

### E. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from new standards at specific efficiency levels. DOE calculated NES and NPV for each efficiency level as the difference between a base-case forecast (without new standards) and the standards case forecast (with standards). DOE determined national annual energy consumption by multiplying the number of units in use (by vintage) by the average unit energy consumption (also by vintage). Cumulative energy savings are the sum of the annual NES determined over a specified time period. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, retirement rates (based on estimated product lifetimes), and estimates of changes in shipments and retirement rates in response to changes in product costs due to standards. Chapter 10 of the preliminary TSD discusses the NIA.

DOE consulted with interested parties as part of its process for conducting all of the analyses and invites further input from the public on these topics. The preliminary analytical results are subject to revision following review and input from the public. The final rule will contain the final analysis results.

The Department encourages those who wish to participate in the public meeting to obtain the preliminary TSD and to be prepared to discuss its contents. A copy of the preliminary TSD is available at the Web address given in the **SUMMARY** section of this notice. However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD. The Department is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for these products or that DOE should address in the NOPR.

Furthermore, the Department welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by April 26, 2010, comments and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of standards for residential clothes dryers and room air conditioners.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to record the

minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the expiration of the period for submitting written statements, the Department will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a NOPR. The NOPR will include proposed energy conservation standards for the products covered by this rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

Issued in Washington, DC, on February 12, 2010.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

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**BILLING CODE 6450-01-P**

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 950 and 980

#### FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Parts 1266 and 1272

**RIN 2590-AA24**

#### **Use of Community Development Loans by Community Financial Institutions To Secure Advances; Secured Lending by Federal Home Loan Banks to Members and Their Affiliates; Transfer of Advances and New Business Activity Regulations**

**AGENCY:** Federal Housing Finance Agency; Federal Housing Finance Board.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** Section 1211 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Home Loan Bank Act (Bank Act) to expand the types of eligible collateral that community financial institution (CFI) members may pledge to secure Federal Home Loan Bank (Bank) advances to include secured loans for community development activities and to allow Banks to make long-term advances to CFI members for purposes of financing community development activities. Section 1211 further provides that the Federal Housing Finance Agency (FHFA) shall define the term

“community development activities” by regulation. Consequently, FHFA is proposing to amend the advances regulations to allow CFI members to pledge secured loans for community development activities as eligible collateral for advances, to provide that CFI members may use long term advances to fund community development activities and to define “community development,” “community development loan,” and other related terms necessary to implement these provisions. The proposal would also transfer the advances and new business activities regulations from the Federal Housing Finance Board (FHFB) regulations to the FHFA regulations, and make other conforming amendments. Finally, the proposed rule would also make a change to the advances regulation which would incorporate a long-standing policy previously established by the FHFB that any form of secured lending by a Bank to a member of the Federal Home Loan Bank System (Bank System) is deemed to be an advance. The proposed rule would extend that policy to cover secured lending transactions by a Bank to affiliates of members.

**DATES:** Written comments must be received on or before April 26, 2010. For additional information, see

**SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** You may submit your comments, identified by regulatory information number (RIN) 2590-AA24, by one of the following methods:

- *U.S. Mail, United Postal Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA24, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA24, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail to [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov). Please include “RIN 2590-AA24” in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by e-mail to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure

timely receipt by FHFA. Please include "RIN 2590-AA24" in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:**

Thomas E. Joseph, Senior Attorney Advisor, Office of General Counsel, [thomas.joseph@fhfa.gov](mailto:thomas.joseph@fhfa.gov), (202) 414-3095, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552; Louis Scalza, Associate Director, Policy and Program Development, [louis.scalza@fhfa.gov](mailto:louis.scalza@fhfa.gov), (202) 408-2953; or Julie Paller, Senior Financial Analyst, [julie.paller@fhfa.gov](mailto:julie.paller@fhfa.gov) (202) 408-2842, (not toll-free numbers), Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Comments**

FHFA invites comments on this proposed rule, and will consider all comments before adopting final amendments to its regulations. Copies of all comments will be posted on the FHFA Internet Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-6924.

