

(d) Not planted into an established grass or legume or interplanted with another crop.

3. Payment

(a) A payment will not be made unless your trigger yield is less than the payment yield for the insured crop year.

(b) Payment yields will be determined prior to April 16 following the crop year.

(c) We will issue any payment to you prior to the May 16 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy

protection for each insured crop practice and type specified on the Actuarial Table.

(e) The payment will not be revised even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15 .....	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28 .....	November 30.
All other Texas counties and all other states .....	March 15 .....	November 30.

**§ 407.17 Group Risk Plan For Wheat.**

1. Definitions

*Harvest*—Combining or threshing the wheat for grain.

*NASS yield*—The yield calculated by dividing the NASS estimate of the production of wheat in the county by the NASS estimate of the acres of wheat, for each type and practice contained in the Actuarial Table. The Actuarial Table states whether harvested or planted acres of wheat are used to establish the expected county yield and calculate indemnities.

*Planted acreage*—Land in which the wheat seed has been planted by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

Land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted.

2. Crop Insured

The insured crop will be all wheat:

(a) Grown on insurable acreage in the county or counties listed in the accepted application;

(b) Properly planted and reported by the acreage reporting date;

(c) Planted with the intent to be harvested as grain; and

(d) Not planted into an established grass or legume, interplanted with another crop, or planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Payment

(a) A payment will not be made unless your trigger yield is less than the payment yield for the insured crop year.

(b) Payment yields will be determined prior to April 1 following the crop year.

(c) We will issue any payment to you prior to the May 1 immediately following our determination of the payment yield.

(d) The payment is equal to the payment calculation factor multiplied by your policy protection for each insured crop practice and type specified in the Actuarial Table.

(e) The payment will not be revised even though the NASS yield may be subsequently revised.

4. Program Dates

State and county	Cancellation and termination dates	Contract change date
All Colorado counties except Alamosa, Conejos, Costilla, Rio Grande, and Saguache; all Montana counties except Daniels, Roosevelt, Sheridan, and Valley Counties; all South Dakota counties except Harding, Perkins, Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties and all South Dakota counties north and east thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties; and all other states except Alaska, Arizona, California, Maine, Minnesota, Nevada, New Hampshire, North Dakota, Utah, and Vermont.	September 30 .....	June 30.
Arizona; California; Nevada; and Utah .....	October 31 .....	June 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Harding, Perkins, Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15 .....	November 30.

Signed in Washington, DC, on October 1, 1996.

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

[FR Doc. 96-25640 Filed 10-07-96; 8:45 am]

BILLING CODE 3410-FA-P

**FEDERAL HOUSING FINANCE BOARD**

**12 CFR Part 935**

[No. 96-62]

**Advances To Nonmembers**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Board of Directors of the Federal Housing Finance Board (Finance Board) is proposing to amend its regulation on Federal Home Loan Bank (FHLBank) advances to nonmembers. The proposed 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 proposing to revise the definition of the term "state housing finance agency" (SHFA) to include all Indian housing authorities (IHAs). The proposed 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.

**DATES:** The Finance Board will accept comments on this proposed rule in writing on or before December 9, 1996.

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

**FOR FURTHER INFORMATION CONTACT:** Laura K. St. Claire, Financial Analyst, Financial Management Division, Office of Policy, 202/408-2811, Christine M. Freidel, Assistant Director, Financial Management Division, Office of Policy, 202/408-2976, or, Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408-2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

#### 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.* section 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) 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.* section 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.* sections 1430b(b), 1430(a); 26 U.S.C. 142(d), 143(f). Under section 10(a), four categories of collateral are eligible to secure advances to members. See 12 U.S.C. 1430(a). The four categories are: (1) fully disbursed whole first mortgage loans on improved residential real property 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.<sup>1</sup>

The Finance Board originally sought public comments concerning the qualifications for nonmember mortgagees and the terms and conditions under which FHLBanks may make advances to certified nonmember mortgagees in October 1992. See 57 FR 45338 (Oct. 1, 1992) (proposed rule). The Finance Board received four comment letters. Because Congress enacted legislation affecting advances to nonmember mortgagees shortly after publication of the proposed rule, see Housing and Community Development Act of 1992, Pub. L. 102-550, Title XIII, section 1392(b), 106 Stat. 4009 (Oct. 28, 1992), the Finance Board again sought public comments in May 1993. See 58 FR 29474 (May 20, 1993), *codified at* 12 CFR 935.1, 935.20-935.22 (interim final rule with request for comments). In response to this second request, the Finance Board received six comment

