almost certainly be *de minimis*.

The second concern expressed generally by commenters was that, depending upon the relationship between the return paid on FHLBank stock, a member's alternative investments, and the cost of debt, a nonmember mortgagee might have a financial advantage from FHLBank borrowings that would allow it to compete for mortgages with members. For the following reasons, the Finance Board finds this argument to be unpersuasive. On the basis of the strong growth in voluntary membership since 1990, it appears that FHLBank dividend rates generally exceed the alternative investment rates available to members. For example, the average FHLBank dividend rate in 1996 was 120 basis points over the average one-year Treasury security and, since fourth quarter 1989, only two FHLBanks on eight occasions have paid a quarterly dividend rate below the average federal funds rate. Accordingly, investing in FHLBank stock typically should not put a member at a competitive disadvantage relative to nonmember mortgagees.

The third concern advanced by commenters in support of a compensation mark-up is that funding nonmember mortgagee advances may be more expensive to the extent that the cost of debt is higher than the mixture of debt and equity used to fund member advances. This argument also is unpersuasive. With few exceptions, FHLBank debt has been less expensive than equity, thus, advances funded solely with debt should be less expensive than those funded with a mix of equity and debt. In addition, under § 935.24(c)(2)(i), the FHLBanks must price a nonmember mortgagee advance to cover the funding, operating, and

administrative costs associated with making the advance.

After consideration of the comments, the Finance Board has determined that, given the current financial operations of the FHLBanks, there do not appear to be compelling economic circumstances to justify an additional compensation mark-up on nonmember mortgagee advances. Further, eliminating the mark-up should enhance the FHLBanks' statutory housing finance mission by providing more attractively priced funds to entities that specialize in affordable housing finance. Accordingly, the lack of a capital stock investment in a FHLBank by a nonmember borrower is not an acceptable other risk or differential pricing factor. If a FHLBank is able to show in a particular case that it will suffer financial hardship as a result of lending to a nonmember mortgagee, and is able to quantify the harm, it may request a regulatory waiver. See 61 FR 64613 (Dec. 6, 1996), codified at 12 CFR 902.6.

Two commenters asked the Finance Board to clarify whether a FHLBank is required or has discretion to allow a nonmember mortgagee to participate in a FHLBank's Community Investment Program (CIP). Both commenters thought that the FHLBanks should grant SHFA nonmember mortgagees access to advances at CIP rates. Section 10(i) of the Bank Act requires each FHLBank to "establish a program to provide funding for members to undertake community-oriented mortgage lending." See *id.* 1430(i)(1) (emphasis added). Since the final rule gives the FHLBanks discretion in pricing nonmember mortgagee advances, the FHLBanks could make advances at CIP rates available to nonmember mortgagees. However, because section 10(i)(1) requires establishment of a CIP only for members, the FHLBanks are not required to do so. The Finance Board plans to consider this issue as part of a future rulemaking concerning CIP advance programs.

Section 935.24(c)(3) limits the principal amount of any advance made to a nonmember mortgagee to 90 percent of the unpaid principal of the mortgage loans or securities pledged as security for the advance. This limit does not apply to advances made to SHFA nonmember mortgagees for the purpose of facilitating qualifying low- and moderate-income mortgage lending. A trade association commented that a principal reason limiting nonmember borrowing is that most FHLBanks value nonmember mortgagee collateral at levels below the 90 percent limit. The Finance Board believes that the FHLBanks should develop the technical

capacity to evaluate more precisely the risks of multi-family mortgages. This potentially will lower the over-collateralization factor assigned to such collateral.

4. Transaction Accounts

A FHLBank commenter suggested that the rule be revised to include authority for the FHLBanks to establish transaction accounts with nonmember mortgagees in order to facilitate the funding of advances. Since the FHLBanks have incidental authority to establish limited purposes deposit accounts, see *supra* part II(F)(2), the Finance Board has added a new paragraph § 935.24(d) to provide the suggested authorization.