**II. Background**

*A. Establishment of FHFA*

Effective July 30, 2008, Division A of HERA, Public Law No. 110-289, 122 Stat. 2654 (2008), created FHFA as an independent agency of the Federal government. HERA transferred the supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), the Banks, and the Bank System's Office of Finance, from the Office of Federal Housing Enterprise Oversight (OFHEO) and the FHFB to FHFA. HERA provided for the abolishment of OFHEO and FHFB one year after the date of enactment. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including being capitalized adequately, and that they carry out their public policy missions, including fostering liquid, efficient, competitive, and resilient national

housing finance markets. The Enterprises and the Banks continue to operate under regulations promulgated by OFHEO and FHFB until FHFA issues its own regulations.<sup>1</sup>

*B. Statutory and Regulatory Background*

Each Bank is a cooperative institution that is owned by its members. Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. See 12 U.S.C. 1424, 1426; 12 CFR part 925. Only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank. See 12 U.S.C. 1426(a)(4), 1430(a), 1430b.

Prior to HERA, CFIs were defined under the Bank Act as depository institutions insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) with average total assets of less than \$500 million, as adjusted annually for inflation thereafter. 12 U.S.C. 1422(13) (2008). Section 1211 of HERA raised the \$500 million average total assets cap to \$1 billion. See section 1211 Public Law 110-289, 122 Stat. 2790 (amending 12 U.S.C. 1422(10)).

By Notice published in the **Federal Register** in February 2009, FHFA adjusted the \$1 billion figure for inflation to \$1.011 billion. See 74 FR 7438 (Feb. 17, 2009). As part of FHFA's separate rulemaking addressing Bank membership for community development financial institutions, FHFA included a technical amendment to the definition of "CFI" in existing § 925.1 of the FHFB regulations to implement the average total asset cap increase to \$1 billion made by HERA.<sup>2</sup>

Under the Bank Act, any member, including a CFI, that wishes to borrow from its Bank must pledge certain types of collateral to secure its repayment obligation on advances, and must otherwise demonstrate to the Bank that it is creditworthy. See 12 U.S.C. 1430(a). Each Bank sets its own lending and collateral policies, which may vary from Bank to Bank and will apply to all borrowing members of that Bank. Prior to HERA, section 10(a)(3) of the Bank Act specified that a member may pledge the following types of collateral to secure an advance: (i) Fully disbursed, whole first mortgages on improved

residential property not more than 90 days delinquent, or securities representing a whole interest in such mortgages; (ii) securities issued, insured or guaranteed by the U.S. Government or any agency thereof; (iii) cash or deposits of a Bank; (iv) other real estate-related collateral acceptable to the Bank, provided the value of such collateral is readily ascertainable and the Bank can perfect its security interest in the collateral; and (v) for institutions that qualify as CFIs, secured loans for small business or agriculture, or securities representing a whole interest in such secured loans.<sup>3</sup> See 12 U.S.C. 1430(a)(3). Section 1211 of HERA amended section 10(a)(3)(E) to broaden the collateral that may be pledged by CFI members to include secured loans for community development activities.<sup>4</sup>

In addition, prior to HERA, section 10(a)(2) of the Bank Act provided that a Bank could make a long-term advance to a member only for the purposes of providing funds to the member for residential housing finance; it also allowed long term advances to CFI members for purposes of funding small business, small farm, and small agribusiness lending.<sup>5</sup> See 12 U.S.C. 1430(a)(2). Section 1211 of HERA amended section 10(a)(2)(B) of the Bank Act so that a Bank also may make long term advances to a CFI member to fund community development activities.<sup>6</sup>

Section 1211 of HERA also amended section 10(a)(6) of the Bank Act to provide that the term "community development activities" shall have the meaning given such term by regulation by the Director of FHFA. See *id.* (amending 12 U.S.C. 1430(a)(6)). The legislative history of HERA does not further illuminate Congress' intent in making these amendments.

*C. Considerations of Differences Between the Banks and the Enterprises*

Section 1201 of HERA requires the Director, when promulgating regulations relating to the Banks, to consider the following differences between the Banks and the Enterprises: Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community

<sup>3</sup> In addition, the Banks under their Community Investment Cash Advance programs (CICA) may provide advances to support economic development that benefit persons based on defined targeted income levels or targeted geographic areas. See 12 CFR part 952.

<sup>4</sup> See section 1211 of HERA (amending 12 U.S.C. 1430(a)(3)(E)).

<sup>5</sup> Applicable regulations define a long term advance as one "with an original term to maturity of greater than five years." 12 CFR 950.1.

