

*Qualifying life event \* \* \**

(13) An employee or eligible family member becomes eligible for premium assistance under Medicaid or a State Children's Health Insurance Program (CHIP). An eligible employee may enroll and an enrolled employee may change his or her enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when the employee or an eligible family member of the employee becomes eligible for premium assistance under a Medicaid plan or a State Children's Health Insurance Program. An employee must enroll or change his or her enrollment within 60 days after the date the employee or family member is determined to be eligible for assistance.

[FR Doc. 2010-30962 Filed 12-8-10; 8:45 am]

BILLING CODE 6325-39-P

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**FEDERAL HOUSING FINANCE BOARD**
**12 CFR Parts 950 and 980**
**FEDERAL HOUSING FINANCE AGENCY**
**12 CFR Parts 1264, 1266, 1269, 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 Board, Federal Housing Finance Agency.

**ACTION:** Final rule.

**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. To implement these provisions, FHFA is amending the advances regulation to allow CFI

members to pledge community development loans as collateral for advances and is adopting a definition of "community development" as proposed. The final rule also will transfer the advances and new business activities rules from parts 950 and 980 of the Federal Housing Finance Board (FHFB) regulations, to new parts 1266 and 1272 of the FHFA regulations, respectively, and make other conforming amendments. Finally, the final rule will make a change to the advances regulation to incorporate a long-standing policy previously established by the FHFB that secured lending to a member of any Bank is an advance that must meet the requirements of the advances regulation. The final rule language has been clarified to assure that certain types of transactions, such as derivatives, will not be considered secured lending for the purposes of this provision. The new provision addressing secured lending does not include a prohibition on secured transactions with affiliates of members, as was initially proposed.

**DATES:** The final rule is effective on January 10, 2011.

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**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Establishment of FHFA*

Effective July 30, 2008, Division A of HERA, Public Law 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. 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. See section 1302 Public Law 110-289, 122 Stat. 2795.

*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. 12 U.S.C. 1424, 1426; 12 CFR part 1263. 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. 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 No. 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. 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" to implement the average total asset cap increase to \$1 billion made by HERA.<sup>1</sup> See 74 FR 22848, 22857 (May 15, 2009); 75 FR 678, 691 (Jan. 5, 2010).

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. 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

<sup>1</sup> FHFA also relocated the part 925 regulations to part 1263 of the FHFA's regulations. 75 FR 678.

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>2</sup> See 12 U.S.C. 1430(a)(3). Section 1211 of HERA amended section 10(a)(3)(E) of the Bank Act to broaden the collateral that may be pledged by CFI members to include secured loans for community development activities. Section 1211 Public Law 110–289, 122 Stat. 2790 (*amending* 12 U.S.C. 1430(a)(3)(E)).

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, except that it also allowed long-term advances to CFI members for purposes of funding small business, small farm, and small agri-business lending.<sup>3</sup> 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. Section 1211, Public Law 110–289, 122 Stat. 2790 (*amending* 12 U.S.C. 1430(a)(2)(B)).

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. *Id.* (*amending* 12 U.S.C. 1430(a)(6)). The legislative history of HERA does not further illuminate Congress’ intent in making these amendments.

<sup>2</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. 12 CFR part 952.

<sup>3</sup> Applicable regulations define a long-term advance as one “with an original term to maturity of greater than five years.”

### *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 development mission; capital structure; and joint and several liability. See section 1201 Public Law 110–289, 122 Stat. 2782–83 (*amending* 12 U.S.C. 4513). The Director also may consider any other differences that are deemed appropriate. In preparing this final regulation, FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors. As part of its proposed rulemaking, FHFA also requested comments from the public about whether differences related to these factors should result in any revisions to the proposal, but received no comments on this point in response.

## **II. The Final Regulation**

### *A. The Proposed Rule and Comments Received*

FHFA published a proposed rule in the **Federal Register** on February 23, 2010 to implement the provisions in HERA allowing CFIs to pledge “community development loans” as collateral for advances and the Banks to make long term advances to a CFI member to fund community development activities. 75 FR 7990 (Feb. 23, 2010). As part of its implementation of these provisions, FHFA proposed defining “community development” as having:

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.

*Id.* at 7994.

FHFA also proposed defining “community development loan” as:

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.