5. Ineligibility

Under certain circumstances certified nonmember mortgagees may become ineligible to receive FHLBank advances. Section 935.24(e)(1) requires a nonmember mortgagee that applies for an advance to agree first in writing that it will promptly notify the FHLBank of any change in its status as a nonmember mortgagee. Section 935.24(e)(2) permits a FHLBank, from time to time, to require a nonmember mortgagee to provide evidence that it continues to satisfy all of the statutory and regulatory eligibility requirements. If the FHLBank determines that the nonmember mortgagee no longer meets the eligibility requirements, § 935.24(e)(3) prohibits the FHLBank from extending a new advance or renewing an existing advance until the entity provides evidence satisfactory to the FHLBank that it is in compliance with such requirements. The Finance Board received no comments regarding these provisions and is adopting them without change from the proposal.

III. Regulatory Flexibility Act

The rule largely implements statutory requirements binding on all FHLBanks, nonmember mortgagee applicants, and certified nonmember mortgagees. The Finance Board is not at liberty to make adjustments in the requirements to accommodate small entities. The Finance Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities. Thus, in accordance with the provisions of the Regulatory Flexibility Act, the Board of Directors of the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

IV. Paperwork Reduction Act

As part of the notice of proposed rulemaking, the Finance Board published a request for comments concerning the collection of information contained in §§ 935.22 through 935.24 of the proposed rule. See 61 FR 52731. The Finance Board received no comments regarding the collection of information. The Finance Board also submitted an analysis of the information collection to the Office of Management and Budget (OMB) for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995. See 44 U.S.C. 3507(d). OMB assigned a control number, 3069-0005, and approved the information collection without conditions with an expiration date of November 30, 1999. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by the OMB. See *id.* 3512(a). The final rule does not substantively or materially modify the approved information collection. The title, description of need and use, and a description of the information collection requirements in the final rule are discussed in parts I and II of the **SUPPLEMENTARY INFORMATION**.

The following table discloses the estimated annual reporting and recordkeeping burden:

| | |
|--|-------|
| The estimated annual reporting and recordkeeping hour burden is: | |
| a. Number of respondents | 10 |
| b. Total annual responses | 10 |
| Percentage collected electronically | 0 |
| c. Total annual hours requested .. | 100 |
| d. Current OMB inventory | 100 |
| e. Difference | 0 |
| The estimated annual reporting and recordkeeping cost burden is: | |
| a. Total annualized capital/start-up costs | \$ 0 |
| b. Total annual costs (O&M) | 0 |
| c. Total annualized cost requested | 6,250 |
| d. Current OMB inventory | 6,250 |
| e. Difference | 0 |

Any comments concerning the information collection should be submitted to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, and the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Federal Housing Finance Board, Washington, D.C. 20503.

List of Subjects in 12 CFR Part 935

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

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

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, and 1431.

2. Section 935.1 is amended by revising the definition of "State housing finance agency" to read as follows:

§ 935.1 Definitions.

* * * * *

State housing finance agency or SHFA means:

(1) A public agency, authority, or publicly sponsored corporation that serves as an instrumentality of any state or political subdivision of any state, and functions as a source of residential mortgage loan financing in that state; or

(2) A legally established agency, authority, corporation, or organization that serves as an instrumentality of any Indian tribe, band, group, nation, community, or Alaska Native village recognized by the United States or any state, and functions as a source of residential mortgage loan financing for the Indian or Alaska Native community.

* * * * *

3. Subpart B is revised to read as follows:

Subpart B—Advances to Nonmembers

Sec.

935.20 Advances to the Savings Association Insurance Fund.

935.21 Scope.

935.22 Nonmember mortgagee eligibility requirements.

935.23 Nonmember mortgagee application process.

935.24 Advances to nonmember mortgagees.

Subpart B—Advances to Nonmembers**§ 935.20 Advances to the Savings Association Insurance Fund.**

(a) *Authority.* Upon receipt of a written request from the FDIC, a Bank may 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) *Requirements.* Advances to the FDIC for the use of the Savings Association Insurance Fund 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) Have 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.

§ 935.21 Scope.

With the exception of § 935.13, and except as otherwise provided in § 935.20 and § 935.24, the requirements of subpart A of this part apply to this subpart.