<sup>6</sup> See section 1211 of HERA (amending 12 U.S.C. 1430(a)(2)(B)).

<sup>1</sup> See section 1302 of HERA.

<sup>2</sup> Effective February 4, 2010, FHFA relocates the part 925 regulations to part 1263 of the FHFA's regulations. See 74 FR 22848, 22857 (May 15, 2009); 75 FR 678, 691 (Jan. 5, 2010).

development mission; capital structure; and joint and several liability.<sup>7</sup> The Director also may consider any other differences that are deemed appropriate. In preparing this proposed regulation, the FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors. The FHFA requests comments from the public about whether differences related to these factors should result in any revisions to the proposal.

### III. The Proposed Regulation

The FHFA is proposing definitions for community development, community development loans, and other terms as needed, to implement the new CFI collateral provisions adopted by HERA. The FHFA also proposes to amend the regulations addressing the purposes for which a Bank may make long term advances to include community development loans made by CFI members. The proposed rule also would make a change to the advances regulation which would incorporate a long standing policy previously established by the FHFBA that any form of secured lending by a Bank to a member of the Bank System is deemed to be an advance and extend that policy to cover secured lending transactions by a Bank to affiliates of members. Finally, the FHFA is proposing to transfer the existing advances regulations from part 950 and the existing new business activity regulation from part 980 of the FHFBA's regulations (12 CFR parts 950 and 980) to new parts 1266 and 1272 of the FHFA's regulations, incorporate certain definitions that had been in part 900 of the FHFBA rules into new proposed parts 1266 and 1272, and make additional conforming changes to these rules.<sup>8</sup>

#### A. Proposed Definitions

Under the proposed transfer of the current part 950 advances regulation, the definition section of that regulation would be redesignated as § 1266.1. FHFA is proposing to amend redesignated § 1266.1 to make changes necessary to implement the CFI collateral amendments adopted by HERA, as described above, and to make other conforming changes.

First, FHFA is proposing to define "community development" with

reference to the definition for this term adopted by CFI members' primary federal regulators under Community Reinvestment Act (CRA) regulations.<sup>9</sup> The definitions were jointly adopted by the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), and Office of Thrift Supervision (OTS) and are substantively the same.<sup>10</sup> Under the definitions, "community development" encompasses affordable housing, community services targeted to low- and moderate-income individuals, economic development activities through financing of businesses and farms that meet size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company Programs or have gross annual revenues of \$1 million or less, and activities that revitalize or stabilize low- or moderate-income geographies, designated disaster areas, or certain designated, distressed, or underserved non-metropolitan middle-income geographies.<sup>11</sup> Basing the new definition on the current CRA regulations should strengthen the CFI members' ability to use advances in financing the development needs of their local communities as embodied by their CRA obligations.

In turn, FHFA is proposing to define "community development loan" as a loan that has community development as its primary purpose. FHFA recognizes, however, that many loans that are extended to support community development, as that term is defined in the referenced CRA regulations, would already be acceptable collateral for advances under existing FHFA regulations. For example, all loans for affordable housing likely would qualify as eligible security for advances as mortgages or other real estate-related collateral. Because FHFA does not intend the proposed definition to call into question the validity of any security pledged (or to be pledged) under the categories of eligible collateral already identified in the advances regulation for all members, the proposed definition of "community development loan" would exclude categories of eligible collateral now identified in § 950.7(a) of the advances rule<sup>12</sup> from its scope. FHFA recognizes that there would also likely be overlap between "community

development loans" and other types of collateral that may be pledged exclusively by CFI members. For example, loans that promote economic development by financing small businesses and farms could already qualify for use by CFI members as advances collateral, as small business loans, small farm loans, or small agribusiness loans, as currently defined in the advances regulation. However, these types of collateral including the new community development loans can be pledged only by CFI members, so there appears to be no need to carve out the existing categories of eligible CFI collateral from the proposed definition.

The proposed definition of "community development loan" also specifically excludes consumer loans or credit extended to one or more individuals for household, family, or other personal expenditures. This exclusion is intended to make clear that FHFA is not proposing that consumer loans, such as auto loans, even if made to low- or moderate-income individuals or households, would be considered eligible collateral for advances as a "community development loan." This proposed provision, however, would not change the status of any loan that qualifies as eligible collateral for advances under existing categories of collateral in the current regulations. For example, the proposed language would not affect the status of home equity loans as other real estate-related collateral eligible to secure advances.

