

## Federal Housing Finance Agency

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serving consumers at all income levels; and

(b) Community lending.

[65 FR 25278, May 1, 2000, as amended at 67 FR 12850, Mar. 20, 2002; 67 FR 39791, June 10, 2002]

### § 1265.3 Core mission activities.

The following Bank activities qualify as core mission activities:

(a) Advances;

(b) Acquired member assets (AMA), except that United States government-insured or guaranteed whole single-family residential mortgage loans acquired under a commitment entered into after April 12, 2000 shall qualify only in a cumulative dollar amount up to 33 percent of: The cumulative total dollar amount of AMA acquired by a Bank after April 12, 2000, less the cumulative dollar amount of United States government-insured or guaranteed whole single-family residential mortgage loans acquired after April 12, 2000 under commitments entered into on or before April 12, 2000 (which calculation, at the discretion of two or more Banks, may be made based on aggregate transactions among those Banks);

(c) Standby letters of credit;

(d) Intermediary derivative contracts;

(e) Debt or equity investments:

(1) That primarily benefit households having a targeted income level, a significant proportion of which must benefit households with incomes at or below 80 percent of area median income, or areas targeted for redevelopment by local, state, tribal or Federal government (including Federal Empowerment Zones and Enterprise and Champion Communities), by providing or supporting one or more of the following activities:

(i) Housing;

(ii) Economic development;

(iii) Community services;

(iv) Permanent jobs; or

(v) Area revitalization or stabilization;

(2) In the case of mortgage- or asset-backed securities, the acquisition of which would expand liquidity for loans that are not otherwise adequately provided by the private sector and do not

have a readily available or well established secondary market; and

(3) That involve one or more members or housing associates in a manner, financial or otherwise, and to a degree to be determined by the Bank;

(f) Investments in SBICs, where one or more members or housing associates of the Bank also make a material investment in the same activity;

(g) SBIC debentures, the short term tranche of SBIC securities, or other debentures that are guaranteed by the Small Business Administration under title III of the Small Business Investment Act of 1958, as amended (15 U.S.C. 681 *et seq.*);

(h) Section 108 Interim Notes and Participation Certificates guaranteed by the Department of Housing and Urban Development under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5308); and

(i) Investments and obligations issued or guaranteed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

[65 FR 43981, July 17, 2000]

## PART 1266—ADVANCES

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EDITORIAL NOTE: Nomenclature changes to part 1266 appear at 75 FR 76622, Dec. 9, 2010.

### Subpart A—Advances to Members

#### § 1266.1 Definitions.

As used in this part:

*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.

*Affiliate* means any business entity that controls, is controlled by, or is under common control with, a member.

*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.

*Cash equivalents* means investments that—

- (1) Are readily convertible into known amounts of cash;
- (2) Have a remaining maturity of 90 days or less at the acquisition date; and
- (3) Are held for liquidity purposes.

*CFI member* means a member that is a Community Financial Institution, as defined in §1263.1 of this chapter, except that, for purposes of this part, the member's average of total assets over three years shall be calculated by the Bank:

- (1) Based on the average of total assets drawn from the institution's regulatory financial reports (as defined in §1263.1 of this chapter) filed with its appropriate regulator (as defined in §1263.1 of this chapter) for the three most recent calendar year-ends; and
- (2) Annually, and shall be effective April 1 of each year.

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*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, or a participation interest in such 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;
- (2) Any loan that qualifies as a small agri-business loan, small business loan or small farm loan, under definitions set forth in this section; or
- (3) Consumer loans or credit extended to one or more individuals for household, family or other personal expenditures.

*Credit union* means a credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

*Depository institution* means a bank, savings association, or credit union.

*Dwelling unit* means a single room or a unified combination of rooms designed for residential use by one household.

*Improved residential real property* means residential real property excluding real property to be improved, or in the process of being improved, by the construction of dwelling units.

*Insurer* means the FDIC for insured depository institutions, as defined section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)), and the NCUA for federally-insured credit unions.

