

and similar institutions do not disqualify an establishment from exemption as a retail store so long as they do not exceed either of two maximum limits: 25 percent of the dollar value of total product sales and the total calendar year dollar limitation. (The Administrator adjusts the dollar limitation, which currently is \$41,000 under the FMIA and \$39,000 under the PPIA (63 FR 41540, August 4, 1998), when the Consumer Price Index indicates a change of more than \$500 in the price of the same volume of product.) FSIS applies these limits when it investigates complaints alleging that retail stores claiming exemption under § 303.1(d) or § 381.10(d) have been operating in violation of the conditions prescribed in the regulations (see paragraph (d)(3) of §§ 303.1 and 381.10).

Because FSIS's conclusion rests on its views about the scope of the FMIA and PPIA requirements for inspection (21 U.S.C. 455 and 603 through 606), the Agency has decided that it should begin applying its interpretation now with respect to sales of products that clearly have not undergone any processing or handling other than storage and activities incidental to storage, rather than waiting until the anticipated rulemaking on the exemption regulations. The effect of this interpretative rule is to exclude the value of products such as properly labeled packages of bacon and cans of poultry stew that "pass through" an establishment in deciding whether sales to hotels, restaurants, and similar institutions exceed either of the two maximum limits. Future calculations of the total dollar value of an establishment's sales to hotels, restaurants, and similar institutions and the proportion of its total product sales that institutional sales represent will not include the value of products so identified.

Not counting sales of products that clearly "pass through" an establishment without undergoing any processing or handling other than storage and activities incidental to storage essentially returns FSIS to USDA's practice during the early years of the retail exemption regulations. However, USDA then based the practice on a decision that these sales were traditional and usual for retail stores. That decision was challenged in 1975, and in January 1976, when commenters did not provide "evidence to support a conclusion that such sales of prepackaged inspected products to nonhousehold consumers had been a traditional and usual retail operation," USDA withdrew a proposed rule that

would have codified rules for applying the exclusion (40 FR 15906).

The basis for FSIS's action today is different, as explained above. In fact, FSIS views the "traditionally and usually" criterion in the retail operations exemption (21 U.S.C. 454(c)(2) and 661(c)(2)) as only restricting the types of preparation or processing operations—those "types traditionally and usually conducted at retail stores and restaurants"—that an establishment may conduct. This is not the issue here. Other criteria in the statutory exemption address the product sales aspects of retail operations.

FSIS does recognize that the views of various members of the public may differ on the circumstances under which products should be treated as "passing through" an establishment. Therefore, it is providing the public with an opportunity to submit comments for consideration by the Agency during development of its proposed rule on the exemption of retail operations from inspection requirements. Pending any changes in the regulations as a result of further rulemaking, the Agency will address questions about particular products on a case-by-case basis.

#### Additional Public Notification

FSIS has considered the potential civil rights impact of this interpretative rule on minorities, women, and persons with disabilities. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this interpretative rule and are informed about the mechanism for providing comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader,

more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720-5704.

Done at Washington, DC, on: December 27, 1999.

**Thomas J. Billy,**  
Administrator.

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 935

[No. 99-69]

RIN 3069-AA91

#### Information Collection Approval; Technical Amendment to Advances to Nonmembers Rule

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final Rule.

**SUMMARY:** Under the Paperwork Reduction Act of 1995 (Act), the Office of Management and Budget (OMB) has approved a three-year extension of the information collection contained in the Federal Housing Finance Board (Finance Board) regulation governing Federal Home Loan Bank advances to nonmembers. The OMB control number approving the information collection now expires on November 30, 2002. In accordance with the requirements of the Act, the Finance Board is amending the advances to nonmembers rule to reflect this new expiration date.

**EFFECTIVE DATE:** The final rule will become effective on January 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jonathan F. Curtis, Senior Financial Analyst, Policy Development and Analysis Division, Office of Policy, Research and Analysis, by telephone at 202/408-2866, by electronic mail at [curtisj@fhfb.gov](mailto:curtisj@fhfb.gov), or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In order to extend the expiration date of the OMB control number approving the information collection contained in its advances to nonmembers rule, the Finance Board published requests for public comments regarding the information collection in the **Federal Register** on June 16 and October 5, 1999. See 64 FR 32235 (June 16, 1999) and 64 FR 54021 (Oct. 5, 1999). The

Finance Board also submitted an analysis of the information collection, entitled "Advances to Nonmember Mortgagees," to the OMB for review and approval. The OMB has approved a three-year extension of the information collection under OMB control number 3069-0005. The OMB control number now expires on November 30, 2002.