*Id.*

The proposed rule also would have amended the advances regulation to incorporate a long-standing Finance

Board policy that deemed any form of secured lending by a Bank to a Bank System member an advance subject to the rules governing advances. The proposal would have extended this policy to cover affiliates of any members, and, as a consequence, would have prohibited a Bank from entering into secured lending transactions with member affiliates. Finally, the proposed rule would have transferred the advances and the new business activity regulation, respectively, from parts 950 and 980 of the Finance Board regulations to parts 1266 and 1272 of the FHFA regulations.

FHFA received eleven comment letters on the proposed rule. Eleven of the twelve Banks commented, including a joint letter which was signed by three Banks. One letter came from an association representing municipal governments and one letter came from a private citizen. All the Bank comment letters addressed proposed § 1266.2(e) of the rule, which would have required secured transactions with the member of any Bank to meet the requirements of an advance and would have prohibited secured transactions between a Bank and an affiliate of a member of any Bank. As is discussed below, these letters generally suggested clarification to the proposed rule language so that any restriction did not carry unintended consequences and limit transactions beyond borrowings by members. These letters also stated that the proposed restrictions on secured transactions with affiliates of members would eliminate an important and safe liquidity investment for the Banks and urged that the provision be substantially revised in this respect or not be adopted.

Two comment letters, including the joint Bank letter, addressed the proposed provisions allowing “community development loans” to be pledged as collateral by CFIs. Both letters made similar comments and generally urged FHFA to expand the definitions of “community development” and “community development loan” and not tie the definition to criteria based on income targeting. These comments are also addressed more fully below. No comments were made on other aspects of the proposed rule. All comment letters are posted on the FHFA Internet Web site at <http://www.fhfa.gov>.

### *B. Final Rule Provisions*

#### Definitions—§ 1266.1

FHFA proposed adding definitions for “community development” and “community development loan” to the advances regulation to help implement

the HERA provision allowing CFI members to pledge community development loans to secure advances. In the proposed rule, “community development” was defined with reference to the definition for this term adopted by CFI members’ primary federal regulators under Community Reinvestment Act (CRA) regulations.<sup>4</sup> In turn, FHFA proposed to define “community development loan” as a loan that has community development as its primary purpose. Because FHFA did not intend the proposed definition to call into question the validity of any collateral allowed under the advances regulation to be pledged by all members, the proposed definition of “community development loan” excluded categories of eligible collateral identified in § 950.7(a) of the advances rule<sup>5</sup> from its scope. FHFA specifically requested 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. 75 FR at 7992.

FHFA received two comments on these definitions. Both comments urged FHFA to adopt a broader definition for “community development” that would not include the income targeting criteria inherent in the proposed definition. They argued (albeit for different reasons) that the proposed definition of “community lending” was contrary to Congressional intent in adopting section 1211 and that a broader definition would better meet Congress’ reasons for including this provision in HERA. Instead of the proposed definition, the commenters suggested developing a definition based on the one used for “economic development projects” in FHFA’s current Community Investment Cash Advance Programs (CICA) regulations.<sup>6</sup> One commenter proposed a specific definition for “community development” that included criteria that

<sup>4</sup> See 12 CFR 25.12, 228.12, 345.12, and 563e.12. Under this definition, “community development” would have encompassed 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>5</sup> As part of the transfer of the advances regulation to part 1266, this provision will be redesignated as § 1266.7(a). This provision identifies collateral that can be pledged by all Bank members to secure advances.

<sup>6</sup> See 12 CFR 952.1.

would limit the definition to projects or activities that were the recipient of any form of federal, state or local government support. The commenter believed such criteria would help identify the activity or project as one viewed by federal, state or local governments as important for the community in question.

FHFA has considered these comments, but generally does not find them persuasive. As noted when FHFA proposed its definition of “community development,” the legislative history of HERA does not clearly illuminate Congressional intent in allowing secured loans for community development to be pledged as collateral by CFI members to support advances. Instead, section 1211(b) of HERA provided FHFA with broad flexibility to define the term “community development activities.” More importantly, although HERA did not specify income targeting criteria in the provision concerning “community development,” the concept of community development lending is not new in banking law and is a well-developed concept as evidenced by the Community Reinvestment Act, and the regulations adopted by federal banking regulators to implement that statute. As it noted in proposing this definition, FHFA is relying on this long-standing regulatory history in defining the term. Moreover, by linking the definition of “community development” to the Community Reinvestment Act rules of the banking regulators, FHFA will ensure that future changes and developments in this area will be captured in FHFA’s definition of “community development”.

