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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 110

OPM Regulation Posting Notices; Technical Amendment

AGENCY: Office of Personnel Management.

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Personnel Management is amending its regulations on the posting of personnel regulations in agencies to delete references to the Federal Personnel Manual (FPM). With the recent abolishment of the FPM, these references are no longer valid. We will continue to issue posting notices as required by statute; however, the notices will no longer be identified with the Federal Personnel Manual system.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: JoAnn G. Blackler, (202) 606–1973.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 553 (b)(3)(B) and (d)(3), good cause exists for publishing this amendment without general notice of proposed rulemaking and a 30-day delay in effectiveness. This amendment is non-substantive in nature and will not affect current compliance.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities as it applies only to operations of the Federal Government and is non-substantive in impact.

List of Subjects in 5 CFR Part 110

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 110 of title 5 of the Code of Federal Regulations as follows:

PART 110—OPM REGULATIONS AND INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 110 continues to read as follows:

Authority: 5. U.S.C. 1103; § 110.201 is also issued under 5 U.S.C. 1104, 5 CFR 5.2 (c) and (d); 44 U.S.C. 3507(f); 5 CFR part 1320.

§ 110.101 [Amended]

2. In § 110.101, the introductory text is amended by removing the words "Federal Personnel Manual (FPM)."

§ 110.102 [Amended]

3. In § 110.102, the last sentence in paragraph (c) is amended by removing the words "Federal Personnel Manual."

[FR Doc. 94–1276 Filed 1–19–94; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 93–97]

Advances to Capital Deficient Members, and Other Matters

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to incorporate requirements governing secured loans (called advances) made by the Federal Home Loan Banks (Banks) to capital deficient members. The final rule prohibits Bank lending to tangibly insolvent members, except at the request of the appropriate federal regulator or insurer, and restricts the Banks from lending to other capital deficient members whose use of Bank advances has been prohibited by the appropriate federal regulator or insurer.

In addition, the final rule provides that a Bank may allow a member to assume advances held by a nonmember, as long as the advances had previously been extended by the Bank to another of its members. The final rule also changes the definition of nursing homes from nonresidential to residential real property, which means that mortgage loans backed by nursing homes are eligible collateral for advances.

EFFECTIVE DATE: February 22, 1994.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Financial Analyst, (202) 408–2976; Thomas D. Sheehan, Assistant Director, (202) 408–2870, District Banks Directorate; James H. Gray Jr., Associate General Counsel, Office of Legal and External Affairs, (202) 408–2552; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On September 23, 1993, the Finance Board published for 30-day public comment a proposed rule governing advances to capital deficient members and other matters. See 58 FR 49446. The provisions in the proposed rule addressing Bank lending to capital deficient members closely paralleled the Finance Board's current policy on lending to capital deficient members.

The Finance Board received six comment letters on the proposed rule. Comment letters were submitted by three Banks, two trade associations, and a federal savings bank member. In general, the comment letters concurred with the overall intent of the provisions in the proposed rule addressing lending to capital deficient members, although there were conflicting views on the point at which access to advances should be restricted. None of the comment letters addressed the transfer of advances, and one comment letter addressed the treatment of nursing home loans as eligible collateral.

Based on the comment letters received, the Finance Board is publishing the final rule on lending to capital deficient members as proposed, except that the definition of tangible capital has been changed to permit members to include purchased mortgage servicing rights to the extent a member has included such assets in core or Tier 1 capital.

II. Analysis of Final Rule

A. Lending to Capital Deficient Members

1. Background

In April 1992, the Finance Board adopted policy guidelines governing the extension of advances to capital

deficient members. See Finance Board Resolution No. 92–277.1. The policy precludes the Banks from making new advances available to members without positive tangible capital, unless a member's regulator requests that the Bank provide such funding and the Bank determines it can safely make the advance. The Banks may extend new advances to undercapitalized but solvent members without regulatory approval, but must refrain from doing so at the request of the appropriate federal banking agency or insurer. The policy permits the Banks to renew existing advances to tangibly insolvent members for terms of up to 30 days without regulatory approval.