*Long-term advance* means an advance with an original term to maturity greater than five years.

*Manufactured housing* means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

*Mortgage-backed security* means:

- (1) An equity security representing an ownership interest in:

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(i) Fully disbursed, whole first mortgage loans on improved residential real property; or

(ii) Mortgage pass-through or participation securities which are themselves backed entirely by fully disbursed, whole first mortgage loans on improved residential real property; or

(2) An obligation, bond, or other debt security backed entirely by the assets described in paragraph (1)(i) or (ii) of this definition.

*Multifamily property* means:

(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 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 FHFA in its discretion.

*One-to-four family property* means any of the following:

(1) Real property containing:

(i) One-to-four dwelling units; or

(ii) More than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row houses, townhouses or similar types of property;

(2) Manufactured housing if:

(i) Applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property; and

(ii) The loan to purchase the manufactured housing is secured by that manufactured housing;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

*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 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.

*Residential real property* means:

(1) Any of the following:

(i) One-to-four family property;

(ii) Multifamily property;

(iii) Real property to be improved by the construction of dwelling units;

(iv) Real property in the process of being improved by the construction of dwelling units;

(2) The term residential real property does not include nonresidential real property as defined in this section.

*Savings association* means a savings association as defined in section 3(b) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(b)).

*Small agri-business loans* means loans to finance agricultural production and other loans to farmers that are within the legal lending limit of the reporting CFI member, and that are reported on either: Schedule RC-C, Part I, item 3 of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC300, SC303 or SC306 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).

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*Small business loans* means commercial and industrial loans that are within the legal lending limit of the reporting CFI member and that are reported on either: Schedule RC-C, Part I, item 1.e or Schedule RC-C, Part I, item 4 of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC300, SC303 or SC306 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).

*Small farm loans* means loans secured primarily by farmland that are within the legal lending limit of the reporting CFI member, and that are reported on either: Schedule RC-C, Part I, item 1.a. or 1.b. of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC260 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).

*State housing finance agency* or *SHFA* has the meaning set forth in §1264.1 of this chapter.

*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 a member’s Report of Condition and Income for members whose primary federal regulator is the FDIC, the OCC, or the FRB.

(2) Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members that are not regulated by the FDIC, the OCC, or the FRB; 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. In addition, for those members that are insurance companies and that do not file or otherwise prepare financial statements based on GAAP, Banks may base this calculation on the member’s financial state-

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ments prepared using Statutory Accounting Principles as implemented by the insurance company member’s appropriate state regulator.

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

[58 FR 29469, May 20, 1993, as amended at 58 FR 29477, May 20, 1993; 59 FR 2949, Jan. 20, 1994; 62 FR 8871, Feb. 27, 1997; 62 FR 12079, Mar. 14, 1997; 63 FR 35128, June 29, 1998; 63 FR 65545, Nov. 27, 1998; 64 FR 16621, Apr. 6, 1999; 65 FR 8262, Feb. 18, 2000; 65 FR 44428, July 18, 2000; 66 FR 50295, Oct. 3, 2001; 67 FR 12850, Mar. 20, 2002; 75 FR 76622, Dec. 9, 2010; 78 FR 2324, Jan. 11, 2013; 81 FR 76297, Nov. 2, 2016]

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

(a) *Application for advances.* A Bank may accept oral or written applications for advances from its members.

(b) *Obligation to repay advances.* (1) A Bank shall require any member to which an advance is made to enter into a primary and unconditional obligation to repay such advance and all other indebtedness to the Bank, together with interest and any unpaid costs and expenses in connection therewith, according to the terms under which such advance was made or other indebtedness incurred.

(2) Such obligations shall be evidenced by a written advances agreement that shall be reviewed by the Bank’s legal counsel to ensure such agreement is in compliance with applicable law.

(c) *Secured advances.* (1) Each Bank shall make only fully secured advances to its members as set forth in the Bank Act, the provisions of this part and policy guidelines established by the FHFA.