FHFA believes that this approach will help CFI members to use advances to provide financing for their communities’ development needs, as those needs are embodied by those members’ CRA obligations. 75 FR at 7992. FHFA, therefore, is adopting the definition of “community development” as proposed.

FHFA also is adopting the definition of “community development loan” generally as proposed. In this respect, a community development loan is a loan that has community development as its primary purpose. The final rule, as adopted, also clarifies that the term “community development loan” includes a participation interest in a community development loan.

FHFA recognizes that many loans that are extended to support community development already will be acceptable collateral for advances under existing Bank Act provisions and FHFA regulations. As a consequence, the

definition excludes from the meaning of “community development loan,” any loan that qualifies as acceptable collateral under other provisions of the Bank Act and FHFA regulations. As explained when FHFA initially proposed this definition, FHFA does not intend to call into question the validity of any security pledged (or to be pledged) under the existing categories of eligible collateral. Thus, the definition of “community development loan” excludes from its scope, categories of eligible collateral now identified in § 950.7(a) of the advances rule,<sup>7</sup> which can be pledged by any member to secure an advance, as well as small agri-business loan, small business loan, or small farm loan, which currently are forms of acceptable collateral for CFI members.<sup>8</sup> The 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 does not change the status of any loan that qualifies as eligible collateral for advances under existing categories of collateral in the Bank Act or current regulations. For example, the new language does not affect the status of home equity loans as other real estate-related collateral eligible to secure advances.

Commenters also urged that FHFA include municipal bonds within the definition of community development loans so that municipal bonds could be accepted as collateral from CFIs to secure advances. They noted that FHFA regulations already allow members to use municipal bonds as collateral to secure letters of credit where the letter of credit helps facilitate residential

<sup>7</sup> As part of the proposed transfer of the advances regulation to part 1266, this provision would be redesignated as § 1266.7(a).

<sup>8</sup> When proposing the definition of “community development loan,” FHFA noted that because small agri-business, small business and small farm loans can be pledged only by CFI members, there was no need to exclude them from the definition of community development loan, despite likely overlap in these existing categories of collateral and community development loans. See 75 FR at 7992. Upon reconsideration, such overlap may nonetheless cause some confusion, especially when determining whether the new business activity requirements applied to a loan that may fall both within the definition of community development loan and the definition of one of the other categories of CFI member only collateral. Moreover, because small agri-business, small business, and small farm loans are defined as loans that are within legal lending limits of the CFI member and reported on specific regulatory financial reports of that member, these loans are easy to identify, and it will be straightforward to determine whether loans fall into one of the existing categories of eligible CFI collateral or whether the loans may qualify only as a “community development loan” to be pledged as collateral for an advance.

housing finance or community lending. 12 CFR 1269.2(c)(2).

Section 1266.7(b)(1) as amended by this rulemaking, however, already allows the Banks to accept from CFI members, as collateral for advances, any security to the extent that the security represents a whole interest in a secured, small agri-business, small business, small farm or community development loan. This restriction limiting the type of securities that can be pledged under the special CFI collateral provision is statutory, and the wording of § 1266.7(b)(1) closely follows that of the Bank Act. See 12 U.S.C. 1430(a)(3)(E). Extending the definition of community development loans to include all municipal securities would go beyond what is authorized in the Bank Act and would not be consistent with the statutory limitation.<sup>9</sup> FHFA, therefore, is not altering the final definition of community development loan as requested. CFI members, of course, can still pledge as collateral for advances any municipal bond to the extent allowed by § 1266.7(b)(1), as that provision is being amended by this rulemaking.