Although many community development loans would be eligible collateral for CFI members under pre-HERA statutory and regulatory provisions, FHFA believes that the proposed definitions of "community development" and "community development loan" would allow for at least marginal expansion in the types of loans that CFI members can pledge as security for advances. For example, the proposed definition could allow CFI members to accept certain types of loans that are meant to revitalize or stabilize certain designated, distressed, or underserved non-metropolitan middle income geographies that would qualify as community development loans under the referenced definitions adopted by federal banking regulators but would not necessarily qualify as collateral under existing advances regulations. FHFA specifically requests comments on whether, and how, these proposed definitions might be altered to better help CFI members fund community development activities while continuing to assure that advances be secured only by high quality collateral.

<sup>7</sup> See section 1201 of HERA (amending 12 U.S.C. 4513).

<sup>8</sup> The definitions in part 900 of the FHFBA rules apply only to regulations contained in chapter 9 of Title 12 of the Combined Federal Regulations. Thus, definitions in part 900 would no longer be applicable to the advances or the new business activities regulations once they transferred to new parts 1266 and 1272.

<sup>9</sup> See 12 CFR 25.12, 228.12, 345.12, and 563e.12.

<sup>10</sup> See 60 FR 22156 (May 4, 1995); 61 FR 21363 (May 10, 1996); 70 FR 44266 (Aug. 2, 2005); 71 FR 18618 (Apr. 12, 2006).

<sup>11</sup> See 12 CFR 25.12, 228.12, 345.12, 563e.12.

<sup>12</sup> As part of the proposed transfer of the advances regulation to part 1266, this provision would be redesignated as § 1266.7(a).

FHFA is also proposing a new definition of “residential housing finance assets” that would incorporate community development loans and thereby implement the HERA amendment that allows CFIs to rely on long-term advances to fund this type of loan. To avoid confusion with the term “community development loan”, FHFA is also proposing to remove the reference to “community lending” from the current definition and incorporate each element of “community lending”, as defined in § 900.2,<sup>13</sup> into the definition of “residential housing finance assets”. Thus, the proposed new definition of “residential housing finance assets” would specifically refer to “loans or investments providing financing for economic development projects for targeted beneficiaries” and for CFI members, to the extent not already included, “small business loans, small farm loans, small agri-business loans, or community development loans.” Other than adding “community development loans”, the proposed changes are editorial in nature and would not alter the scope of the current definition for “residential housing finance assets”.

FHFA is also proposing to add to newly designated § 1266.1 definitions for “Bank Act”, “advances”, “Bank”, and “targeted beneficiaries”. These definitions are contained in § 900.1 or § 900.2 of the FHFBR rules, and FHFA is proposing to carry them over to newly designated part 1266 without substantive change.<sup>14</sup>

#### B. Long-Term Advances

Current § 950.3 implements section 10(a)(2) of the Bank Act by providing that a Bank shall make long-term advances only for the purpose of enabling a member to purchase or fund new or existing residential housing finance assets, which include, for CFI members, small business loans, small farm loans, and small agri-business loans. This provision would be redesignated as § 1266.3 by the proposed rule. Because, as already noted, FHFA is proposing to add specific references to small business loans, small farm loans, small agri-business loans, and community development loans in the definition of “residential housing finance assets”, FHFA is also proposing to remove references to such CFI-specific collateral from the redesignated § 1266.3(a) as

redundant. No other changes are being proposed for this section.

#### C. Collateral

Current § 950.7(b) implements section 10(a)(3)(E) of the Bank Act, which sets forth additional eligible collateral that can be pledged by CFI members only to secure advances from a Bank. Section 950.7 would be redesignated as § 1266.7 under this proposed rule. The FHFA is proposing to implement the HERA provision allowing CFI members to pledge loans for community development activities as collateral for advances by adding “community development loans” to the list of CFI-specific collateral set forth in the redesignated § 1266.7(b)(1). No other changes are being proposed to this provision.