(2) The Bank shall execute a written security agreement with each borrowing member which establishes the Bank’s security interest in collateral securing advances.

(3) Such written security agreement shall, at a minimum, describe the type of collateral securing the advances and give the Bank a perfectible security interest in the collateral.

(d) *Form of applications and agreements.* Applications for advances, advances agreements and security agreements shall be in substantially such form as approved by the Bank’s board

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of directors, or a committee thereof specifically authorized by the board of directors to approve such forms.

(e) *Status of secured lending.* All secured transactions, regardless of the form of the transaction, for money borrowed from a Bank by a member of any Bank shall be considered an advance subject to the requirements of this part.

[58 FR 29469, May 20, 1993, as amended at 64 FR 71278, Dec. 21, 1999; 65 FR 8262, Feb. 18, 2000. Redesignated at 65 FR 44429, July 18, 2000; 67 FR 12851, Mar. 20, 2002; 75 FR 76623, Dec. 9, 2010]

### § 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.

[75 FR 76623, Dec. 9, 2010]

### § 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, 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 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

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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.

[58 FR 29469, May 20, 1993, as amended at 59 FR 2949, Jan. 20, 1994; 64 FR 71278, Dec. 21, 1999; 65 FR 8263, Feb. 18, 2000. Redesignated at 65 FR 44429, July 18, 2000, as amended at 67 FR 12851, Mar. 20, 2002; 71 FR 35500, June 21, 2006]

### § 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 (b) 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 shall disclose in writing to such member the type and nature of the risks associated with putable or convertible advance funding. The disclosure should include detail sufficient to describe such risks.

(2) *Replacement funding for putable advances.* If a Bank terminates a putable

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advance prior to the stated maturity date of such advance, the Bank shall offer to provide replacement funding to the member, provided the member is able to satisfy the normal credit and collateral requirements of the Bank for the replacement funding requested.

(3) *Definition.* For purposes of this paragraph (d), the term *putable advance* means an advance that a Bank may, at its discretion, terminate and require the member to repay prior to the stated maturity date of the advance.

[58 FR 29469, May 20, 1993, as amended at 61 FR 52687, Oct. 8, 1996; 65 FR 8263, Feb. 18, 2000. Redesignated and amended at 65 FR 44429, July 18, 2000]

### § 1266.6 Fees.

(a) *Fees in member products policy.* All fees charged by each Bank and any schedules or formulas pertaining to such fees shall be included in the Bank's member products policy required by §917.4 of this title. Any such fee schedules or formulas shall be applied consistently and without discrimination to all members.

(b) *Prepayment fees.* (1) Except where an advance product contains a prepayment option, each Bank shall establish and charge a prepayment fee pursuant to a specified formula which makes the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

(2) Prepayment fees are not required for:

(i) Advances with original terms to maturity or repricing periods of six months or less;

(ii) Advances funded by callable debt; or

(iii) Advances which are otherwise appropriately hedged so that the Bank is financially indifferent to their prepayment.

(3) The board of directors of each Bank, a designated committee thereof, or officers specifically authorized by the board of directors, may waive a prepayment fee only if such prepayment will not result in an economic loss to the Bank. Any such waiver must subsequently be ratified by the board of directors.

(4) A Bank, in determining whether or not to waive a prepayment fee, shall

apply consistent standards to all of its members.

(c) *Commitment fees.* Each Bank may charge a fee for its commitment to fund an advance.

(d) *Other fees.* Each Bank is authorized to charge other fees as it deems necessary and appropriate.

[58 FR 29469, May 20, 1993; 65 FR 8263, Feb. 18, 2000. Redesignated and amended at 65 FR 44429, July 18, 2000]

### § 1266.7 Collateral.

(a) *Eligible security for advances to all members.* At the time of origination or renewal of an advance, each Bank shall obtain from the borrowing member or, in accordance with paragraph (g) of this section, an affiliate of the borrowing member, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

(1) *Mortgage loans and privately issued securities.* (i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; or

(ii) Privately issued mortgage-backed securities, excluding the following:

(A) Securities that represent a share of only the interest payments or only the principal payments from the underlying mortgage loans;

(B) Securities that represent a subordinate interest in the cash flows from the underlying mortgage loans;

(C) Securities that represent an interest in any residual payments from the underlying pool of mortgage loans; or

(D) Such other high-risk securities as the FHFA in its discretion may determine.