Prior to the adoption of these policy guidelines, there were no Finance Board-mandated restrictions on a Bank's ability to lend to an insolvent member. The Federal Home Loan Bank Act (Bank Act) does not address lending to capital deficient members. Although the secured nature of advances generally protects the Banks from credit risk, the Finance Board was concerned that, by making advances available to certain capital deficient members, a Bank could inadvertently contravene the wishes of a member's federal regulator.

2. New Advances to Members Without Positive Tangible Capital

Section 935.5(b) of the final rule restricts a Bank from making a new advance to a member that does not have positive tangible capital, unless the appropriate federal banking agency or insurer requests in writing that funding be made available to such member. Section 935.5(b) of the final rule also requires each Bank to promptly provide the Finance Board with a copy of any such written request. A Bank shall use the most recently available Report of Condition and Income (Call Report), Thrift Financial Report (TFR), or other regulatory report of financial condition to determine whether a member has positive tangible capital.

The comment letters provided conflicting views on the appropriate point to require regulatory approval for member access to advances. One Bank commenter believes the regulators already have adequate authority and power to limit advance borrowings by capital deficient and insolvent members. The Bank commented that it is not necessary for the Banks to become part of the regulatory process by subjecting themselves to the direction of the shareholders' regulators.

A trade association for community bankers recommended that the final rule preclude the Banks from making advances to critically undercapitalized members (i.e., members with tangible capital equal to two percent or less of assets) without regulatory approval.

A thrift trade association commented that the Banks should be permitted to lend to members without positive tangible capital unless the appropriate federal regulator objects. The comment letter notes that the decision to fund an advance should be an independent credit decision made by a Bank and that the Banks are protected from default by full collateralization. The trade association also recommended that the final rule allow the Banks to lend to tangibly insolvent members with approved capital restoration plans without regulatory approval.

While the Finance Board agrees that the federal banking regulators have considerable authority to supervise member activities, the purpose of this final rule is to ensure that the Banks do not inadvertently contravene the supervisory objectives of a member's primary federal regulator. The provisions in this final rule prohibiting Bank lending to tangibly insolvent members have been in effect since April 1992 as part of the Finance Board's policy on limiting Bank lending to capital deficient members. Since these provisions have been quite effective, the Finance Board does not see any reason to eliminate them.

The final rule uses tangible insolvency, rather than the definition of critically undercapitalized, as the threshold level for requiring regulatory approval of new advances. The Finance Board considers the insolvency criterion to be appropriate because it limits access by insolvent members while providing a measure of flexibility for capital deficient members unless the appropriate federal banking agency or insurer objects. The Finance Board believes it is more appropriate for the federal banking agencies and insurer to determine whether a critically undercapitalized member should have access to Bank advances, than for the Finance Board to take unilateral action and prohibit the Banks from providing advances to such members.

Regarding the comment that the Banks be permitted to lend to a tangibly insolvent member unless the member's appropriate regulator objects, the Finance Board believes that requiring regulatory approval for Bank lending to insolvent members provides greater assurance that the objective of the final rule will be met. Regarding the suggestion that tangibly insolvent members operating under approved capital restoration plans be permitted to borrow new advances without regulatory approval, the Finance Board believes that tangible solvency rather than approval of a capital restoration plan should be the criterion for determining access to advances without regulatory approval. The regulator may request that funding for a tangibly insolvent member be continued.

The federal savings bank member commenter generally agreed with the proposed rule but expressed concern about Bank lending to members without positive tangible capital, even with regulatory approval. The commenter recommended that provisions be included in the final rule to ensure that a Bank's collateral position is secured should a member borrower be placed in receivership. However, this is unnecessary since section 10(a) of the Bank Act (12 U.S.C. 1430(a)) requires that advances be fully secured and that each Bank, at the time an advance is originated or renewed, obtain and maintain a security interest in certain specified types of eligible collateral.

Therefore, § 935.5(b) is being adopted in the final rule as proposed.

3. Renewal of Advances to Members Without Positive Tangible Capital

Section 935.5(c)(1) of the final rule permits a Bank to renew an outstanding advance to a member without positive tangible capital for successive terms of up to 30 days each. This provision is intended to allow a Bank to accommodate a tangibly insolvent member's need to find alternative funding sources, while also limiting the Bank's exposure to a weak institution. This section of the final rule also prohibits a Bank from renewing advances to tangibly insolvent members if the appropriate federal banking agency or insurer objects. Section 935.5(c)(2) of the final rule provides that a Bank may renew an advance to a member without positive tangible capital for a term greater than 30 days at the written request of the appropriate federal banking agency or insurer.