A Bank’s acceptance of “community development loans” would need to meet the same requirements as its acceptance of other types of CFI collateral. Thus, community development loans pledged by CFI members to secure advances would need to be fully secured by collateral other than real estate. In addition, any eligible community development loan would have to have a readily ascertainable value, be able to be reliably discounted to account for liquidation or other risk, and be able to be liquidated in due course, and the Bank would have to be able to perfect a security interest in such loan. A Bank’s acceptance of specific types of “community development loans” to secure an advance would also be subject to its first meeting the requirements of the new business activities rule, currently set forth in 12 CFR part 980.<sup>15</sup> The proposed changes would also allow a Bank to accept as collateral for advances, a security representing a whole interest in community development loans, subject to the Bank’s first fulfilling any obligations under the new business activities rule. A Bank’s acceptance of “community development loans” would also be subject to all relevant FHFA policies and guidance that apply to acceptance of other types of collateral to secure advances, such as the guidance on anti-predatory lending policies contained in Advisory Bulletin 2005-AB-08.

#### D. Status of Secured Lending Under the Advances Regulation

FHFA is also proposing to amend newly designated § 1266.2 of the advances regulation to incorporate a long-standing position that any secured

lending by a Bank to members is deemed an advance subject to all requirements related to advances. This position was first taken by the FHFBR in 1995 by resolution; this resolution has not been rescinded and is still in effect. *See* Fin. Brd. Res. No. 95-13 (Aug. 9, 1995). The purpose of the resolution was to prevent Banks from using other forms of secured lending to members, such as reverse repurchase transactions, to avoid specific requirements and obligations associated with making advances to members.

This remains a concern, even if, because of amendments to the Bank Act, the specific issue which motivated the original resolution is no longer relevant. FHFA is proposing to codify the position taken in the old FHFBR resolution as new § 1266.2(e) to make clear that it intends this restriction to continue to apply and that it does not believe that members, or the Banks, should be able to avoid requirements applied to advances, including stock purchase requirements, by allowing members to borrow from the Banks using other forms of secured transactions. Further, to assure that the proposed provision cannot be circumvented by a Bank extending secured credit to an affiliate of a member, the proposed provision also would be applied to any affiliate of a member.<sup>16</sup> Members and their affiliates are able to enter transactions with each other to provide funding and liquidity, and thereby, can extend the benefits of borrowing from the Bank among affiliated parties. In fact, the advances regulation has long recognized that affiliates of a member can play a role in helping the member secure financing from a Bank, and has allowed affiliates to pledge collateral for advances subject to certain specific requirements. *See* § 950.7(g). Given this link, FHFA believes that it is appropriate to close what could be another means for members to avoid regulatory requirements associated with advances by incorporating into the regulations a provision providing that, because secured extensions of credit are deemed to be advances, they are not to be made to member affiliates.

#### E. New Business Activities

FHFA is proposing to transfer the new business activities rule from part 980 of the FHFBR regulations to part 1272 of FHFA regulations. FHFA is also proposing to make conforming changes

<sup>13</sup> The current definition of “residential housing finance assets” incorrectly states that “community lending” is defined in § 900.1 rather than in § 900.2.

<sup>14</sup> *See* n.8, *supra*.

<sup>15</sup> As already noted, this rulemaking would also relocate the part 980 rules in their entirety to 12 CFR part 1272.

<sup>16</sup> An “affiliate” is currently defined in the advances regulation as “any business entity that controls, is controlled by, or is under common control with, a member.” *See* § 950.1.

to part 1272, including adding definitions for “Bank” and “FHFA”. The proposed definitions are the same as those being proposed in part 1266. No substantive changes to the new business activities regulation are being proposed.

**IV. Paperwork Reduction Act**

The information collection contained in the Data Reporting Manual, entitled “Advances to Housing Associates,” has been assigned control number 2590–0001 by the Office of Management and Budget (OMB). The proposed amendments to the advances regulations do not substantively or materially modify the approved information collection. The proposed changes to the new business activity regulation do not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the OMB for review.

**V. Regulatory Flexibility Act**

The proposed amendments apply only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act

(RFA). See 5 U.S.C. 601(6). Therefore in accordance with section 605(b) of the RFA, FHFA certifies this proposed regulation, if promulgated as a final regulation, will not have significant economic impact on a substantial number of small entities.

**List of Subjects in 12 CFR Parts 950, 980, 1266 and 1272**

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Housing Finance Agency proposes to amend chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

**CHAPTER IX—FEDERAL HOUSING FINANCE BOARD**

**CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**

**PART 950—[REDESIGNATED AS PART 1266]**

1. Transfer 12 CFR part 950 from chapter IX, subchapter G, to chapter XII,

subchapter D, and redesignate as 12 CFR part 1266.