(2) *Agency securities.* Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation:

(i) Mortgage-backed securities issued or guaranteed by Freddie Mac, Fannie Mae, Ginnie Mae, or any other agency of the United States Government;

(ii) Mortgages or other loans, regardless of delinquency status, to the extent that the mortgage or loan is insured or guaranteed by the United States or any agency thereof, or otherwise is backed by the full faith and

credit of the United States, and such insurance, guarantee or other backing is for the direct benefit of the holder of the mortgage or loan; and

(iii) Securities backed by, or representing an equity interest in, mortgages or other loans referred to in paragraph (a)(2)(ii) of this section.

(3) *Cash or deposits.* Cash or deposits in a Bank.

(4) *Other real estate-related collateral.*

(i) Other real estate-related collateral provided that:

(A) 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

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

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(5) *Securities representing equity interests in eligible advances collateral.* Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as:

(i) Eligible collateral under paragraphs (a)(1), (2), (3) or (4) of this section; or

(ii) Cash equivalents.

(b) *Additional collateral eligible as security for advances to CFI members or their affiliates—(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 agribusiness loans, or community development loans, in each case fully secured by collateral other than real estate, or securities representing a whole interest in such secured 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.

(2) *Change in CFI status.* If a Bank determines, as of April 1 of each year, that a member that has previously qualified as a CFI no longer qualifies as a CFI, and the member has total advances outstanding that exceed the amount that can be fully secured by collateral under paragraph (a) of this section, the Bank may:

(i) Permit the advances of such member to run to their stated maturities; and

(ii) Renew such member's advances to mature no later than March 31 of the following year; provided that the total of the member's advances under paragraphs (b)(2)(i) and (ii) of this section shall be fully secured by collateral set forth in paragraphs (a) and (b) of this section.

(c) *Bank restrictions on eligible advances collateral.* A Bank at its discretion may further restrict the types of eligible collateral acceptable to the Bank as security for an advance, based upon the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria.

(d) *Additional advances collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraphs (a) or (b) of this section or section 10 of the Bank Act (12 U.S.C. 1430).

(e) *Bank stock as collateral.* (1) Pursuant to section 10(c) of the Bank Act (12 U.S.C. 1430(c)), a Bank shall have a lien upon, and shall hold, the stock of a member in the Bank as further collateral security for all indebtedness of the member to the Bank.

(2) The written security agreement used by the Bank shall provide that the borrowing member's Bank stock is assigned as additional security by the member to the Bank.

(3) The security interest of the Bank in such member's Bank stock shall be entitled to the priority provided for in



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section 10(e) of the Bank Act (12 U.S.C. 1430(e)).

(f) *Advances collateral security requiring formal approval.* No home mortgage loan otherwise eligible to be accepted as collateral for an advance by a Bank under this section shall be accepted as collateral for an advance if any director, officer, employee, attorney or agent of the Bank or of the borrowing member is personally liable thereon, unless the board of directors of the Bank has specifically approved such acceptance by formal resolution, and the FHFA has endorsed such resolution.

(g) *Pledge of advances collateral by affiliates.* Assets held by an affiliate of a member that are eligible as collateral under paragraphs (a) or (b) of this section may be used to secure advances to that member only if:

(1) The collateral is pledged to secure either:

(i) The member's obligation to repay advances; or

(ii) A surety or other agreement under which the affiliate has assumed, along with the member, a primary obligation to repay advances made to the member; and

(2) The Bank obtains and maintains a legally enforceable security interest pursuant to which the Bank's legal rights and privileges with respect to the collateral are functionally equivalent in all material respects to those that the Bank would possess if the member were to pledge the same collateral directly, and such functional equivalence is supported by adequate documentation.

