

§ 708a.8 Other regulatory oversight of methods and procedures of membership vote.

The federal or state regulatory agency that will have jurisdiction over the financial institution after conversion must verify the membership vote and may direct that a new vote be taken, if it disapproves of the methods by which the membership vote was taken or the procedures applicable to the membership vote.

§ 708a.9 Completion of conversion.

(a) Upon receipt of approvals under § 708a.7 and § 708a.8 of this part, the credit union may complete the conversion transaction.

(b) Within 30 calendar days after the effective date of the conversion, the board of directors of the mutual savings bank or mutual savings association must certify completion of the transaction to the Regional Director. NCUA will cancel the insurance certificate of the credit union and, if applicable, the charter of the federal credit union.

§ 708a.10 Limit on compensation of officials.

No director or senior management official of an insured credit union may receive any economic benefit in connection with the conversion of the credit union other than compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932, 935, 936 and 970

[No. 98-48]

RIN 3069-AA75

Community Investment Cash Advance Programs

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting a final rule establishing a general framework under which the Federal Home Loan Banks (Banks) may offer Community Investment Cash Advance (CICA) programs in addition to their Affordable Housing Programs (AHP) and Community Investment Programs (CIP). CICA programs other than AHP and CIP are entirely optional on the part of the Banks. The final rule is intended to provide the Banks with an array of specific standards for projects, targeted

beneficiaries and targeted income levels that the Finance Board has determined support community lending under all CICA programs, including CIP. The final rule, however, does not apply to a Bank's AHP, which is governed specifically by part 960 of the Finance Board's regulations. A Bank may offer CICA programs, called Rural Development Advance (RDA) and Urban Development Advance (UDA) programs, for community lending using the specified standards for targeted beneficiaries or targeted income levels, without prior Finance Board approval. A Bank also may offer other CICA programs for projects, targeted beneficiaries and targeted income levels established by the Bank with prior Finance Board approval.

EFFECTIVE DATE: December 28, 1998.

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SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Banks currently have broad authority under section 10(a) of the Federal Home Loan Bank Act (Bank Act) and part 935 of the Finance Board's regulations to make advances in support of housing finance, including housing for very low-, low- and moderate-income families. See 12 U.S.C. 1430(a); 12 CFR part 935. In the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Congress required the Banks to offer two programs, the AHP and the CIP, to provide advances in support of unmet housing finance and economic development credit needs. See Pub. L. 101-73, § 721, 103 Stat. 183 (Aug. 9, 1989).

The AHP is a subsidy program through which the Banks support the finance of affordable owner-occupied and rental housing. See 12 U.S.C. 1430(j). The Finance Board first issued implementing regulations for the AHP in 1990. See 12 CFR part 960.

The CIP is a program through which the Banks provide advances to members at cost to support the financing of housing benefiting families with incomes at or below 115 percent of the

area median income, and economic development activities benefiting families with incomes at or below 80 percent of the area median income. See 12 U.S.C. 1430(i)(2). The Finance Board previously has not promulgated regulations implementing the CIP.

Section 10(j)(10) of the Bank Act authorizes the Banks to establish CICA programs in addition to the CIP and the AHP to support "community investment." See *id.* section 1430(j)(10). The Finance Board has not previously promulgated regulations or other specific guidance on what kinds of Bank lending are permitted under this authority.

Since the enactment of the Banks' statutory authority to make advances for community investment under FIRREA, the Banks have provided relatively less long-term credit for economic development projects than for housing, and all of the verifiable targeted economic development lending by the Banks has been done under their CIP authority, as opposed to their authority to establish other CICA programs. In the past eight years, the Banks have provided \$18.1 billion in CIP advances to finance 368,359 housing units. Only 25 percent of those units have been rental units that often provide housing for lower-income families and are usually more difficult to finance than single-family owner-occupied housing. In addition, only \$751 million or 4 percent of CIP advances have financed economic development projects. Furthermore, CIP advances are not available to the Banks' nonmember borrowers. See *id.* section 1430(i)(1).

The Finance Board believes there is a need for long-term financing for economic development that is not being met by the financial community generally, nor by members using the CIP specifically. The Banks can help to meet this need through the establishment of other CICA programs to provide long-term financing for economic development. In order to facilitate and encourage such community lending, the Finance Board issued a proposed rule to establish uniform standards for all CICA programs defining the kinds of housing and economic development projects and activities, targeted beneficiaries and targeted income levels that would constitute "community investment" eligible to be financed by advances under section 10(j)(10) of the Bank Act. This proposed rule was published in the **Federal Register** on May 8, 1998, with a 90-day period for public comment that closed on August 6, 1998. See 63 FR 25718 (May 8, 1998).