<sup>1</sup> *Id.* section 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).

letters. Given the passage of time since the original notices, the experiences of the FHLBanks in administering the nonmember mortgagee advance programs during that period, and the Finance Board's effort to devolve corporate governance authority to the FHLBanks, the Board of Directors of the Finance Board has decided to reopen the advances to nonmembers regulation for comment. The Finance Board will consider all comments it receives before taking final action, including comments received in response to the interim final rule published in May 1993 and this notice of proposed rulemaking. However, those who submitted comments in response to the interim final rule may wish to update their earlier submissions.

##### II. Analysis of the Proposed Rule

###### A. Definitions

The proposed rule amends the definition of the term "state housing finance agency" that appears currently in § 935.1 of the Finance Board's regulations. See 12 CFR 935.1. The Finance Board proposes to retain the current meaning as the first paragraph of the new definition and add a second paragraph that includes IHAs established under tribal law as SHFAs. Currently, only IHAs chartered under state law are eligible for certification as SHFA nonmember mortgagees. According to HUD's Office of Native American Programs, of the 209 IHAs it currently recognizes, approximately 39 are chartered under state law and the remaining 170 are chartered under tribal law. Proposed paragraph two, which is based on the definition found in the Indian Self Determination and Education Assistance Act of 1968, see 25 U.S.C. 450b, will equalize the treatment accorded to IHA nonmember mortgagees, regardless of whether the IHA is chartered under tribal law or state law. This will permit every IHA nonmember mortgagee that makes mortgage loans to low- and moderate-income members of the Indian community to take advantage of the more flexible collateral rules for securing advances to SHFA nonmember mortgagees provided by section 10b(b) of the Bank Act. See *supra* section I; 12 U.S.C. 1430b(b). The purpose of the proposal is to expand homeownership opportunities for Native Americans by increasing the flow of mortgage credit to Native lands. This is consistent with the goals of the National Homeownership Strategy and the Finance Board's commitments under its National Partners For Homeownership Partnership Agreement.

To make certain that the proposed definition of the term "state housing finance agency" is as inclusive as possible, the Finance Board solicits comments regarding whether the definition should be expanded to include any groups other than Indian tribes, bands, groups, nations, or communities, and Alaska Native villages, whose sovereign authority is recognized currently by the United States.

#### *B. Advances to the Savings Association Insurance Fund*

Proposed § 935.20, which implements section 31(k) of the Bank Act, restates without substantive change the provision that appears currently at § 935.21 of the Finance Board's regulations. See 12 U.S.C. 1431(k), 12 CFR 935.21. It provides that a 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*

Proposed § 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. The purpose of this provision is to ensure that nonmember mortgagee advance programs operate within the same regulatory framework as FHLBank member advance programs. The FHLBanks must continue to apply to nonmember mortgagees the advance application requirements, credit underwriting standards, collateral and safekeeping procedures, restrictions on lending to institutions without positive tangible capital, advance maturity requirements, prepayments fees, and most other measures applicable to FHLBank members under subpart A of part 935 and the Finance Board's policy guidelines.

Proposed § 935.21 includes several exceptions to this general requirement. The proposed rule includes the exceptions provided in the current rule as well as an exception 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, the Finance Board believes that advances to nonmember mortgagees need not be included in the

aggregate limit on advances to non-QTLs.

#### *D. Nonmember Mortgagee Eligibility Requirements*

1. In general. Proposed § 935.22(a) restates the current authority of a FHLBank to make advances to an entity that is not a member of the FHLBank if the entity is certified by the FHLBank as a nonmember mortgagee.

Proposed § 935.22(b) incorporates the statutory eligibility requirements for certification as a nonmember mortgagee. In addition to the four statutory eligibility criteria, discussed in section 1 of the *Supplementary Information*, to ensure the safety and soundness of the FHLBanks, the Finance Board has incorporated a financial condition criterion that would require an applicant's financial condition to be such that a FHLBank may safely lend to it. This is the same financial condition criterion that applies currently to applicants for membership in a FHLBank. See *id.* section 1424(a)(2)(B); 12 CFR 933.6(a)(4).