[58 FR 29469, May 20, 1993, as amended at 64 FR 16621, Apr. 6, 1999; 65 FR 8262, Feb. 18, 2000. Redesignated and amended at 65 FR 44429, July 18, 2000; 67 FR 12851, Mar. 20, 2002; 75 FR 76623, Dec. 9, 2010]

### § 1266.8 Banks as secured creditors.

(a) Except as provided in paragraph (b) of this section, notwithstanding any other provision of law, any security interest granted to a Bank by a member, or by an affiliate of a member, shall be entitled to priority over the claims and rights of any party, including any receiver, conservator, trustee or similar party having rights of a lien creditor, to such collateral.

(b) A Bank's security interest as described in paragraph (a) of this section shall not be entitled to priority over the claims and rights of a party that:

(1) Would be entitled to priority under otherwise applicable law; and

(2) Is an actual bona fide purchaser for value of such collateral or is an actual secured party whose security interest in such collateral is perfected in accordance with applicable state law.

[58 FR 29469, May 20, 1993. Redesignated at 65 FR 8256, Feb. 18, 2000 and further redesignated at 65 FR 44429, July 18, 2000, as amended at 67 FR 12851, Mar. 20, 2002]

### § 1266.9 Pledged verification.

### collateral;

(a) *Collateral safekeeping.* (1) A Bank may permit a member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided that the Bank and such member have executed a written security agreement pursuant to § 1266.2(c) of this part whereby such collateral is retained solely for the Bank's benefit and subject to the Bank's control and direction.

(2) A Bank shall take any steps necessary to ensure that its security interest in all collateral pledged by non-depository institutions for an advance is as secure as its security interest in collateral pledged by depository institutions.

(3) A Bank may at any time perfect its security interest in collateral securing an advance to a member.

(b) *Collateral verification.* Each Bank shall establish written procedures and standards for verifying the existence of collateral securing the Bank's advances, and shall regularly verify the existence of the collateral securing its advances in accordance with such procedures and standards.

[58 FR 29469, May 20, 1993, as amended at 64 FR 16621, Apr. 6, 1999; 65 FR 8263, Feb. 18, 2000. Redesignated at 65 FR 44430, July 18, 2000; 67 FR 12851, Mar. 20, 2002]

### § 1266.10 Collateral valuation; appraisals.

(a) *Collateral valuation.* Each Bank shall determine the value of collateral securing the Bank's advances in accordance with the collateral valuation procedures set forth in the Bank's

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member products policy established pursuant to § 1239.30 of this chapter.

(b) *Fair application of procedures.* Each Bank shall apply the collateral valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) *Appraisals.* A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

[65 FR 44430, July 18, 2000, as amended at 81 FR 76297, Nov. 2, 2016]

## § 1266.11 [Reserved]

### § 1266.12 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.

[59 FR 2950, Jan. 20, 1994. Redesignated at 65 FR 44430, July 18, 2000]

### § 1266.13 Special advances to savings associations.

(a) *Eligible institutions.* (1) A Bank, upon receipt of a written request from the OCC, with respect to a federal savings association, or from the FDIC, with respect to a state chartered savings association, may make short-term advances to a savings association member pursuant to section 10(h) of the Bank Act (12 U.S.C. 1430(h)).

(2) Such request must certify that the savings association member:

(i) Is solvent but presents a supervisory concern to the OCC or FDIC, as

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appropriate, because of the member's financial condition; and

(ii) Has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

(b) *Terms and conditions.* Advances made by a Bank to a member savings association under this section shall:

(1) Be subject to all applicable collateral requirements of the Bank, this part and section 10(a) of the Bank Act (12 U.S.C. 1430(a)); and

(2) Be at the interest rate applicable to advances of similar type and maturity that are made available to other members that do not pose such a supervisory concern.