The Finance Board received 31 comment letters on the proposed rule. Commenters included: eleven Banks, a Bank board of directors, a Bank member thrift, three Bank Advisory Councils, five government entities, an organization representing government entities, five trade associations, and an investment advisor.

In the proposed rule, the Finance Board requested comment on whether it should establish CICA standards, in whole or in part, in the form of a regulation or a policy statement or guidelines. See 63 FR 25718. The Finance Board asked whether a policy statement or guidelines would be a more effective means of achieving the goal of promoting the Bank's support of community investment financing. Commenters supporting issuance of CICA standards via a regulation stated that the proposed rule contained sufficient flexibility and discretion to enable the Banks to promote community investment in response to the needs of their individual districts. Commenters noted that the establishment of clear and specific CICA standards would be more likely to increase economic development activities in targeted communities, and would make CICA programs easier to implement and monitor. The Finance Board agrees with these commenters and has determined to issue a final rule.

Commenters preferring issuance of a policy statement or guidelines stated that regulatory standards and reporting requirements would increase the cost of implementing CICA programs and might discourage members and others from participating in such programs. Commenters also suggested that policy guidelines could be modified more quickly than a regulation to respond to changing markets and project needs. There appears to be little merit in these arguments. First, the standards and reporting requirements would exist regardless of the form of the guidance. This argument implies that such standards and requirements could be more easily ignored if the guidance existed in the form of a policy statement, since a policy statement is not legally enforceable by the agency. Such arguments only serve to demonstrate why a regulation is preferable to a policy statement. Second, changing a policy statement requires action by the Board of Directors of the Finance Board, as does changing a regulation. The only real difference in timing is the public comment process required for a rulemaking procedure. Once again, this only serves to demonstrate why the regulatory route is preferable.

Under the Administrative Procedures Act (APA), regulations are subject to a wide-ranging notice and public comment process, which enables the regulatory agency to obtain the broadest possible input from the regulated industry, program users, and the public in developing the standards and other requirements to be incorporated into such regulations. See 5 U.S.C. 553. In addition, as noted above, unlike policy statements and guidelines which do not have the force of law and therefore are not legally binding, regulations are legally enforceable by the agency. In order to provide the most certainty for the agency, the Banks and their members, the Finance Board has determined that it is most appropriate to issue the CICA program standards in a regulation rather than as a policy statement or guidelines.

II. Analysis of Final Rule

The final rule adds a new part 970 to the Finance Board's regulations. Part 970 establishes a general framework whereby the Banks may offer CICA programs to provide advances to members and nonmember borrowers, who in turn can use the advances to provide financing for housing and economic development projects or activities for targeted beneficiaries with incomes at or below a targeted income level, to address unmet economic development credit needs. Projects with unmet credit needs are those for which financing is not generally available, or is available at lower levels or under less attractive terms. The final rule does not require a Bank to establish a CICA program (other than AHP and CIP, which are required by statute). The final rule is intended to provide the Banks with the parameters for what the Finance Board has determined will meet the statutory requirement for "community investment" under section 10(j)(10). See 12 U.S.C. 1430(j)(10).

As further described below, the final rule has been substantially reorganized from the proposed rule to provide greater clarity.

A. Scope—§ 970.1

Section 970.1 of the final rule states that part 970 establishes requirements for all CICA programs offered by a Bank, except for a Bank's AHP, which is governed specifically by part 960 of the Finance Board's regulations (Affordable Housing Program Regulation, 12 CFR part 960).

B. Purpose—§ 970.2

Section 970.2 of the final rule states that the purpose of part 970 is to identify community lending projects or

activities (as defined in § 970.3 and discussed further below) that the Banks may support through the establishment of CICA programs. A Bank may offer the following CICA programs in support of community lending: Rural Development Advance (RDA) programs; Urban Development Advance (UDA) programs; and any other CICA programs that meet the requirements of part 970. In addition, a Bank is required to offer CICA programs under section 10(i) of the Bank Act (CIP) (12 U.S.C. 1430(i)), and under section 10(j) of the Bank Act (AHP) (12 U.S.C. 1430(j)).

C. Community Lending Plan—§ 970.4

Section 970.4 of the final rule requires each Bank to develop and adopt an annual Community Lending Plan pursuant to § 936.6 of the Finance Board's Community Support Regulation (12 CFR 936.6). As further discussed below, a Bank's Community Lending Plan shall contain quantitative community lending performance goals, and the initiatives and incentives the Bank intends to offer to promote community lending and affordable housing finance by the Bank's borrowers.