Proposed § 935.22(c) establishes uniform review criteria to be used to determine whether an applicant meets the eligibility requirements for certification as a nonmember mortgagee. The review criteria are based on the standards the Finance Board and FHLBanks apply currently in considering applications for certification as a nonmember mortgagee. The Finance Board specifically requests comments as to whether the regulation should include examples of additional or alternative review criteria.

Under the proposed rule, 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 proposed § 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 proposed § 935.22(c)(2), an applicant is deemed to meet the requirement that it be a chartered institution having succession if it provides documentary 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. Acceptable documentary evidence generally consists of a copy of the statute(s) and/or regulation(s) under which the applicant was created.

Under proposed § 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 documentary 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 government agency. To afford flexibility, the proposed rule provides that inspection by a government agency includes, but is not limited to, a statutory or regulatory requirement that the applicant's books and records be audited or examined periodically by such agency or an external auditor. Supervision by a government agency includes, but is not limited to, statutory or regulatory authority for such agency to remove an applicant's officers or directors for malfeasance or misfeasance. Copies of the relevant statutory and/or regulatory provisions should constitute adequate documentary evidence.

Under proposed § 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. 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 financial statement that includes mortgage loan assets and their funding liabilities generally will provide adequate documentary evidence. The proposed rule provides 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 proposed § 935.22(c)(5), an applicant that provides such financial or other information as the FHLBank may require to determine that advances may

be extended safely to the applicant is deemed to meet the financial condition requirement in § 935.22(b)(5) of the proposed rule. This requirement is not intended to replace, or be a substitute for, the in-depth financial review a FHLBank should undertake before making specific lending decisions. Nor is it meant to be a presumption that any applicant with eligible collateral is in adequate financial condition.

2. State housing finance agencies. Under § 935.22(d) of the proposed rule, any applicant seeking to take advantage of the more flexible collateral requirements provided by section 10b(b) of the Bank Act and § 935.24(b)(2) of the proposed rule for advances used to facilitate residential or commercial mortgage lending to certain low- and moderate-income families or individuals, in addition to meeting the requirements in proposed § 935.22(b), must provide documentary evidence satisfactory to the FHLBank that it is a SHFA. The proposed definition of the term "state housing finance agency" is discussed in section II(A) of the Supplementary Information. Satisfactory documentary evidence generally consists of a copy of the statutory and/or regulatory provisions that outline the applicant's structure and responsibilities.

#### *E. Nonmember Mortgagee Application Process*

The Finance Board and the FHLBanks have been considering ways to transfer a variety of management and governance responsibilities from the Finance Board to the FHLBanks since the completion of studies required by the Housing and Community Development Act of 1992, including the Finance Board's own study completed in April 1993. See Pub. L. 102-550, § 1393, 106 Stat. 3672; Report on the Structure and Role of the FHLBank System at 153 (Apr. 28, 1993). The Finance Board, which believes that the FHLBanks should be allowed broad discretion to manage their affairs as long as they comply with the Bank Act and Finance Board regulations, has identified nonmember mortgagee application approval as one of the management functions that should be devolved from the Finance Board to the FHLBanks. Accordingly, § 935.23(a) of the proposed rule 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.

The remainder of proposed § 935.23 sets forth the procedures for submission and review of nonmember mortgagee

applications. Proposed § 935.23(b) requires an applicant to submit an application that satisfies the requirements of this subpart to the FHLBank of the district in which the applicant's principal place of business, as defined in 12 CFR 933.18, is located.

To ensure expeditious action on applications for certification as a nonmember mortgagee, proposed § 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, the proposed rule deems an application complete, thus triggering the 60-day time period, only after the FHLBank has obtained all of the information required by this subpart and any other information it considers necessary to process the application. The proposed rule also 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 left off upon receiving the additional required information. The FHLBank must notify applicants in writing when the 60-day time period begins, stops, and starts again.

Proposed § 935.23(c)(2) requires the board of directors of a FHLBank to approve or deny each application for certification as a nonmember mortgagee by a written decision resolution that states the grounds for the decision. A FHLBank must provide a copy of the decision resolution to the applicant and the Finance Board within 3 business days of the FHLBank's decision on an application.

Proposed § 935.23(c)(3) establishes a process by which applicants may appeal FHLBank certification denials to the Finance Board. The appeal procedure is intended to ensure that the nonmember mortgagee certification criteria are applied uniformly and fairly by the FHLBanks and that similarly situated applicants are treated in a consistent manner. 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 application for certification as a nonmember mortgagee as well as

any relevant new materials it receives while the appeal is pending. The proposed 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 appeal is filed by the applicant.