§ 935.22 Nonmember mortgagee eligibility requirements.

(a) *Authority.* Subject to the provisions of the Act and this subpart, a Bank may make advances to an entity that is not a member of the Bank if the Bank has certified the entity as a nonmember mortgagee.

(b) *Eligibility requirements.* A Bank may certify as a nonmember mortgagee any applicant that meets the following requirements:

(1) The applicant is approved under title II of the National Housing Act (12 U.S.C. 1707, *et seq.*);

(2) The applicant is a chartered institution having succession;

(3) The applicant is subject to the inspection and supervision of some governmental agency;

(4) The principal activity of the applicant in the mortgage field consists of lending its own funds; and

(5) The financial condition of the applicant is such that advances may be safely made to it.

(c) *Satisfaction of eligibility requirements—(1) HUD approval requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and paragraph (b)(1) of this section that it be approved under title II of the National Housing Act if it submits a current HUD Yearly Verification Report or other documentation issued by HUD stating that the Federal Housing Administration of HUD has approved the applicant as a mortgagee.

(2) *Charter requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and paragraph (b)(2) of this section that it be a chartered institution having succession if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations under which the applicant was created, that:

(i) The applicant is a government agency; or

(ii) The applicant is chartered under state, federal, local, tribal, or Alaska

Native village law as a corporation or other entity that has rights, characteristics, and powers under applicable law similar to those granted a corporation.

(3) *Inspection and supervision requirement.* An applicant shall be deemed to meet the inspection and supervision requirement in section 10b(a) of the Act and paragraph (b)(3) of this section if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, relevant statutes and/or regulations, that, pursuant to statute or regulation, the applicant is subject to the inspection and supervision of a federal, state, local, tribal, or Alaska native village governmental agency. An applicant shall be deemed to meet the inspection requirement if there is a statutory or regulatory requirement that the applicant be audited or examined periodically by a governmental agency or by an external auditor. An applicant shall be deemed to meet the supervision requirement if the governmental agency has statutory or regulatory authority to remove an applicant's officers or directors for cause or otherwise exercise enforcement or administrative control over actions of the applicant. For purposes of this paragraph (c)(3), the term "governmental agency" includes the governor, legislature, and any other component of a federal, state, local, tribal, or Alaska native village government with authority to act for or on behalf of that government.

(4) *Mortgage activity requirement.* An applicant shall be deemed to meet the mortgage activity requirement in section 10b(a) of the Act and paragraph (b)(4) of this section if it provides documentary evidence satisfactory to the Bank, such as a financial statement or other financial documents that include the applicant's mortgage loan assets and their funding liabilities, that it lends its own funds as its principal activity in the mortgage field. Lending funds includes, but is not limited to, the purchase of whole mortgage loans. In the case of a federal, state, local, tribal, or Alaska Native village government agency, appropriated funds shall be considered an applicant's own funds. An applicant shall be deemed to satisfy this requirement notwithstanding that the majority of its operations are unrelated to mortgage lending if its mortgage activity conforms to this requirement. An applicant 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 this requirement.

(5) *Financial condition requirement.* An applicant shall be deemed to meet the financial condition requirement in

paragraph (b)(5) of this section if the Bank determines that advances may be safely made to the applicant. The applicant shall submit to the Bank copies of its most recent regulatory audit or examination report, or external audit report, and any other documentary evidence, such as financial or other information, that the Bank may require to make the determination.

(d) *State housing finance agencies.* In addition to meeting the requirements in paragraph (b) of this section, any applicant seeking access to advances as a SHFA pursuant to § 935.24(b)(2) shall provide evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations describing the applicant's structure and responsibilities, that the applicant is a state housing finance agency as defined in § 935.1.

(e) *Ineligibility.* Except as otherwise provided in this subpart, if an applicant does not satisfy the requirements of this subpart, the applicant is ineligible to be certified as a nonmember mortgagee.

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069-0005 with an expiration date of November 30, 1999)

§ 935.23 Nonmember mortgagee application process.