[58 FR 29469, May 20, 1993. Redesignated at 65 FR 8256, Feb. 18, 2000 and further redesignated at 65 FR 44430, July 18, 2000; 81 FR 76298, Nov. 2, 2016]

### § 1266.14 Advances to the Savings Association Insurance Fund.

(a) *Authority.* Upon receipt of a written request from the FDIC, a Bank may make advances to the FDIC for the use of the Savings Association Insurance Fund. The Bank shall provide a copy of such request to the FHFA.

(b) *Requirements.* Advances to the FDIC for the use of the Savings Association Insurance Fund shall:

(1) Bear a rate of interest not less than the Bank's marginal cost of funds, taking into account the maturities involved and reasonable administrative costs;

(2) Have a maturity acceptable to the Bank;

(3) Be subject to any prepayment, commitment, or other appropriate fees of the Bank; and

(4) Be adequately secured by collateral acceptable to the Bank.

[58 FR 29469, May 20, 1993, as amended at 65 FR 8262, Feb. 18, 2000. Redesignated at 65 FR 44430, July 18, 2000]

### § 1266.15 Liquidation of advances upon termination of membership.

If an institution's membership in a Bank is terminated, the Bank shall determine an orderly schedule for liquidating any indebtedness of such member to the Bank; this section shall not require a Bank to call any such indebtedness prior to maturity of the advance. The Bank shall deem any such

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liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment.

[58 FR 29469, May 20, 1993. Redesignated at 65 FR 8256, Feb. 18, 2000 and further redesignated at 65 FR 44430, July 18, 2000]

### Subpart B—Advances to Housing Associates

SOURCE: 62 FR 12079, Mar. 14, 1997, unless otherwise noted.

#### § 1266.16 Scope.

Except as otherwise provided in §§ 1266.14 and 1266.17, the requirements of subpart A apply to this subpart.

[58 FR 29469, May 20, 1993. Redesignated at 65 FR 44430, July 18, 2000]

#### § 1266.17 Advances to housing associates.

(a) *Authority.* Subject to the provisions of the Bank Act and this subpart, a Bank may make advances only to a housing associate whose principal place of business, as determined in accordance with part 1263 of this chapter, is located in the Bank's district.

(b) *Collateral requirements*—(1) *Advances to housing associates.* A Bank may make an advance to any housing associate upon the security of the following collateral:

(i) Mortgage loans insured by the Federal Housing Administration of HUD under title II of the National Housing Act; or

(ii) Securities representing a whole interest in the principal and interest payments due on a pool of mortgage loans insured by the Federal Housing Administration of HUD under title II of the National Housing Act. A Bank may only accept as collateral the securities described in this paragraph (b)(1)(ii) if the housing associate provides evidence that such securities are backed solely by mortgages of the type described in paragraph (b)(1)(i) of this section.

(2) *Certain advances to SHFAs.* (i) In addition to the collateral described in paragraph (b)(1) of this section, a Bank may make an advance to a housing associate that has satisfied the requirements of § 1264.3(b) for the purpose of

facilitating residential or commercial mortgage lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code (26 U.S.C. 142(d) or 143(f)) upon the security of the following collateral:

(A) The collateral described in § 1266.7(a)(1) or (2).

(B) The collateral described in § 1266.7(a)(3). Solely for the purpose of facilitating acceptance of such collateral, a Bank may establish a cash collateral account for a housing associate that has satisfied the requirements of § 1264.3(b).

(C) The other real estate-related collateral described in § 1266.7(a)(4), provided that such collateral comprises mortgage loans on one-to-four family or multifamily residential property.

(ii) Prior to making an advance pursuant to this paragraph (b)(2), a Bank shall obtain a written certification from the housing associate that it shall use the proceeds of the advance for the purposes described in paragraph (b)(2)(i) of this section.

(c) *Terms and conditions*—(1) *General.* Subject to the provisions of this paragraph (c), a Bank, in its discretion, shall determine whether, and on what terms, it will make advances to a housing associate.