#### *F. Advances to Nonmember Mortgagees*

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

Proposed § 935.24(b) sets forth the collateral requirements for advances to nonmember mortgagees. Pursuant to section 10b(a) of the Bank Act, 12 U.S.C. 1430b(a), and § 935.24(b)(1)(i) of the proposed rule, a FHLBank may make advances to a nonmember mortgagee upon the security of FHA-insured mortgages. Section 935.24(b)(1)(ii) of the proposed rule includes securities representing a whole interest in a pool of FHA-insured mortgages as eligible collateral. If a nonmember mortgagee wishes to pledge such securities, it first must provide to the FHLBank evidence that the securities are backed solely by qualifying mortgages.

As discussed in section 1 of the **SUPPLEMENTARY INFORMATION**, under section 10b(b) of the Bank Act, 12 U.S.C. 1430b(b), 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, are subject to less restrictive collateral requirements than those imposed on other advances to nonmember mortgagees. Section 935.24(b)(2) of the proposed rule implements these collateral requirements. Under proposed § 935.24(b)(2), a FHLBank may make such advances upon the security of the collateral described above; 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. Since a

FHLBank may accept deposits only from FHLBank members, other FHLBanks, or other instrumentalities of the United States, see 12 U.S.C. 1431(e)(1), SHFA nonmember mortgagees would not have any category 3 collateral available to secure FHLBank advances. If a SHFA nonmember mortgagee wishes to pledge other than FHA-insured collateral, it first must certify in writing to the FHLBank that the proceeds of the advance so secured will be used to facilitate qualifying mortgage lending. The proposed rule clarifies that qualifying mortgage lending includes both residential and commercial mortgage lending.

Proposed § 935.24(c) outlines the terms and conditions for advances to nonmember mortgagees. Under proposed § 935.24(c)(1), a FHLBank may exercise its discretion to determine whether, and on what terms, it will make advances to nonmember mortgagees. Proposed § 935.24(c)(2) addresses advance pricing. Paragraph (c)(2)(i) requires a FHLBank to price nonmember mortgagee advances to cover the funding, operating, and administrative costs associated with making the advance. Paragraph (c)(2)(ii) permits, but does not require, a FHLBank to price advances to reflect the credit risk of lending to nonmember mortgagees. Paragraph (c)(2)(iii) authorizes a FHLBank to apply other reasonable differential pricing criteria, provided that the FHLBank applies the criteria equally to all of its member and nonmember mortgagee borrowers. This is intended to ensure that any pricing criteria other than cost and credit risk are applied to nonmember mortgagee advances in the same way as to member advances. The Finance Board requests public comments concerning whether, and on what basis, any pricing distinctions should be permitted between member and nonmember borrowers.

The Finance Board proposes to delete the requirement that appears currently in § 935.22(e)(2)(B)(ii) that a FHLBank price nonmember mortgagee advances to compensate the 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). The Finance Board believes that requiring such compensation is unnecessary since the additional earnings achieved through advances not supported by capital should enhance a FHLBank's return on equity.

Proposed § 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 under § 935.24(b)(2) of the proposed rule.

Under certain circumstances an entity that has been certified as a nonmember mortgagee may be deemed ineligible to receive FHLBank advances. Section 935.24(d)(1) of the proposed rule 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(d)(2) of the proposed rule 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 these eligibility requirements, proposed § 935.24(d)(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.

### III. Regulatory Flexibility Act

The proposed rule implements statutory requirements binding on all FHLBanks and all nonmember mortgagee applicants and certified nonmember mortgagees. The Finance Board is not at liberty to make adjustments in those 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, 5 U.S.C. 601, *et seq.*, the Board of Directors of the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. *Id.* section 605(b).

### IV. Paperwork Reduction Act

The Finance Board has submitted to the Office of Management and Budget (OMB) an analysis of the collection of information contained in §§ 935.22 through 935.24 of the proposed rule, described more fully in part II of the *Supplementary Information*. The FHLBanks and, where appropriate, the Finance Board, will use the information collection to determine whether an entity satisfies the statutory and regulatory eligibility requirements to be certified as a nonmember mortgagee

eligible to receive FHLBank advances. See 12 U.S.C. 1430b; 12 CFR 935.21–935.24. A FHLBank may make advances to an entity that is not a member of the FHLBank only after the entity has satisfied the eligibility requirements to be a nonmember mortgagee. See 12 U.S.C. 1430b. Responses are required to obtain or retain a benefit. See *id.* The Finance Board and FHLBanks will maintain the confidentiality of information obtained from respondents pursuant to the collection of information as required by applicable statute, regulation and agency policy. Books or records relating to this collection of information must be retained as provided in the regulation or proposed rule.