The thrift trade association commenter recommended that the Banks be permitted to renew advances to a tangibly insolvent member for periods of any length, unless the member's regulator requests that the Bank not do so. The Finance Board does not consider this change to be necessary since the final rule provides the Banks with the flexibility to renew an advance for successive 30-day terms. This allows the Bank to reassess the advisability of such renewals at regular intervals. Furthermore, the Finance Board believes that the renewal of outstanding advances to tangibly insolvent members should be a temporary measure until the member finds alternative funding

sources. Therefore, § 935.5(c) is being adopted as proposed.

4. Lending to Capital Deficient But Solvent Members

Section 935.5(d) of the final rule authorizes the Banks to make new advances and renew outstanding advances to capital deficient members (defined as members that fail to meet their minimum capital requirements) that have positive tangible capital. However, the final rule also directs the Banks not to make new advances or renew outstanding advances to such capital deficient members upon receipt of written notification from the appropriate federal regulator that the member's access to advances has been prohibited.

The Finance Board wants to ensure that the Banks do not lend to members whose access to advances has been restricted by the appropriate federal banking agency or insurer. However, the Finance Board also wants to ensure that the federal regulators, and not the Banks, have the responsibility for determining whether a member's access to funding should be restricted and for enforcing any directives that limit the member's access to advances. The Finance Board therefore believes that it is appropriate for a Bank to refrain from lending to a capital deficient but tangibly solvent member after the appropriate federal banking agency or insurer has established restrictions on the member's access to Bank advances.

Accordingly, the final rule directs the Banks to refrain from lending to a capital deficient but solvent member once the Bank receives written notice from the appropriate federal regulator that the member's use of Bank advances has been prohibited. The Bank may resume lending to such a member once it receives a written statement from the appropriate federal banking agency or insurer that re-establishes the member's access to advances.

The community banker trade association recommended that members that have been precluded from borrowing by their regulators be permitted to petition the regulators for the resumption of funding. The commenter believes that the proposed rule is unclear as to when the regulator would be prompted to request the resumption of Bank funding to an undercapitalized member.

The proposed rule provided that a Bank may resume funding to a capital deficient but solvent member if it receives a written statement from the appropriate federal banking agency or insurer which re-establishes the member's ability to use advances. A member is always entitled to petition its federal regulator or insurer. Therefore, adding a provision to allow a member to petition its regulator is unnecessary. In addition, since the Finance Board has no jurisdiction in this area, such a provision would not be enforceable. Accordingly, § 935.5(d) is being adopted in the final rule as proposed.

5. Bank Determination That It Can Safely Make an Advance

Section 935.5(a)(3) reiterates the provision in the Bank Act that all advances, including advances to tangibly insolvent members made at the request of the appropriate federal banking agency or insurer, can only be made if the Bank determines that it can safely make the advance to the member. See 12 U.S.C. 1430(a).

6. Report of Outstanding Bank Advances

Section 935.5(e) of the final rule requires each Bank to provide the Finance Board with a monthly report of outstanding Bank advances and commitments to all members. Section 935.5(e) also directs the Banks, upon written request from a member's appropriate federal banking agency or insurer, to provide to such entity information on advances and commitments outstanding to the member.

7. Capital Deficient Members That Are Not Federally Insured Depositories

Section 935.5(f) of the final rule requires that, in the case of members that are not federally insured depository institutions, the relevant provisions in § 935.5(b), (c), (d) and (e) apply to a member's state regulator acting in a capacity similar to an appropriate federal banking agency or insurer.

8. Advance Commitments

Section 935.5(g) of the final rule provides that the written advances agreement required by § 935.4(b)(2) of the Finance Board's regulations, or the written advances application required by § 935.4(a) of the Finance Board's regulations, stipulate that a Bank shall not fund commitments for advances, including Community Investment Program and Affordable Housing Program advance commitments, previously made to members whose access to advances was subsequently restricted pursuant to § 935.5. Consistent with § 935.8 of the Finance Board's advances regulation, a Bank may charge the member a fee for a commitment cancellation resulting from the restrictions in § 935.5.