(a) *Authority.* The Banks are authorized to approve or deny all applications for certification as a nonmember mortgagee, subject to the requirements of the Act and this subpart. A Bank may delegate the authority to approve applications for certification as a nonmember mortgagee only to a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) *Application requirements.* An applicant for certification as a nonmember mortgagee shall submit an application that satisfies the requirements of the Act and this subpart to the Bank of the district in which the applicant's principal place of business, as determined in accordance with part 933 of this chapter, is located.

(c) *Application process—(1) Action on applications.* A Bank shall approve or deny an application for certification as a nonmember mortgagee within 60 calendar days of the date the Bank deems the application to be complete. A Bank shall deem an application complete, and so notify the applicant in writing, when it has obtained all of the information required by this subpart and any other information it deems

necessary to process the application. If a Bank determines during the review process that additional information is necessary to process the application, the Bank may deem the application incomplete and stop the 60-day time period by providing written notice to the applicant. When the Bank receives the additional information, it shall again deem the application complete, so notify the applicant in writing, and resume the 60-day time period where it stopped.

(2) *Decision on applications.* The Bank or a duly delegated committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development shall approve, or the board of directors of a Bank shall deny, each application for certification as a nonmember mortgagee by a written decision resolution stating the grounds for the decision. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and the Board with a copy of the Bank's decision resolution.

(3) *File.* The Bank shall maintain a certification file for each applicant for at least three years after the date the Bank decides whether to approve or deny certification or the date the Board resolves any appeal, whichever is later. At a minimum, the certification file shall include all documents submitted by the applicant or otherwise obtained or generated by the Bank concerning the applicant, all documents the Bank relied upon in making its determination regarding certification, including copies of statutes and regulations, and the decision resolution.

(4) *Appeals.* Within 90 calendar days of the date of a Bank's decision to deny an application for certification as a nonmember mortgagee, the applicant may submit a written appeal to the Board that includes the Bank's decision resolution and a statement of the basis for the appeal with sufficient facts, information, analysis, and explanation to support the applicant's position. Appeals shall be sent to the Federal Housing Finance Board, 1777 F Street, N.W., Washington D.C. 20006, with a copy to the Bank.

(i) *Record for appeal.* Upon receiving a copy of an appeal, the Bank whose action has been appealed shall provide to the Board a complete copy of the applicant's certification file maintained by the Bank under paragraph (c)(3) of this section. Until the Board resolves the appeal, the Bank shall promptly provide to the Board any relevant new materials it receives. The Board may request additional information or further

supporting arguments from the applicant, the Bank, or any other party that the Board deems appropriate.

(ii) *Deciding appeals.* Within 90 calendar days of the date an applicant files an appeal with the Board, the Board shall consider the record for appeal described in paragraph (c)(4)(i) of this section and resolve the appeal based on the requirements of the Act and this subpart.

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069-0005 with an expiration date of November 30, 1999)

§ 935.24 Advances to nonmember mortgagees.

(a) *Authority.* Subject to the provisions of the Act and this subpart, a Bank may make advances only to a nonmember mortgagee whose principal place of business, as determined in accordance with part 933 of this chapter, is located in the Bank's district.

(b) *Collateral requirements—(1) Advances to nonmember mortgagees.* A Bank may make an advance to any nonmember mortgagee upon the security of the following collateral:

(i) Mortgage loans insured by the Federal Housing Administration of HUD under title II of the National Housing Act; or

(ii) Securities representing a whole interest in the principal and interest payments due on a pool of mortgage loans insured by the Federal Housing Administration of HUD under title II of the National Housing Act. A Bank may only accept as collateral the securities described in this paragraph (b)(1)(ii) if the nonmember mortgagee provides evidence that such securities are backed solely by mortgages of the type described in paragraph (b)(1)(i) of this section.

(2) *Certain advances to SHFAs.* (i) In addition to the collateral described in paragraph (b)(1) of this section, a Bank may make an advance to a nonmember mortgagee that has satisfied the requirements of § 935.22(d) for the purpose of facilitating residential or commercial mortgage lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code (26 U.S.C. 142(d) or 143(f)) upon the security of the following collateral:

(A) The collateral described in § 935.9(a)(1) or (2).