To implement the HERA provisions which allow CFIs to rely on long-term advances to fund “community development loans,” FHFA proposed amending the definition of “residential housing finance assets” to incorporate “community development loans” into the definition. See 75 FR at 7993. To avoid confusion, FHFA also proposed removing the reference to “community lending” from the “residential housing finance assets” definition and incorporating each element of “community lending,” as defined in § 900.2,<sup>10</sup> into the definition. Thus, the proposed definition specifically referred to “loans or investments providing financing for economic development projects for targeted beneficiaries” and

<sup>9</sup> The comparison made by commenters to the provision in the letter of credit regulation is somewhat misplaced. Prior to adopting the letter of credit regulation, the Finance Board determined that, as a matter of law, the Bank Act did not require that letters of credit be collateralized. It did, however, conclude that such a requirement was advisable as a matter of safe and sound banking practice and provided for the acceptance of certain types of collateral for letters of credit that the Banks, by law, were not permitted to accept to secure advances. See Final Rule: Standby Letters of Credit, 63 FR 65693 (Nov. 30, 1998); and Office of General Counsel Opinion, 1998-GC-14 (Oct. 28, 1998). The HERA amendments that will be implemented by this rule, however, limit eligible advance collateral for a CFI member to secured community development loans or securities representing a whole interest in such secured loans.

<sup>10</sup> The definition of “residential housing finance assets” in § 950.1 of the Finance Board’s advances regulations incorrectly states that “community lending” is defined in § 900.1 rather than in § 900.2.

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 were editorial in nature and did not alter the scope of the definition for “residential housing finance assets.” No comments were received on these changes and the definition of “residential housing finance assets” is being adopted as proposed.

FHFA also proposed adding to newly designated § 1266.1 definitions for “Bank Act,” “advances,” “Bank,” and “targeted beneficiaries.” These definitions were contained in § 900.1 or § 900.2 of the FHFBS rules, and FHFA proposed to carry them over to newly designated part 1266 without substantive change.<sup>11</sup> No comments were received on these definitions and FHFA is adopting them as proposed.

#### Secured Lending—§ 1266.2(e)

FHFA proposed amending 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 FHFBS in 1995 by resolution; this resolution has not been rescinded and is still in effect. Fin. Brd. Res. No. 95-13 (Aug. 9, 1995). FHFA proposed incorporating this position into the regulation to prevent Banks from using forms of secured lending to members, such as reverse repurchase transactions, to avoid specific requirements and obligations associated with making advances to members, including stock purchase requirements. To assure that the proposed provision could not be circumvented by a Bank extending secured credit to an affiliate of a member, the proposed provision also prohibited secured lending to any non-member, affiliate of a member, given that such non-member affiliates would not be eligible to receive an advance under the regulations.

Almost all the comment letters addressed proposed § 1266.2(e). Most of these commenters noted that the broad wording in the proposed amendment could prevent derivative transactions or similar transactions in which counterparties would be required to

<sup>11</sup> The definitions in part 900 of the FHFBS rules apply only to regulations contained in chapter 9 of Title 12 of the Code of Federal Regulations. Thus, definitions in part 900 are no longer applicable to the advances and the new business activities regulations once they are transferred to new parts 1266 and 1272.

post collateral. Commenters suggested that the rule language should refer to secured transactions for “money borrowed” to distinguish reverse repurchase agreements and similar transaction from other types of transactions that may create credit exposures. FHFA agrees that the proposed provision is overly broad. It was not FHFA’s intent to prevent the Banks from entering into derivative transactions or prohibit the Banks from requiring members that may be a derivative counterparty from posting collateral. Nor was it FHFA’s intent to prevent Banks from accepting collateral to secure other types of member obligations to the Bank such as those arising under the members’ credit enhancement obligations for mortgages sold to Banks under their AMA programs. See 12 CFR 955.3(b)(2).

FHFA is therefore adopting as part of the final rule language similar to that proposed in commenters’ letters. The rule now refers to “all secured transactions, regardless of the form of the transaction, for money borrowed from a Bank by a member of any Bank,” so that reverse repurchase type lending transactions will be covered, but not other member transactions or obligations that may create a credit exposure to a Bank but do not arise from the Bank lending cash funds to the member. As with the proposed rule, the final rule continues to cover these types of transactions if undertaken between a Bank and a member of any Bank, and does not apply only to transactions between a Bank and one of its own members.