Section 935.5(g) of the proposed rule provided that all commitments entered into after August 25, 1993 were subject to the restrictions in § 935.5 to ensure that commitments entered into by the Banks from the time the proposed rule was approved did not result in the Banks inadvertently circumventing the wishes of the federal banking agencies or insurer. The Finance Board reasoned that immediate application of the restrictions on advance commitments was justifiable, given that the Banks and their members have been aware of the Finance Board's views on lending to capital deficient members since the adoption of the Finance Board's capital deficient lending policy on April 22, 1992. The Finance Board specifically requested comment on this issue.

Two comment letters addressed this issue. The community banker trade association expressed support for this provision. The second commenter, a Bank, opposed the provision. The Bank wrote that the final rule should not affect commitments made before the Banks had received notice of the proposed limitation and had an opportunity to assimilate the requirement into their operations and applicable credit documentation.

However, as stated earlier, the Banks have been subject to limitations on lending to capital deficient members since April 1992. The Finance Board believes this is adequate notice. Further, there is good cause to make the limitation on commitments effective August 25, 1993, because using this date allowed the Banks to adjust their lending policies to avoid making commitments to lend that would contravene the requirements of the final rule. Therefore, § 935.5(g) is being adopted in the final rule as proposed.

Another Bank commented more generally on the commitment provisions in § 935.5(g). It opposes the provision precluding a Bank from funding an outstanding commitment to a capital deficient member if the appropriate federal regulator has restricted the member's access to advances. The Bank believes this requirement could result in potential asset/liability management complications and funding costs for the Bank, and could have serious negative implications for the Bank's membership and marketing efforts.

The Finance Board believes it is doubtful that a member would ask a Bank to fund an outstanding commitment once the member has been prohibited by its regulator from access to Bank advances, and does not believe that a Bank should provide a member with funding that has been explicitly prohibited by the member's regulator. A Bank's asset/liability management costs should be minimized since a Bank may

charge a fee if it is required to cancel an outstanding commitment due to regulatory action. Therefore, § 935.5(g) is being adopted in the final rule as proposed.

9. Definition of "Tangible Capital"

The restrictions on access to Bank advances are triggered by a member's level of tangible capital. Section 935.1 of the proposed rule defined "tangible capital" as: (1) Capital, calculated according to Generally Accepted Accounting Principles (GAAP), less "intangible assets" as reported in the member's TFR for members whose primary federal regulator is the Office of Thrift Supervision (OTS), or as reported in the Call Report for members whose primary federal regulator is the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC) or the Board of Governors of the Federal Reserve System (Federal Reserve Board); or (2) capital calculated according to GAAP, less intangible assets, as defined by a Bank for members which are not regulated by the OTS, the FDIC, the OCC, or the Federal Reserve Board.

This definition of tangible capital is consistent with the definition established by the FDIC in its final rulemaking on prompt corrective action. See 57 FR 44886 (Sept. 29, 1992), 12 CFR part 325. The prompt corrective action procedures provide a framework for determining supervisory action for financial institutions. The FDIC has implemented prompt corrective action procedures based on an institution's level of core or Tier 1 capital. GAAP capital less intangible assets results in a definition of tangible capital that is similar to core or Tier 1 capital, as defined by the federal banking agencies. See *e.g.*, 12 CFR part 3, Appendix A, section 2(a) (OCC); 12 CFR part 208, Appendix A, II.A.1 (Federal Reserve Board); 12 CFR 325.2(m) (FDIC); 12 CFR 567.5(a) (OTS).

The comment letter from the thrift trade association recommended that the final rule use the definition of "tangible equity" as adopted by the OTS and the FDIC to determine whether a member is tangibly solvent. The commenter noted that this definition permits banks and savings associations to include qualifying purchased mortgage servicing rights in the calculation of tangible capital and permits savings associations to include qualifying supervisory goodwill.

The community banker trade association requested that the capital definitions in the final rule be the same as those used in the prompt corrective action regulations, and that the definition of tangible capital include certain qualifying intangible assets such as purchased mortgage servicing rights.