1. Proposed Budget and Strategy Process

The final rule does not adopt the budget and strategy process for establishing community lending goals that was set forth in the proposed rule. Proposed § 970.3 would have authorized the Banks to establish an annual budget for the cumulative discount the Bank intended to make available under its CIP and other CICA programs (excluding AHP) the Bank established. The budget was to be based on the Bank's projected annual totals of CIP advances and other CICA advances that the Bank intended to make, and the extent to which the Bank intended to provide a pricing discount, if any, for such other CICA advances. If a Bank chose to establish a budget, the Bank was urged to establish standards for allocating the discount among specific types of eligible community lending activities. In the absence of such a budget, the Bank was required to fund requests from qualified borrowers for any advances that otherwise met the requirements of the Bank's CIP or any other CICA program the Bank offered. The proposed rule also would have required each Bank to establish a strategy, after consultation with the Bank's Advisory Council and economic development organizations in the Bank's district, for providing CIP advances to support financing for community lending that is otherwise not generally available, or is available at

lower levels or under less attractive terms.

The proposal was meant to encourage the Banks to engage in a deliberate decisionmaking process about how much community lending credit they intended to make available each year, through their CIP and other CICA programs, and the kinds of projects to which that credit should be directed. As discussed above, the Banks' community lending efforts to date have been through volume lending under the CIP in support of home mortgage loans, to the relative exclusion of economic development financing. The Banks' concentration on volume funding of CIP-eligible home mortgage loans may have been encouraged by the CIP target system established in the past by the Finance Board, which was based on a Bank's average annual outstanding CIP advances. The Finance Board wishes to reverse this trend and to shift the Banks' focus from volume of CIP lending to maximizing the impact of individual advances. The proposed rule made clear that each Bank had authority to determine the appropriate amount of CIP credit to make available on an annual basis. However, the Finance Board believed that the authority to limit the amount of available CIP credit imposed an obligation for the Bank to target how the opportunity cost associated with CIP advances is to be used most effectively in relation to the kinds of CIP projects the Bank funds.

One Bank commenter specifically supported the necessity of having a Bank System-wide basis for determining the dollar value of the discount for specific advances, in order to ensure that all of the Banks budget their cumulative discounts consistently, regardless of the actual CICA programs and discounts offered. The commenter stated that capital limitations should be included as a factor which Banks could consider in the cumulative discount budgeting process, since CIP and other CICA advances must be funded under the statutory 20-to-1 capital leverage limits, just as regular advances are funded. See *id.* section 1426(b)(2). One Bank commenter added that it should be clarified that the Banks are dependent on lenders to decide whether to originate specific types of loans and to finance them with Bank advances and, therefore, the Banks should have flexibility to adjust their budgets in response to changing market realities.

Other commenters stated that the budget dollar amount selected by the Bank would be an inaccurate and unrelated measure of a Bank's commitment to community lending and should not be used by the Finance

Board as a proxy for such lending. Commenters claimed that it would be nearly impossible for the Banks to demonstrate that a CICA advance to support projects is "otherwise not generally available or is available at lower levels or under less attractive terms." A Bank commenter questioned how the Finance Board would treat Banks that do not "spend" all of their annual CICA budget, or spend more or budget less than the Finance Board desires. Another commenter expressed concern that the proposed annual budget requirement could result in a Bank having to make all of its advances at cost, without any profit, which would be burdensome and unworkable. One commenter also noted that the proposed budget requirement could create uncertainty rather than a stable source of discounted funding for eligible projects. For example, if the volume of CICA advances were to decline, discounts offered near the end of the budget period may be more significant than those offered earlier in the year in order for the Banks to fulfill their volume or discount quota under the proposed rule. Conversely, in order to meet volume or discount quota, Banks may offer aggressive discounts early in the year, to the detriment of worthy projects needing funding later in the year that may not receive as favorable terms.

A Bank commenter recommended deletion of the proposed provision that in determining projected annual totals for CIP and other CICA program advances, a Bank should take into account its earnings, fearing that this would become the primary measure for establishing a CICA budget, rather than taking into account market conditions, product demand, and other variables that typically are considered in developing budget projections.

Several Bank commenters suggested that the proposed requirement that the Bank must fund CICA advance requests in the absence of a CICA budget adopted by the Bank be deleted as inconsistent with safe and sound business practices, and contrary to the statutory language granting the Banks' boards of directors discretionary authority to deny or condition approval of an advance. See *id.* section 1429.

Several commenters suggested instead that each Bank's board of directors, in consultation with its Advisory Council, should be required to establish specific annual measurable goals or performance standards for CIP and CICA advances, such as volume targets or dollar targets, based on assessment of critical community lending needs in the Bank's district. One Bank commenter suggested

evaluating a Bank's CICA performance taking into account its marketing efforts, technical assistance activities and other information on CICA programs.