Commenters also pointed out that most acceptable reverse repurchase agreement counterparties would be affiliates of a Bank System member, since most major financial institutions in the United States have at least one affiliate that is a member of some Bank. They also noted that reverse repurchase agreements were an important short term liquid investment for the Banks, especially in times of economic stress when unsecured money-market investments may be a less desirable option on a risk-adjusted basis. These commenters therefore urged that the rule exclude from the prohibition on secured transactions with affiliates of members: (i) Primary dealers in government securities and (ii) other counterparties meeting the credit and other risk management requirements established by a Bank. One commenter stated that the rule should exclude broker-dealer affiliates of members from the prohibition of the rule. A number of commenters also pointed out that the provision prohibiting a Bank from

making a secured extension of credit to “an affiliate of any member” could technically prevent the Bank from making advances to members that were affiliates of other members and urged that the language prohibiting secured lending to affiliates of members be refined in this respect.

After consideration of the comments, FHFA has determined not to adopt, as part of the final rule, the proposed prohibition on reverse repurchase agreements and similar secured lending transactions with affiliates of members. While FHFA had an indication that certain Banks were considering entering into reverse repurchase agreements, each Bank with members of the other Bank, to help these members avoid additional stock purchases, FHFA has no indication that these transactions were being considered with affiliates of members as a way to avoid stock purchase requirements. FHFA decided that it should not prevent Banks from entering into important liquidity investments at this time on the possibility that Banks may use reverse repurchase agreements with affiliates of members as a way to effectively make secured extensions of credit to members without requiring member stock purchases. If FHFA becomes aware that the Banks are entering into reverse repurchase agreements with member affiliates, not for purposes of making liquidity investments, but as a means of facilitating member avoidance of additional stock purchase requirements, it may reconsider this position.

#### Long Term Advances—§ 1266.3

FHFA proposed to redesignate § 950.3 of the Finance Board’s advances regulation as § 1266.3, and to make certain conforming changes to the provision. No comments were received on these changes, and FHFA is adopting § 1266.3 as proposed. See 75 FR at 7993. Section 1266.3 implements section 10(a)(2) of the Bank Act, as amended by HERA, and provides 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, a term defined in § 1266.1 to include, for CFI members, small business loans, small farm loans, small agri-business loans, and community development loans. Thus, the only change being made in § 1266.3 is to remove, as redundant, references to small business loans, small farm loans, and small agri-business loans that were contained in former § 950.3.

#### Community Development Loans as Collateral—§ 1266.7(b)(1)

FHFA proposed 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 were proposed to this provision. No comments were received on this provision and it is being adopted as proposed.

A Bank’s acceptance of “community development loans” will 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 will need to be fully secured by collateral other than real estate. In addition, any eligible community development loan will 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 will also be subject to its first meeting the requirements of the new business activities rule, which will be redesignated as 12 CFR part 1272 by this rulemaking, and any other applicable FHFA regulations, guidance or policies. As already noted, the amendments being adopted here also will allow a Bank to accept, as collateral for advances, a security representing a whole interest in secured community development loans, subject to the Bank’s first fulfilling any obligations under the new business activities rule.

#### Clarification of Provision—§ 1266.11

FHFA is also adopting language in newly designated § 1266.11 to make clear that the provision only applies to the one Bank that has not yet implemented the capital structure plan required under the Gramm-Leach-Bliley Act (GLB Act). The requirements in newly designated § 1266.11 were all adopted prior to the passage of the GLB Act in November 1999 and have not been amended since the passage of the GLB Act. See 64 FR 16788 (Apr. 6, 1999) and 58 FR 29456 (May 20, 1993). The provision addresses stock purchase and redemption requirements. The GLB Act changed these requirements for a Bank, once the Bank implemented its capital plan and converted to the capital structure required under the GLB Act. See 12 U.S.C. §§ 1426(a)(6) and (c).

Banks that have converted to the GLB Act structure are required to set forth in their capital plans the requirements governing member stock purchases and member rights with regard to the redemption and repurchase of Bank stock, consistent with the regulations in 12 CFR parts 931 and 933. To avoid any confusion as to the application of § 1266.11, FHFA is amending this provision to clarify that it only applies to a Bank that has not converted to the GLB Act capital structure.

#### New Business Activities Regulation—Part 1272

As proposed, FHFA is transferring the new business activities rule from part 980 of the FHFBA regulations to part 1272 of FHFA regulations, making only technical and conforming changes to the rule. See 75 FR at 7993–94.