The proposed rule sought to incorporate definitions that the Banks could easily verify using currently available regulatory reports. Tangible equity is not reported on the Call Report filed by commercial bank members, and capital measured according to the prompt corrective action definitions is not reported on the Call Report or the TFR. Therefore, if these definitions were used, the Banks or their members would be required to perform a separate calculation to determine a member's capital level. The Finance Board believes that this requirement would place an unnecessary regulatory burden on the Banks and their members.

However, the Finance Board agrees with the commenters that since both commercial bank and thrift members may include a certain amount of purchased mortgage servicing rights (PMSRs) in their calculation of core or Tier 1 capital, it is appropriate that such assets also be included in tangible capital for the purpose of determining access to advances. Since PMSRs are a line item on the Call Report and TFR, this should not place an undue reporting burden on the members. Therefore, the Finance Board has decided to change the definition of tangible capital in § 935.1 of the final rule to include PMSRs, to the extent such assets are included in the member's calculation of core or Tier 1 capital as reported in the member's TFR, Call Report, or other regulatory report of financial condition. At the present time, thrifts and commercial banks may include PMSRs in core or Tier 1 capital in an amount up to 50 percent of core or Tier 1 capital. See *e.g.*, 12 CFR 325.6(e)(3) (1993).

For members that are not federally insured depository institutions, the Bank shall define intangible assets; provided that a Bank shall include a member's PMSRs to the extent such assets are included for the purpose of meeting regulatory capital requirements.

The community banker trade association also recommended that the definition "capital deficient member" in the proposed rule be replaced by the definition of undercapitalized in the banking agencies' prompt corrective action regulations. However, the term "capital deficient member," which is defined as an institution that fails to meet its minimum regulatory capital requirements, has been used since the Finance Board adopted its policy in 1992. Given that the Banks and their membership are familiar with this term, the Finance Board does not see any reason to change it. Therefore, the definition of "capital deficient member" is being adopted as proposed.

B. Transfer of Advances

The final rule amends § 935.17 of the Finance Board's advances regulation, which governs the transfer of advances. Section 935.17 provides that a Bank may allow one of its members to assume advances previously extended by the Bank to another of its members. The final rule amends this section to provide that a Bank may allow a member to assume advances held by a nonmember, provided the advances were originated by the Bank.

The Banks generally may not make advances to nonmembers, except in the limited circumstances provided for in section 10b of the Bank Act, 12 U.S.C. 1430b. However, a nonmember, through acquisition of a member institution, may assume outstanding Bank advances held by the acquired member. Section 935.17, as amended, authorizes a Bank to allow the transfer of advances from a nonmember to a member, provided the advance was originated by the Bank, and provided the assumption complies with the requirements governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer. No comments were received on this provision and § 935.17 of the final rule is being adopted as proposed.

C. Treatment of Nursing Homes as Residential Property

In the Finance Board's final advances rule published on May 20, 1993, see 58 FR 29456, nursing homes were treated as nonresidential property, thus making mortgages on nursing homes ineligible as collateral for advances. The Finance Board has subsequently reconsidered this issue and determined that mortgages on nursing homes have a sufficiently residential character to be treated as residential real property, thus making them eligible to be accepted as collateral for advances. One comment letter addressed this provision. The commenter, a Bank, believes this treatment of nursing homes will assist the Banks in fulfilling their housing mission, without exposing them to unnecessary risk. Therefore, as proposed, the final rule deletes nursing homes from the definition of "nonresidential real property" and includes nursing homes in the definition of "multifamily property." Thus, mortgage loans backed by nursing homes are eligible collateral for an advance.

III. Paperwork Reduction Act

Section 935.5(e) of the final rule will require the Banks to report certain information to the Finance Board. However, § 935.5(e) does not involve a "collection of information" for purposes of the Paperwork Reduction Act because § 935.5(e) does not require the Banks to collect any additional information from the public. The Paperwork Reduction Act defines "collection of information" to include the obtaining of facts or opinions from ten or more persons "other than * * * instrumentalities * * * of the United States." 44 U.S.C. 3502(4)(A).

The Banks are considered to be instrumentalities of the United States under statute and case law. See 12 U.S.C. 1431(e)(1); *Fahey* v. *O'Melveny & Myers*, 200 F.2d 420, 446 (9th Cir. 1952) ("a Federal Home Loan Bank is a federal instrumentality organized to carry out public policy * * *" *Id.*); *Association of Data Processing Service Organizations* v. *Fed. Home Loan Bank Board*, 568 F.2d 478 (6th Cir. 1977) (court found Banks to be federal instrumentalities in action preventing a Bank from providing on-line data processing services); *Osei-Bonsu* v. *Fed. Home Loan Bank of New York*, 726 F. Supp. 95, 97–98 (S.D.N.Y. 1989) (Banks held to be federal instrumentalities in an employment context).