(B) The collateral described in § 935.9(a)(3). Solely for the purpose of facilitating acceptance of such collateral, a Bank may establish a cash collateral account for a nonmember

mortgagee that has satisfied the requirements of § 935.22(d).

(C) The real estate related collateral described in § 935.9(a)(4), provided that such collateral is comprised of mortgage loans on one-to-four family or multifamily residential property and the acceptance of such collateral will not increase the total amount of advances outstanding to the SHFA secured by such collateral beyond 30 percent of its GAAP capital, as computed by the Bank.

(ii) Prior to making an advance pursuant to this paragraph (b)(2), a Bank shall obtain a written certification from the nonmember mortgagee that it shall use the proceeds of the advance for the purposes described in paragraph (b)(2)(i) of this section.

(c) *Terms and conditions*—(1) *General.* Subject to the provisions of this paragraph (c), a Bank, in its discretion, shall determine whether, and on what terms, it will make advances to a nonmember mortgagee.

(2) *Advance pricing.* (i) A Bank shall price advances to nonmember mortgagees in accordance with the requirements for pricing advances to members set forth in § 935.6(b). Wherever the term "member" appears in § 935.6(b), the term shall be construed also to mean "nonmember mortgagee."

(ii) A Bank shall apply the pricing criteria identified in § 936.5(b)(2) equally to all of its member and nonmember mortgagee borrowers.

(3) *Limit 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 pledged as security for the advance. This limit does not apply to an advance made to a nonmember mortgagee under paragraph (b)(2) of this section.

(d) *Transaction accounts.* Solely for the purpose of facilitating the making of advances to a nonmember mortgagee, a Bank may establish a transaction account for each nonmember mortgagee.

(e) *Loss of eligibility*—(1) *Notification of status changes.* A Bank shall require a nonmember mortgagee that applies for an advance to agree in writing that it will promptly inform the Bank of any change in its status as a nonmember mortgagee.

(2) *Verification of eligibility.* A Bank may, from time to time, require a nonmember mortgagee to provide evidence that it continues to satisfy all of the eligibility requirements of the Act and this subpart.

(3) *Loss of eligibility.* A Bank shall not extend a new advance or renew an existing advance to a nonmember mortgagee that no longer meets the

eligibility requirements of the Act and this subpart until the entity has provided evidence satisfactory to the Bank that it is in compliance with such requirements.

(The Office of Management and Budget approved the information collection requirements contained in this section and assigned control number 3069-0005 with an expiration date of November 30, 1999)

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

Dated: February 19, 1997.

Bruce A. Morrison,

Chairperson.

[FR Doc. 97-6260 Filed 3-13-97; 8:45 am]

BILLING CODE 6725-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-117-AD; Amendment 39-9964; AD 97-06-07]

RIN 2120-AA64

Airworthiness Directives; Dornier Model 328-100 Series Airplanes Equipped With Burns Aerospace Corporation Passenger Seats

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328-100 series airplanes, that requires modification of the restraining systems of certain passenger seats by replacing anchor point fasteners with fasteners that are able to withstand required 16g load conditions. This amendment is prompted by a report indicating that the restraining systems on these seats failed to meet 16g test load requirements during dynamic testing. The actions specified by this AD are intended to prevent the fasteners from failing, which could result in release of the seat restraint and consequent injury to passengers.

DATES: Effective April 18, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 18, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D-82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules

Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2796; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328-100 series airplanes was published in the Federal Register on December 13, 1996 (61 FR 65494). That action proposed to require removal of the anchor point fasteners on Burns Aerospace Corporation commuter seat models JB6.8-1-22 and JB6.8-2-42 passenger seats. It proposed replacing the fasteners with new ones which will ensure that the restraining system for these seats is able to withstand the required 16g test load conditions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 36 Dornier Model 328-100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per seat to accomplish the required actions, and that the average labor rate is \$60 per work hour. There are normally 30 seats per airplane. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$64,800, or \$1,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various