#### Housing Associates and Letter of Credit Regulation—Parts 1264 and 1269

FHFA is also making conforming changes to part 1264 and part 1269 to change any cross references to former part 950 to correspond to the correct, newly designated sections in part 1266.

### III. Paperwork Reduction Act

The information collection contained in the current Bank housing associates and advances regulations, entitled “Advances to Housing Associates,” has been assigned control number 2590–0001 by the Office of Management and Budget (OMB). The amendments to those regulations made by this final rule do not substantively or materially modify the approved information collection. Further, the 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.

### IV. Regulatory Flexibility Act

The final rule applies 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 that this final rule will not have significant economic impact on a substantial number of small entities.

#### List of Subjects in 12 CFR Parts 950, 980, 1264, 1266, 1269 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 is amending 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. Redesignate 12 CFR part 950 as 12 CFR part 1266.

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

■ 2. Redesignate 12 CFR part 980 as 12 CFR part 1272.

**PART 1264—FEDERAL HOME LOAN BANK HOUSING ASSOCIATES**

■ 3. The authority citation for part 1264 continues to read as follows:

**Authority:** 12 U.S.C. 1430b, 4511, 4513, and 4526.

**§ 1264.3 Housing associate eligibility requirements.**

■ 4. Amend § 1264.3(b) by removing the reference to “§ 950.17(b)(2) of this title” and adding in its place “§ 1266.17(b)(2) of this chapter”.

**PART 1266—ADVANCES**

■ 5. 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).

■ 6. 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.
§ 1266.1, Definition of <i>State housing finance agency</i> .....	§ 926.1 .....	§ 1264.1.
§ 1266.4(g)(2)(i) .....	§ 950.2(b)(2) .....	§ 1266.2(b)(2).
§ 1266.4(g)(2)(ii) .....	§ 950.2(a) .....	§ 1266.2(a).
§ 1266.5(b)(2)(ii) .....	§ 917.4 of this chapter .....	§ 917.4 of this title.
§ 1266.6(a) .....	§ 917.4 of this chapter .....	§ 917.4 of this title.
§ 1266.9(a)(1) .....	§ 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) introductory text .....	§ 926.3(b) .....	§ 1264.3(b).
§ 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)(B) .....	§ 926.3(b) .....	§ 1264.3(b).
§ 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 .....	part 1264.
§ 1266.17(e)(3) .....	part 926 .....	part 1264.

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

■ 8. 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, 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.

\* \* \* \* \*

*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 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.

■ 9. Amend newly redesignated § 1266.2 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 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.

■ 10. 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.

■ 11. 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 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.

\* \* \* \* \*

■ 12. Revise newly redesignated § 1266.11 to read as follows:

**§ 1266.11 Capital stock requirements; redemption of excess stock.**

(a) *Capital stock requirement for advances.* For a Bank that has not converted to the capital structure authorized by the Gramm-Leach-Bliley Act, the aggregate amount of outstanding advance made by the Bank to a member shall not exceed 20 times the amount paid in by such member for capital stock in the Bank.

(b) *Unilateral Redemption of excess stock.* A Bank that has not converted to the capital structure authorized by the Gramm-Leach-Bliley Act:

(1) May, after providing 15 calendar days advance written notice to a member, require the redemption of that amount of the member's Bank capital stock that exceeds the applicable capital stock requirements in paragraph (a) of this section, provided that the member continues to comply with the minimum stock purchase requirement set forth in § 1263.20(a) of this chapter; and

(2) May not impose on, or accept from, a member a fee in lieu of redeeming a member's excess stock.