(2) *Advance pricing.* (i) A Bank shall price advances to housing associates in accordance with the requirements for pricing advances to members set forth in § 1266.5(b). Wherever the term "member" appears in § 1266.5(b) the term shall be construed also to mean "housing associate."

(ii) A Bank shall apply the pricing criteria identified in § 1266.5(b)(2) equally to all of its member and housing associate borrowers.

(3) *Limit on advances.* The principal amount of any advance made to a housing associate may not exceed 90 percent of the unpaid principal of the mortgage loans or securities pledged as security for the advance. This limit does not apply to an advance made to a housing associate under paragraph (b)(2) of this section.

(d) *Transaction accounts.* Solely for the purpose of facilitating the making of advances to a housing associate, a

Bank may establish a transaction account for each housing associate.

(e) *Loss of eligibility*—(1) *Notification of status changes*. A Bank shall require a housing associate that applies for an advance to agree in writing that it will promptly inform the Bank of any change in its status as a housing associate.

(2) *Verification of eligibility*. A Bank may, from time to time, require a housing associate to provide evidence that it continues to satisfy all of the eligibility requirements of the Bank Act, this subpart and part 1264 of this chapter.

(3) *Loss of eligibility*. A Bank shall not extend a new advance or renew an existing advance to a housing associate that no longer meets the eligibility requirements of the Bank Act, this subpart and part 1264 of this chapter until the entity has provided evidence satisfactory to the Bank that it is in compliance with such requirements.

[58 FR 29469, May 20, 1993, as amended at 65 FR 203, Jan. 4, 2000; 65 FR 8263, Feb. 18, 2000. Redesignated and amended at 65 FR 44430, July 18, 2000; 67 FR 12851, Mar. 20, 2002; 70 FR 9510, Feb. 28, 2005; 81 FR 76298, Nov. 2, 2016]

## PART 1267—FEDERAL HOME LOAN BANK INVESTMENTS

Sec.

1267.1 Definitions.

1267.2 Authorized investments and transactions.

1267.3 Prohibited investments and prudential rules.

1267.4 Limitations and prudential requirements on use of derivative instruments.

AUTHORITY: 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526.

SOURCE: 76 FR 29151, May 20, 2011, unless otherwise noted.

### § 1267.1 Definitions.

As used in this part:

*Asset-backed security* means a debt instrument backed by loans, but does not include debt instruments that meet the definition of a mortgage-backed security.

*Deposits in banks or trust companies* means:

(1) A deposit in another Bank;

(2) A demand account in a Federal Reserve Bank;

(3) A deposit in or sale of Federal funds to:

(i) An insured depository institution, as defined in section 2(9) of the Bank Act, that is designated by the Bank's board of directors;

(ii) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation and is designated by the Bank's board of directors; or

(iii) A U.S. branch or agency of a foreign Bank as defined in the International Banking Act of 1978, as amended, (12 U.S.C. 3101 *et seq.*) that is subject to supervision of the Board of Governors of the Federal Reserve System and is designated by the Bank's board of directors.

*Derivative contract* means generally a financial contract the value of which is derived from the values of one or more referenced assets, rates, or indices of asset values, or credit-related events. Derivative contracts include interest rate derivative contracts, foreign exchange rate derivative contracts, equity derivative contracts, precious metals derivative contracts, commodity derivative contracts and credit derivatives, and any other instruments that pose similar risks.

*Indexed principal swap* means an interest rate swap agreement in which the notional principal balance amortizes based upon the prepayment experience of a specified group of mortgage-backed securities or asset-backed securities or the behavior of an interest rate index.

*Interest-only stripped security* means a class of mortgage-backed or asset-backed security that is allocated only the interest payments made on the underlying mortgages or loans and receives no principal payments.

*Investment quality* means a determination made by the Bank with respect to a security or obligation that, based on documented analysis, including consideration of the sources for repayment on the security or obligation:

(1) There is adequate financial backing so that full and timely payment of principal and interest on such security or obligation is expected; and

(2) There is minimal risk that the timely payment of principal or interest would not occur because of adverse