A commenter suggested that the Banks be encouraged to adopt one CICA plan covering the AHP, CIP, Community Support and other CICA programs, rather than separate plans for each program.

A commenter suggested clarification of the need for a CIP strategy statement where the Bank will not be establishing a budget but intends to fund all qualified requests for CIP advances. Several commenters supported requiring consultation with economic development organizations, in addition to Advisory Councils, in developing CIP strategies. Other commenters suggested that consultation with such organizations should be encouraged but not required, as the Advisory Councils are very capable of providing input in the development of CICA programs, and representatives of such organizations often are members of the Advisory Councils.

The Finance Board believes that many of these comments have merit, and has sought in the final rule to address the concerns expressed by the commenters while maintaining the essence of the proposal in a less burdensome manner. Accordingly, the budget and strategy provisions of proposed § 970.3 have not been adopted in the final rule. Instead, a number of the comments have been incorporated into the final rule through amendment of § 936.6 of the Finance Board's Community Support Regulation, as further discussed below.

2. Community Lending Plan

There is already established in the Finance Board's Community Support Regulation (12 CFR 936) a requirement that the Banks provide technical assistance and engage in outreach to their members for affordable housing and certain community lending. See *id.* § 936.6. The final rule amends § 936.6 to require the Banks to expand the scope of the existing marketing activities required under their Community Support Programs to encourage community lending by their borrowers, and include in their Community Support Programs an annual Community Lending Plan containing quantitative community lending performance goals. As further discussed below, "community lending" is defined in the final rule as "providing financing for economic development projects for targeted beneficiaries." See § 970.3.

Specifically, the final rule amends §§ 936.6(a) and (b) of the Community Support Regulation (to be codified in

§ 936.6(a)), to provide that a Bank's Community Support Program should:

- (1) Promote and expand affordable housing finance;
- (2) Encourage members to increase their community lending and affordable housing finance activities by providing incentives, as provided therein;
- (3) Include an annual Community Lending Plan, approved by the Bank's board of directors and subject to modification, which shall require the Bank to:
 - (i) Conduct market research in the Bank's district;
 - (ii) Describe how the Bank will address the identified credit needs and market opportunities in the Bank's district for community lending;
 - (iii) Consult with its Advisory Council and with members, nonmember borrowers, and public and private economic development organizations in the Bank's district in developing and implementing its Community Lending Plan; and
 - (iv) Establish quantitative community lending performance goals.

The Community Lending Plan is intended not as a burden, but as a tool to assist the Banks in identifying credit needs and business opportunities within the Bank's district and in crafting viable business responses to those needs and opportunities. Market research is the methodology through which the Banks may discover the opportunities available and thereby may develop an informed Community Lending Plan. No formal methodology is required by the final rule; each Bank, therefore, is responsible for determining what market research activity will be sufficient to enable the Bank to identify the community lending credit needs and market opportunities in its district and develop programs to address those needs and opportunities.

3. CICA Program Information Dissemination

In the proposed rule, the Finance Board requested comment on how information about a Bank's CIP and other CICA programs could best be disseminated to Bank members and nonmember borrowers, as well as to other interested members of the public. See 63 FR 25719. Several commenters stated that existing Bank information dissemination procedures under the Banks' other affordable housing and community lending programs are adequate for CICA purposes. The Finance Board agrees with these commenters and has included in the final rule a CICA information dissemination requirement as a part of the existing Community Support

information dissemination process. Specifically, the final rule amends § 936.6(c) of the Finance Board's Community Support Regulation (to be codified in § 936.6(b)) to require that the Banks provide annually to each of their members a written notice:

- (1) Identifying CICA programs and other Bank activities that may provide opportunities for a member to meet the community support requirements and to engage in community lending; and
- (2) Summarizing community lending and affordable housing activities undertaken by members, nonmember borrowers, nonprofit housing developers, community groups, or other entities in the Bank's district, that may provide opportunities for a member to meet the community support requirements and to engage in community lending.

D. Community Investment Cash Advance Programs—§ 970.5

1. Types of CICA Programs

The final rule defines a "CICA program" as a Bank's AHP, CIP, RDA or UDA program using any combination of the standards specified in § 970.3, and any other program for community lending offered by a Bank using standards other than those specified in § 970.3, with prior Finance Board approval. See § 970.3.

2. "Community Lending"

Section 970.5 of the final rule provides that Bank advances offered under CICA programs must be made for "community lending" and eligible housing projects at the appropriate "targeted income levels." See also 12 CFR 935.1 (as amended by the final rule) (definition of "community investment cash advance"). "Community lending" is a new term in the final rule, which is defined as "providing financing" for "economic development projects" for "targeted beneficiaries." See § 970.3.