**PART 1269—STANDBY LETTERS OF CREDIT**

■ 13. The authority citation for part 1269 continues to read as follows:

**Authority:** 12 U.S.C. 1429, 1430, 1430b, 1431, 4511, 4513 and 4526.

■ 14. Amend part 1269 as indicated in the table below:

Amend:	By removing the reference to:	And adding in its place:
§ 1269.1, Definition of <i>community lending</i> .....	§ 950.1 of this title .....	§ 1266.1 of this chapter.
§ 1269.1, Definition of <i>Residential housing finance</i> ..	§ 950.1 .....	§ 1266.1.
§ 1269.1, Definition of <i>SHFA associate</i> .....	§ 1269.1 .....	§ 1264.1.
§ 1269.2(c) .....	§ 950.7 of this title .....	§ 1266.7 of this chapter.
§ 1269.3(a) introductory text .....	§§ 950.17(b)(1)(i) or (ii) of this title .....	§ 1266.17(b)(1)(i) or (ii) of this chapter.
§ 1269.3(b) .....	§ 950.17(b)(2)(i)(A),(B) or (C) of this title .....	§ 1266.17(b)(2)(i)(A),(B) or (C) of this chapter.
§ 1269.4(a)(1) .....	§ 950.17(b)(2)(i)(B) .....	§ 1266.17(b)(2)(i)(B).
§ 1269.4(a)(1) .....	§ 950.17(d) .....	§ 1266.17(d).
§ 1269.4(c) .....	part 950 .....	part 1266.
§ 1269.5(b)(1) .....	§ 960.3 .....	§ 1269.3.
§ 1269.5(b)(2) .....	§§ 950.7(d), 950.7(e), 950.8, 950.9 and 950.10 of this title.	§§ 1266.7(d), 1266.7(e), 1266.8, 1266.9 and 1266.10 of this chapter.

**PART 1272—NEW BUSINESS ACTIVITIES**

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

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

■ 16. 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).

Amend:	By removing the reference to:	And adding in its place:
§ 1272.3 introductory text .....	§ 980.4(b) .....	§ 1272.4(b).
§ 1272.3(b) introductory text .....	§ 950.7 .....	§ 1266.7.
§ 1272.3(b)(2) .....	§ 917.4 of this chapter .....	§ 917.4 of this title.
§ 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.

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

■ 18. Amend newly redesignated § 1272.1 by adding in correct alphabetical order definitions for “Bank,” “Bank Act” 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).

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

*FHFA* means the Federal Housing Finance Agency.

\* \* \* \* \*

■ 19. In newly redesignated § 1272.5, amend paragraphs (a)(5) and (b) by revising the words “Finance Board’s” to read “FHFA’s”.

Dated: November 30, 2010.

**Edward J. DeMarco,**

*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2010–30519 Filed 12–8–10; 8:45 am]

**BILLING CODE 8070–01–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA–2010–0614; Directorate Identifier 2010–NE–24–AD; Amendment 39–16538; AD 2010–25–05]

RIN 2120–AA64

**Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Models BR700–710A1–10; BR700–710A2–20; and BR700–710C4–11 Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Due to manufacturing problems of BR700–710 HP stage 1 and 2 turbine discs it was necessary to re-calculate the Declared Safe Cyclic Life (DSCL) for all BR700–710 HP turbine discs. The analysis concluded that it is required to reduce the approved life limits for the HP turbine disc part numbers that are listed in Table 1 and Table 2 of this AD (MCAI). Exceeding the revised approved life limits could potentially result in non-contained disc failure.

We are issuing this AD to prevent failure of the high-pressure turbine (HPT) stage 1 and stage 2 discs, uncontained engine failure, and damage to the airplane.

**DATES:** This AD becomes effective January 13, 2011.

**ADDRESSES:** The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail:* mark.riley@faa.gov; telephone (781) 238–7758; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 23, 2010 (75 FR

51693). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Due to manufacturing problems of BR700–710 HP stage 1 and 2 turbine discs it was necessary to re-calculate the Declared Safe Cyclic Life (DSCL) for all BR700–710 HP turbine discs. The analysis concluded that it is required to reduce the approved life limits for the HP turbine disc part numbers that are listed in Table 1 and Table 2 of this AD (MCAI). Exceeding the revised approved life limits could potentially result in non-contained disc failure.

**Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

**Conclusion**

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

**Costs of Compliance**

Based on the service information, we estimate that this AD will affect about 1,026 BR700–710 engines of U.S. registry. We also estimate that no additional labor cost will be incurred to replace the discs. The average labor rate is \$85 per work-hour. Required parts will cost about \$6,000 per disc. Based on these figures, we estimate the cost of the AD on U.S. operators to be \$6,156,000. Our cost estimate is exclusive of possible warranty coverage.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in “Subtitle VII,