Under the Act and the OMB's implementing regulation, 44 U.S.C. 3507 and 5 CFR 1320.5, an agency may not sponsor or conduct, and a person is not required to respond to, an information collection unless the regulation collecting the information displays a currently valid OMB control number. Accordingly, the Finance Board is amending the advances to nonmembers rule to reflect the new expiration date of the OMB control number.

## II. Notice and Public Participation

Because the effectiveness of the information collection contained in the advances to nonmembers rule must be maintained, the Finance Board for good cause finds that the notice and public procedure requirements of the Administrative Procedures Act are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B).

## III. Effective Date

For the reasons stated in part II above, the Finance Board for good cause finds that the final rule should become effective on January 4, 2000. *See* 5 U.S.C. 553(d)(3).

## IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act do not apply since this technical amendment to the advances to nonmember rule does not require publication of a notice of proposed rulemaking. *See* 5 U.S.C. 601(2) and 603(a).

## V. Paperwork Reduction Act

The rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

## List of Subjects in 12 CFR Part 935

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

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR part 935 as follows:

## PART 935—ADVANCES

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

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

### Subpart B—Advances to Nonmembers

#### §§ 935.22, 935.23 and 935.24 [Amended]

2. Revise the parenthetical statement that appears after §§ 935.22, 935.23, and 935.24 to read as follows:

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069-0005 with an expiration date of November 30, 2002.)

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

Dated: December 22, 1999.

**Bruce A. Morrison,**

*Chairman.*

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 960

[No. 99-68]

RIN 3069-AA82

### Amendment of Affordable Housing Program Regulation

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is adopting as final, with no changes, the May 5, 1999 Interim Final Rule which amended its regulation governing the operation of the Affordable Housing Program (AHP or Program) to make certain technical revisions clarifying Program requirements and improving the operation of the AHP.

**EFFECTIVE DATE:** The final rule shall be effective on January 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Fronckowiak, Acting Deputy Director, Program Assistance Division, Office of Policy, Research and Analysis, (202) 408-2575; or Sharon B. Like, Senior Attorney-Advisor, Office of General Counsel, (202) 408-2930, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

#### SUPPLEMENTARY INFORMATION:

### I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Federal Home Loan Bank (Bank) to

establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1) (1994). The Finance Board is required to promulgate regulations governing the operation of the Program. *See id.*

On August 4, 1997, the Finance Board published a final AHP regulation adopting comprehensive revisions to the Program, *see* 12 CFR part 960, which, among other changes, authorized the 12 Banks, rather than the Finance Board, to approve applications for AHP subsidies beginning January 1, 1998. *See* 62 FR 41812 (Aug. 4, 1997). On May 20, 1998, the Finance Board published an Interim Final Rule amending the regulation to make certain technical revisions clarifying Program requirements and improving the operation of the AHP. *See* 63 FR 27668 (May 20, 1998). The Interim Final Rule was adopted as a final rule, with several changes, and became effective on June 1, 1999.

In the course of implementing the changes to the Program under the recent revisions to the AHP regulation, the Banks and Finance Board staff identified a number of additional technical issues whose resolution would clarify Program requirements and improve the effectiveness of the Program. Accordingly, on May 5, 1999, the Finance Board published another Interim Final Rule amending the AHP regulation, effective June 4, 1999, to address these additional issues. The May 5, 1999 Interim Final Rule provided for a 60-day comment period, which closed on July 6, 1999.

The Finance Board received one comment letter on the May 5, 1999 Interim Final Rule from a financial institutions trade association, which generally supported several provisions in the Interim Final Rule and noted one potential concern which is discussed below.

### II. Analysis of the Final Rule

*Requirement for Independent Appraisals from State Certified or Licensed Appraisers for Member Real Estate Owned (REO) Properties and Properties Upon Which a Member Holds a Mortgage or Lien—§ 960.5(b)(2)(ii)(B)*

The May 5, 1999 Interim Final Rule amended § 960.5(b)(2)(ii)(B) of the AHP regulation to require that an independent appraisal of the AHP property be obtained within six months prior to the date the Bank disburses AHP subsidy to the project. The Interim