In response to a commenter, the Finance Board wishes to clarify that CICA loans may be used for affordable housing, but that only the CIP and AHP CICA programs have targeting requirements for affordable housing under CICA. The fact that CICA loans may be made for targeted economic development financing does not negate the fact that CICA loans also may be made for affordable housing. CICA loans also may be used for mixed-use projects involving both community lending and affordable housing, although only the community lending portion of the project would be subject to targeting under CICA (except for CIP projects).

See § 970.5(b). Nothing in this final rule diminishes the Banks' authority to provide advances to fund loans for affordable housing projects pursuant to their regular advances authority under section 10(a) of the Bank Act. See 12 U.S.C. 1430(a).

In the proposed rule, the Finance Board requested comment on defining targeted income levels for CICA programs based upon area median income data other than that published annually by HUD. See 63 FR 25720. A number of commenters favored allowing the Banks to choose among the median income standards identified in the Finance Board's AHP regulation (12 CFR 960.1). Accordingly, targeted income levels in the final rule are based on the "median income for the area," as defined in § 970.3, consistent with the definition in the AHP regulation, which will provide uniformity between the AHP and other CICA programs. In addition, in response to commenters, the median income for the area may be adjusted for family size, rather than just for a family of four.

The final rule specifically defines the component terms of "community lending," as further discussed below.

a. "Providing financing"

"Providing financing" means:

- (1) Originating loans;
- (2) Purchasing a participation interest, or providing financing to participate, in a loan consortium for CICA-eligible housing or economic development projects;
- (3) Making loans to entities that, in turn, make loans for CICA-eligible housing or economic development projects;
- (4) Purchasing mortgage revenue bonds or mortgage-backed securities, where all of the loans financed by such bonds and all of the loans backing such securities, respectively, meet the eligibility requirements of the CICA program under which the member or nonmember borrower receives an advance;
- (5) Creating or maintaining a secondary market for loans, where all such loans are mortgage loans meeting the eligibility requirements of the CICA program under which the member or nonmember borrower receives an advance;
- (6) Originating CICA-eligible loans within 3 months prior to receiving the CICA advance; or
- (7) purchasing low-income housing tax credits. See § 970.3.

Bank commenters specifically supported the inclusion of purchasing qualifying mortgage revenue bonds and mortgage-backed securities, and creating

or maintaining a secondary market for qualifying loans. The financing techniques listed in paragraphs (2), (3), (6) and (7) were added in response to commenters' suggestions, in order to provide additional flexibility for the Banks to use various financing strategies to support community lending.

A Bank commenter recommended that the proposed list of eligible financing techniques be revised to permit other appropriate activities as determined by the Bank, which the Bank may submit to the Finance Board for approval. The Finance Board believes that the list of eligible activities in the final rule, which has been expanded to include commenters' suggestions, is sufficiently inclusive to take into account anticipated community lending financing.

b. "Economic development projects"

"Economic development projects" are:

(1) Commercial, industrial, manufacturing, social service, and public facility projects and activities; and

(2) Public or private infrastructure projects, such as roads, utilities, and sewers. See § 970.3.

In response to a Bank comment, the final rule adds industrial projects, which were not included in the proposed rule.

c. "Targeted beneficiaries"

"Targeted beneficiaries" are beneficiaries determined by the geographical area in which a project is located (Geographically Defined Beneficiaries), by the individuals who benefit from a project as employees or service recipients (Individual Beneficiaries), or by the nature of the project itself (Activity Beneficiaries). See § 970.3. A list of targeted beneficiaries appeared under the definition of "benefit" in § 970.4 of the proposed rule. Targeted beneficiaries as defined in the final rule are composed of three groups:

(1) Geographically Defined Beneficiaries:

(i) The project is located in a neighborhood with a median income at or below the targeted income level. Thus, for CIP-funded projects, the targeted income level must be 80 percent of area median income; for RDA-funded projects (defined in § 970.3), the targeted income level is 115 percent of area median income; and for UDA-funded projects (defined in § 970.3), the targeted income level is 100 percent of area median income;

(ii) The project is located in a rural Champion Community, or a rural

Empowerment Zone or rural Enterprise Community, as designated by the Secretary of the U.S. Department of Agriculture (USDA);

(iii) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of the Department of Housing and Urban Development (HUD);

(iv) The project is located in an Indian area, as defined by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), Alaskan Native Village, or Native Hawaiian Home Land;

(v) The project is located in an area and involves a property eligible for a Brownfield Tax Credit;

(vi) The project is located in an area affected by a military base closing and is a "community in the vicinity of the installation" as defined by the Department of Defense at 32 CFR part 176;

(vii) The project is located in a designated community under the Community Adjustment and Investment Program as defined under 22 U.S.C. 290m-2;

(viii) The project is located in a Federally declared disaster area; or (ix) the project is located in a state declared disaster area, or qualifies for assistance under another Federal or state targeted economic development program, approved by the Finance Board.