**PART 980—[REDESIGNATED AS PART 1272]**

2. Transfer 12 CFR part 980 from chapter IX, subchapter J, to chapter XII, subchapter D, and redesignate as 12 CFR part 1272.

**PART 1266—ADVANCES**

3. The authority citation for newly redesignated part 1266 is revised to read as follows:

**Authority:** 12 U.S.C. 1426, 1429, 1430, 1430b, 1431, 4511(b), 4513, 4526(a).

4. Revise the heading in the newly redesignated part 1266 to read as set forth above.

5. Amend the newly redesignated part 1266 as indicated in the table below:

Amend:	By removing the reference to:	And adding in its place:
§ 1266.1, Definition of <i>CFI member</i> .....	§ 925.1, each place that it appears .....	§ 1263.1.
§ 1261.1, Definition of <i>State housing finance agency</i> .....	§ 926.1 of this chapter .....	§ 926.1 of this title.
§ 1266.4(g)(2)(i) .....	§ 950.2(b)(2) .....	§ 1266.2(b)(2).
§ 1266.4(g)(2)(ii) .....	§ 950.2(a) .....	§ 1266.2(a).
§ 1266.6(a) .....	§ 917.4 of this chapter .....	§ 917.4 of this title.
§ 1266.9(a) .....	§ 950.2(c) .....	§ 1266.2(c).
§ 1266.10(a) .....	§ 917.4 of this chapter .....	§ 917.4 of this title.
§ 1266.16 .....	§§ 950.14 and 950.17 .....	§§ 1266.14 and 1266.17.
§ 1266.17(a) .....	part 925 .....	part 1263.
§ 1266.17(b)(2)(i) .....	§ 926.3(b) .....	§ 926.3(b) of this title.
§ 1266.17(b)(2)(i)(A) .....	§ 950.7(a)(1) or (2) .....	§ 1266.7(a)(1) or (2).
§ 1266.17(b)(2)(i)(B) .....	§ 950.7(a)(3) .....	§ 1266.7(a)(3).
§ 1266.17(b)(2)(i)(C) .....	§ 950.7(a)(4) .....	§ 1266.7(a)(4).
§ 1266.17(c)(2)(i) .....	§ 950.3(b), each time it appears .....	§ 1266.3(b).
§ 1266.17(c)(2)(ii) .....	§ 950.5(b)(2) .....	§ 1266.5(b)(2).
§ 1266.17(e)(2) .....	part 926 of this chapter .....	part 926 of this title.
§ 1266.17(e)(3) .....	part 926 of this chapter .....	part 926 of this title.

6. In newly redesignated part 1266, revise all references to “Finance Board” to read “FHFA” and revise all references to “Act” to read “Bank Act”.

7. In newly redesignated § 1266.1, add in correct alphabetical order definitions for “Advance”, “Bank”, “Bank Act”, “Community development”, “Community development loan”, “FHFA”, and “Targeted beneficiaries”, and revise the definition of “Residential housing finance assets” to read as follows:

**§ 1266.1 Definitions.**

\* \* \* \* \*

*Advance* means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower’s obligation; and

(3) Fully secured by collateral in accordance with the Bank Act and this part.

\* \* \* \* \*

*Bank*, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act, as amended (12 U.S.C. 1432).

*Bank Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

\* \* \* \* \*

*Community development* has the same meaning as under the definition set forth in the Community Reinvestment rule for the Federal Reserve System (12 CFR part 228), Federal Deposit Insurance Corporation (12 CFR part 345), the Office of Thrift Supervision (12 CFR part 563e) or the Office of the Comptroller of the Currency (12 CFR part 25), whichever is the CFI member’s primary federal regulator.

*Community development loan* means a loan that has as its primary purpose community development, but such loans shall not include:

(1) Any loan or instrument that qualifies as eligible security for an

advance under § 1266.7(a) of this part; or

(2) Consumer loans or credit extended to one or more individuals for household, family or other personal expenditures.

\* \* \* \* \*

*FHFA* means the Federal Housing Finance Agency.

