Federal Housing Finance Agency

§ 1266.4 Limitations on access to advances.

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

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

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

(2) 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 FHFA 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 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.

(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) A Bank shall not lend to a capital deficient member that has positive...
§ 1266.5 Terms and conditions for advances.

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

(b) Advance pricing—(1) General. A Bank shall not price its advances to members below:

(i) The marginal cost to the Bank of raising matching term and maturity funds in the marketplace, including embedded options; and

(ii) The administrative and operating costs associated with making such advances to members.

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

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

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

(ii) Each Bank shall include in its member products policy required by §917.4 of this title, standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3) Exceptions. The advance pricing policies contained in paragraph (b)(1) of this section shall not apply in the case of:

(i) A Bank’s CICA programs; and

(ii) Any other advances programs that are volume limited and specifically approved by the Bank’s board of directors.

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

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

(d) Putable or convertible advances—(1) Disclosure. A Bank that offers a putable or convertible advance to a member

§ 1266.5 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 FHFA 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 FHFA with a report of the advances and commitments outstanding to each of its members in accordance with the instructions provided in the Data Reporting Manual issued by the FHFA, as amended from time to time.

(2) 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 §1266.2(b)(2) of this part; or

(ii) The written advances application required by §1266.2(a) of this part.