One Bank commenter suggested that projects located in state declared disaster areas be included as eligible for CICA advances. Another Bank commenter recommended including state-designated Empowerment and Enterprise Zones in order to provide greater flexibility in addressing local needs of the targeted income group. Other commenters suggested allowing the Banks the discretion to select other areas not listed in the rule that are designated for targeted economic development. In response to these comments, paragraph (ix) was added to enable the Banks to fund projects located in state declared disaster areas, or qualifying for assistance under another Federal or state targeted economic development program not specifically listed in the final rule, with prior approval of the Finance Board. This will enable the Finance Board to determine, on a case-by-case basis, whether specific state declared disaster areas or economic development programs are defined by specific standards and are sufficiently targeted to be considered a CICA program.

(2) Individual Beneficiaries:

(i) The annual salaries for at least 51 percent of the permanent full-and part-

time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level (job creation or retention project); or

(ii) At least 51 percent of the families who otherwise benefit from (other than through employment), or are provided services by, the project have incomes at or below the targeted income level.

The Finance Board requested comment in the proposed rule on whether measuring the salaries of jobs created by a project is an effective way to determine whether the project benefits families with incomes at or below a targeted income level. See 63 FR 25720. Several Bank commenters supported measuring such salaries as a reasonable method of determining whether a project benefits households with incomes at or below a targeted income level. A Bank commenter noted that jobs with modest salaries are typically entry level or for people with limited job skills, and are an important link in upward mobility of low-income people. Other commenters stated that the proposed job salary measure gives the appearance of promoting lower-paying jobs when it would be preferable to promote an increase in the number and quality of employment opportunities, and could prevent worthy projects that could not meet the standard from being eligible for CICA funds.

Some commenters recommended lowering the target for eligible job creation or retention projects from 75 percent in the proposed rule (see 63 FR 25724 (definition of "benefit")) to 50 or 51 percent. Commenters stated that projects meeting the lower standard still would be creating or retaining a significant number of jobs in the community, and would provide more career and income potential and may be more viable, given the mix of incomes, than projects with a higher percentage of the jobs at or below the targeted income level. Commenters stated that a 50 percent standard would maintain consistency with other targets in the proposed rule, as well as with targets used by other Federal housing and economic development programs. One commenter suggested changing the target to a "significant number" of jobs created or retained by the project, with the threshold number determined by each Bank in its community investment-affordable housing plan. Another Bank commenter recommended that the Banks have the discretion to set the target for the number of jobs created or retained by the project, taking into account the individual needs of the Bank's district.

The final rule retains the proposed measure of salaries of jobs created or retained by a project which, as noted by a number of commenters, should be an effective method to determine whether the project benefits families with incomes at or below a targeted income level. However, in response to the comments, the final rule changes the target for job creation or retention projects in the proposed rule from 75 percent to 51 percent of the total number of jobs created or retained. The 51 percent standard should ensure that projects eligible for CICA funding have a substantial number of jobs at the targeted salary level, while not excluding a large number of worthy projects in credit needy areas. The 51 percent standard also is consistent with the targeting requirements of other Federal housing and economic development programs.

(3) Activity Beneficiaries:

Projects that qualify as small businesses, as defined in § 970.3.

(4) Other Targeted Beneficiaries:

A Bank may designate, with the prior approval of the Finance Board, other targeted beneficiaries for its community lending.

A number of commenters were concerned that the list of CICA-eligible projects in the definition of "benefit" in the proposed rule was too limited and did not allow the Banks flexibility to fund other types of worthy projects, thereby limiting innovation by the Banks. The final rule addresses this concern by allowing the Banks, with the prior approval of the Finance Board, to designate other types of projects as eligible for CICA funding.

Section 970.3 of the final rule further provides that only targeted beneficiaries identified in paragraphs (1)(i) through (iv), and (2)(i) and (ii) are eligible for CIP advances. This is necessary in order to ensure satisfaction of the statutory CIP targeting requirements. See 12 U.S.C. 1430(i)(2).

3. AHP

Section 970.5(a)(1) of the final rule reiterates the statutory requirement that each Bank shall offer an AHP, in accordance with part 960 of the Finance Board's regulations. See 12 U.S.C. 1430(j); 12 CFR part 960.