Reporting requirements imposed upon the Banks are not "collection[s] of information" unless the collection is for general statistical purposes. See 12 U.S.C. 3502(4)(B). The information that the Banks are required to provide the Finance Board in § 935.5(e) is not for general statistical purposes and, therefore, is not an information collection under the Paperwork Reduction Act. Accordingly, this final rule does not require any reporting under the Paperwork Reduction Act.

IV. Regulatory Flexibility Act

The final rule applies to all Bank members, regardless of their size. The final rule does not contain any requirements that the Finance Board believes will have a disproportionate impact on small entities. Therefore, it is certified, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule, as promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 935

Advances, Credit, Federal home loan banks.

The Finance Board hereby amends 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. 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

Subpart A—Advances to Members

2. Section 935.1 is amended by revising the definitions of "Insurer," "Multifamily property," and "Nonresidential real property" and by adding the following definitions in appropriate alphabetical order to read as follows:

§ 935.1 Definitions.

* * * * *

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

* * * * *

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

* * * * *

Multifamily property means, for purposes of this part:

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

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

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

* * * * *

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

* * * * *

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

Tangible capital means:

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

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

3. Section 935.5 is amended by removing the period at the end of paragraph (a)(2) and adding in its place "; and" and adding paragraphs (a)(3) and (b) through (g) to read as follows:

§ 935.5 Limitations on access to advances.

(a) * * *

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

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

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

(c) *Renewals of advances to members without positive tangible capital.* (1) *Renewal for 30-day terms.* A Bank may renew outstanding advances, for successive terms of up to 30 days each, to a member without positive tangible capital; provided, however, that a Bank shall honor any written request of the appropriate federal banking agency or insurer that the Bank not renew such advances.

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

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

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

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

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

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

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

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

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

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

(i) The written advances agreement required by § 935.4(b)(2) of this part; or

(ii) The written advances application required by § 935.4(a) of this part.

4. Section 935.17 is revised to read as follows:

§ 935.17 Intradistrict transfer of advances.

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

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

By the Federal Housing Finance Board.

December 15, 1993.

Philip L. Conover,

Managing Director.

[FR Doc. 94–1213 Filed 1–19–94; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–56; Amendment 39–8798; AD 94–02–01]

Airworthiness Directives; Textron Lycoming Model T5508D Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Textron Lycoming Model T5508D turboshaft engines. This action requires a cyclic life reduction for the T5508D impeller, a more conservative method for determining low cycle fatigue (LCF) damage to the impeller, and a method for prorating past impeller usage, based on the new LCF counting factors. This amendment is prompted by a report of a rotorcraft accident found to have been caused by an uncontained impeller failure. A subsequent field campaign inspection of high-time impellers utilized by heavy lift operators confirmed 12 more impellers with similar distress. The actions specified in this AD are intended to prevent an impeller failure, which can result in an uncontained engine failure, inflight shutdown, or possible rotorcraft damage.

DATES: Effective February 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 4, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–56, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Textron Lycoming, 550 Main Street, Stratford, CT 06497. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–56, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) received a report of a rotorcraft accident caused by an uncontained failure of a Textron Lycoming T5508D compressor impeller. The impeller failure was caused by a low cycle fatigue (LCF) crack which initiated and propagated to failure in the impeller aft face cooling air holes. Based on this accident, Textron Lycoming issued a Service Bulletin (SB) requiring all operators to inspect impellers with greater than 5,000 cycles in service (CIS). To date, 12 impellers have been discovered with distress in the impeller aft face cooling air holes similar to the accident aircraft but of lesser magnitude. Subsequent analysis and testing of this current design impeller, as well as service experience, has revealed a lower LCF life than originally calculated. This lower LCF life is based on a new engineering analysis using different, improved component geometry and LCF material properties than were used in the original engineering lifing analysis for the impeller. In addition to arriving at a lower LCF life, the new engineering