Likely respondents and/or recordkeepers will be entities, including SHFAs and IHAs, that seek access to FHLBank advances but are not eligible to become members of a FHLBank, the FHLBanks, and the Finance Board. 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 44 U.S.C. 3512(a).

*The estimated annual reporting and recordkeeping hour burden is:*

- a. Number of respondents: 10
- b. Total annual responses: 10  
Percentage of these responses 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/startup 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

Comments concerning the accuracy of the burden estimates and suggestions for reducing the burden may be submitted to the Finance Board in writing at the address listed above.

The Finance Board has submitted the collection of information to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995, codified at 44 U.S.C. 3507(d). Comments regarding the proposed collection of information may be submitted in writing to 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 by December 9, 1996.

## 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 proposes to amend part 935, chapter IX, title 12, 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 for "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.

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**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 entity is certified by the Bank 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 applicant has been approved as a mortgagee by the Federal Housing Administration of HUD.

(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 documentary evidence satisfactory to the Bank, such as a copy of 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, or tribal 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 documentary evidence satisfactory to the Bank, such as a copy of 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 Alaskan native village government agency. Inspection by a government agency includes, but is not limited to, a statutory or regulatory requirement that the applicant be audited or examined periodically by such agency or by an external auditor. Supervision by a government agency includes, but is not limited to, statutory or regulatory authority for such agency to remove an applicant's officers or directors for cause.

(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 lend 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 it provides such financial or other information as the Bank may require to determine that advances may be safely made to the applicant.

(d) *State housing finance agencies.* In addition to meeting the requirements in paragraph (b) of this section, any

applicant that seeks access to advances as a SHFA pursuant to § 935.24(b)(2) shall provide documentary evidence satisfactory to the Bank, such as a copy of the statutes and/or regulations that describe 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.

**§ 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.

(b) *Application requirements.* An applicant for certification as a nonmember mortgagee shall submit an application that satisfies the requirements of this subpart to the Bank of the district in which the applicant's principal place of business, as defined in 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 left off.

(2) *Decision on applications.* The board of directors of a Bank shall approve or deny each application for certification as a nonmember mortgagee by a written decision resolution stating the grounds for the decision. Within 3 business days of a Bank's decision on an application, the Bank shall provide the applicant and the Board's Executive Secretary with a copy of the Bank's decision resolution.

(3) *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 Executive Secretary, 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 application for certification as a nonmember mortgagee. 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)(3)(i) of this section and resolve the appeal based on the requirements of the Act and this subpart.

**§ 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 defined in 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 an 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 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 set forth 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); or

(B) 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 SHFA that the proceeds of the advance shall be used 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.* Each Bank making an advance to a nonmember mortgagee:

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

(ii) May price the advance to reflect the credit risk of lending to the nonmember mortgagee; and

(iii) May apply other reasonable differential pricing criteria, provided that the Bank applies such pricing criteria 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 SHFA under paragraph (b)(2) of this section.

(d) *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.

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

Bruce A. Morrison,

*Chairperson.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 95-AWP-3]

#### Proposed Establishment of Class E Airspace; Grand Canyon-Valle Airport, AZ

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace area at Grand Canyon-Valle Airport, AZ. The development of a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 19 and a Global Positioning System (GPS) SIAP to RWY 01/19 at Grand Canyon-Valle Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Grand Canyon-Valle Airport, AZ.

**DATES:** Comments must be received on or before October 21, 1996.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP-530, Docket No. 95-AWP-3, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations

Branch, Air Traffic Division at the above address.

**FOR FURTHER INFORMATION CONTACT:**

William Buck, Airspace Specialist, Operations Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725-6556.

**SUPPLEMENTARY INFORMATION:**

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95-AWP-3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular

No. 112-2A, which describes the application procedures.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace area at Grand Canyon-Valle Airport, AZ. The development of a VOR/DME and GPS SIAP at Grand Canyon-Valle Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the VOR/DME RWY 19 and GPS RWY 01/19 SIAP at Grand Canyon-Valle Airport, AZ. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.