4. CIP

Section 970.5(a)(2) of the final rule provides that each Bank shall offer a CIP, as required by statute (see 12 U.S.C. 1430(i)), to "provide financing" for "housing projects" and for eligible "community lending" at the appropriate "targeted income levels." Under the statute, the Banks are required to

provide funding for members who, in turn, "provide loans" to finance CIP-eligible activities. See *id.* Most of the Banks have implemented this statutory requirement by providing advances to members to fund the origination of loans financing CIP-eligible activities. Consistent with the proposed rule, the final rule adopts a more expansive reading of the meaning of the statutory language authorizing CIP advances to be used by members to "provide loans." See *id.* section 1430(i)(2). Specifically, the final rule authorizes CIP advances and other CICA advances to be used not only to fund CICA-eligible loan originations, but also for other types of financing activities as set forth in the definition of "providing financing" in § 970.3. The Finance Board believes that these are additional means of providing loans for the financing of CIP- and other CICA-eligible activities, in accordance with the intent of the statute, because they create liquidity in the market for CIP- and other CICA-eligible loans.

Section 970.3 of the final rule defines "housing projects" to mean projects or activities that involve the purchase, construction or rehabilitation of, or predevelopment financing for:

(1) Individual owner-occupied housing units, each of which is purchased or owned by a family with an income at or below the targeted income level;

(2) Projects involving multiple units of owner-occupied housing in which at least 51 percent of the units are owned or are intended to be purchased by families with incomes at or below the targeted income level;

(3) Rental housing where at least 51 percent of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(4) Manufactured housing parks where:

(i) At least 51 percent of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(ii) The project is located in a neighborhood with a median income at or below the targeted income level.

In response to comments, the final rule adds as eligible CIP projects any projects involving rehabilitation of owner-occupied housing units, construction of rental housing and manufactured housing parks, or predevelopment financing for housing projects, which were omitted from the proposed rule.

The final rule clarifies in paragraph (2) that projects involving multiple units of owner-occupied housing, *i.e.*, condominium, cooperative and single-

family detached housing projects, that meet the 51 percent test are eligible for CIP funding. Thus, single-family detached owner-occupied housing projects with a mix of incomes, Planned Unit Developments, and other mixed income projects, would be eligible for CIP advances.

In response to comments, the final rule changes the requirement in the proposed rule that "substantially all" of the resident families in a manufactured housing park have incomes at or below the targeted incomes, to a requirement that at least 51 percent of the units in the project are occupied by, or the rents are affordable to, families meeting the targeted income level. This makes the occupancy/affordability standard for manufactured housing parks consistent with the 51 percent standard for rental housing projects, and is a clearer standard to meet than the proposed standard.

Most occupants of manufactured housing parks own their homes but rent the space on which their homes are located. Verification of income is not a usual practice in the course of renting space to the owner of a manufactured home. Therefore, it is difficult to verify that the resident families in a manufactured housing park are income-eligible. The criterion in the final rule that the manufactured housing park be located in a neighborhood with a median income at or below the targeted income level is intended as a proxy for the requirement that each resident family be income-eligible.

The "targeted income level" for CICA advances provided under CIP for housing projects and economic development projects is incomes at or below 115 percent and 80 percent of the median income for the area, respectively, both as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four. See *id.*

5. RDA and UDA Programs

Section 970.5(a)(3) of the final rule provides that each Bank may offer RDA or UDA programs, or both, for community lending using the targeted beneficiaries or targeted income levels specified in § 970.3, without prior Finance Board approval. "RDA programs" and "UDA programs" are programs offered by a Bank for community lending in "rural" or "urban" areas, respectively. See § 970.3. "Targeted income levels" for RDA and UDA programs, where applicable, are incomes at or below 115 percent and 100 percent of the median income for

the area, respectively, both as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four. See § 970.3. These income limits are higher than those required under CIP or AHP, and are intended to benefit families not targeted by those programs. Due to generally higher median incomes in urban areas, the UDA income eligibility limit, although numerically lower than the RDA income eligibility limit, reaches families with higher incomes.

A number of commenters specifically supported the income limits established for RDA and UDA programs. Several Bank commenters stated that these income limits do not go far enough to address the income level imbalances between rural and urban areas. Several commenters suggested that the RDA and UDA programs both should have the same income limit of 115 percent, on the basis that while income ranges are lower in rural areas, urban areas have higher costs of living. A trade association commenter supported the establishment of such programs generally, but expressed concern that the higher income limits of these programs would divert financing from lower income and minority neighborhoods to neighborhoods where residents are either mostly middle-income or in the upper range of moderate-income. If a Bank determines that the higher income limits of the RDA or UDA programs are not appropriate for a particular CICA program it wishes to offer in its district, under the final rule the Bank may adopt other income limits upon prior Finance Board approval. See § 970.3 (definition of "targeted income level").