\* \* \* \* \*

*Residential housing finance assets* means any of the following:

(1) Loans secured by residential real property;

(2) Mortgage-backed securities;

(3) Participations in loans secured by residential real property;

(4) Loans or investments providing financing for economic development projects for targeted beneficiaries;

(5) Loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property;

(6) Any loans or investments which the FHFA, in its discretion, otherwise determines to be residential housing finance assets; and

(7) For CFI members, and to the extent not already included in categories (1) through (6), small business loans, small farm loans, small agri-business loans, or community development loans.

\* \* \* \* \*

*Targeted beneficiaries* has the meaning set forth in § 952.1 of this title.

8. Revise newly designated § 1226.2 by adding new paragraph (e) to read as follows:

**§ 1266.2 Authorization and application for advances; obligation to repay advances.**

\* \* \* \* \*

(e) *Status of secured lending.* All secured extensions of credit by a Bank to a member of any Bank, regardless of the form of the transaction, shall be considered an advance subject to the requirements of this part. Because advances to an affiliate of a member are not permitted under the Bank Act, or this part, secured extensions of credit also cannot be made by a Bank to an affiliate of any member.

9. Revise newly redesignated § 1266.3 to read as follows:

**§ 1266.3 Purpose of long-term advances; Proxy test.**

(a) A Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or existing residential housing finance assets.

(b)(1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the most recent Thrift Financial Report, Report of Condition and Income, financial statement or other reliable documentation made available by the member.

(2) Applications for CICA advances are exempt from the requirements of paragraph (b)(1) of this section.

10. Amend newly redesignated § 1266.7 by revising paragraph (b)(1) to read as follows:

**§ 1266.7 Collateral.**

\* \* \* \* \*

(b) \* \* \*

(1) *General.* Subject to the requirements set forth in part 1272 of this chapter, a Bank is authorized to accept from CFI members or their affiliates as security for advances small business loans, small farm loans, small agri-business loans, or community development loans, in each case fully secured by collateral other than real estate, or securities representing a whole interest in such loans, provided that:

(i) Such collateral has a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course; and

(ii) The Bank can perfect a security interest in such collateral.

\* \* \* \* \*

**PART 1272—NEW BUSINESS ACTIVITIES**

11. The authority citation for newly redesignated part 1272 is revised to read as follows:

**Authority:** 12 U.S.C. 1431(a), 1432(a), 4511(b), 4513, 4526(a).

12. Revise the heading in the newly redesignated part 1272 to read as set forth above.

13. Amend the references in the newly redesignated part 1272 as indicated in the table below:

Amend:	By removing the reference to:	And adding in its place:
§ 1272.1, Definition of <i>new business activity</i> .....	§ 950.7(a)(4) .....	§ 1266.7(a)(4).
§ 1272.1, Definition of <i>new business activity</i> .....	§ 950.7(b) .....	§ 1266.7(b).
§ 1272.3, Introductory text .....	§ 980.4(b) .....	§ 1272.4(b).
§ 1272.3(b), Introductory text .....	§ 950.7 .....	§ 1266.7.
§ 1272.3(b)(3) .....	§ 950.10 .....	§ 1266.10.
§ 1272.4(a) .....	§ 980.3 .....	§ 1272.3.
§ 1272.4(a) .....	§ 980.5(a)(1) through (4) .....	§ 1272.5(a)(1) through (4).
§ 1272.4(b) .....	§ 950.7(a)(4) .....	§ 1266.7(a)(4).
§ 1272.4(b) .....	§ 980.3 .....	§ 1272.3.
§ 1272.4(c) .....	§ 980.6 .....	§ 1272.6.
§ 1272.5(a), Introductory text .....	§ 980.3 .....	§ 1272.3.
§ 1272.5(a)(4) .....	§ 980.7 .....	§ 1272.7.
§ 1272.5(a)(5) .....	§ 980.7 .....	§ 1272.7.
§ 1272.5(b) .....	§ 980.6 .....	§ 1272.6.

14. Amend newly redesignated part 1272 by revising all references to “Finance Board” to read “FHFA”.

15. Amend newly redesignated § 1272.1 by adding in correct alphabetical order definitions for “Bank” and “FHFA” to read as follows:

**§ 1272.1 Definitions.**

\* \* \* \* \*

*Bank*, written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act, as amended (12 U.S.C. 1432).

*FHFA* means the Federal Housing Finance Agency.

\* \* \* \* \*

Dated: February 16, 2010.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

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