Section 970.3 of the final rule defines "urban area" as: (1) a unit of general local government with a population of more than 25,000; or (2) an unincorporated area within a Metropolitan Statistical Area (MSA) that does not qualify for housing or economic development assistance from the USDA.

A Bank commenter recommended that "rural area" be defined as any town with a population of 30,000 that is not attached to a central city. Another Bank commenter suggested deletion of the proposed 30,000 reference, recommending instead that "rural area" be defined as any county located outside an MSA, consistent with the definition in other Federal housing programs. In response to these comments, "rural area" is defined in § 970.3 as: (1) a unit of general local government with a population of 25,000

or less; (2) an unincorporated area outside an MSA; or (3) an unincorporated area within an MSA that qualifies for housing or economic development assistance from the USDA. The population number of 30,000 was changed to 25,000 in order to be consistent with the definition of rural used in USDA housing programs. Paragraph (3) of the definition takes into account a comment that the proposed definition should not have excluded large areas within MSAs that are predominantly rural in nature.

6. Other CICA Programs Requiring Finance Board Approval

Section 970.5(a)(4) of the final rule provides that each Bank may offer CICA programs for community lending using targeted beneficiaries and targeted income levels other than those specified in § 970.3, established by the Bank with the prior approval of the Finance Board. In response to comments, this provision is intended to give the Banks greater flexibility, in response to market needs and demands, to offer CICA programs that may not use one of the enumerated targeted beneficiaries or targeted income levels included in the final rule, to better reflect the needs of the individual Bank's district.

7. Mixed-Use Projects

a. CICA programs other than CIP

Section 970.5(b)(1) of the final rule provides that for projects funded under CICA programs other than CIP, involving a combination of housing projects and economic development projects, only the economic development components of the project must meet the appropriate targeted income level for the respective CICA program.

b. CIP programs

Section 970.5(b)(2) of the final rule provides that for projects funded under CIP, both the housing and economic development components of the project must meet the appropriate targeted income levels. This is necessary to ensure satisfaction of the statutory CIP targeting requirements for housing and economic development projects. See 12 U.S.C. 1430(i)(2).

8. Refinancing

Section 970.5(c) of the final rule provides that CICA advances other than AHP may be used to refinance economic development and housing projects, provided that any equity proceeds of the refinancing of rental housing and manufactured housing park projects are used to rehabilitate the projects or to

preserve affordability for current residents.

A trade association commenter specifically supported allowing the use of CICA advances for refinancing of economic development projects. Several commenters opposed the proposed restriction on the use of CICA advances for refinancing as unnecessary and difficult to enforce from a compliance standpoint. One commenter stated that the restriction in proposed §§ 970.5(d)(2) and 970.7(d) on owner-occupied refinancing would penalize low-income families vis a vis upper-income families who face no such limitations on their right to refinance their homes. The Finance Board agrees that targeted homeowners should be able to take advantage of all the incidents of home ownership, including accessing any equity that has accumulated, that other homeowners may use. Accordingly, the proposed refinancing restriction for owner-occupied housing has been omitted from the final rule. In response to a commenter's request for clarification, the final rule's reference to "any" equity proceeds makes clear that there is no restriction on refinancing that results in no "equity proceeds," i.e., refinancing with no cash out to achieve a lower debt service. The Finance Board believes that the restriction on refinancing of rental housing and manufactured housing park projects is necessary to ensure that occupants of such projects are not adversely affected by a refinancing, such as taking equity out of a project resulting in an increase in rents to cover the repayment of the financing.

9. Pricing and Availability of CICA Advances

a. Advances to members

Consistent with proposed § 970.7(f)(1), § 970.5(d)(1) of the final rule provides that for CICA programs other than AHP and CIP, a Bank shall price advances to members as provided in § 935.6 of the Finance Board's Advances Regulation (12 CFR 935.6), and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Bank Act (12 U.S.C. 1430(a)). Permitting the Banks to price such CICA advances as regular advances may provide the Banks with a financial incentive to make such advances. Banks still have the option to provide reduced pricing for such advances in order to provide borrowers with a financial incentive to undertake community lending.

b. Pricing of CIP advances

Consistent with the statutory requirement, § 970.5(d)(2) of the final rule provides that the price of CICA advances made under CIP shall not exceed the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs. *See id.* section 1430(i)(1). The CIP pricing provision formerly appeared at § 935.7 of the Finance Board's Advances Regulation (12 CFR 935.7).

Section 970.5(f)(1) of the proposed rule would have allowed the Banks, in pricing CIP advances, to take into account only those administrative costs necessary for the operation of the CIP. A trade association commenter specifically supported this pricing restriction, stating that it would ensure that the prices of CIP advances are lower than prices of other similar regular advances. A Bank commenter pointed out that it currently prices CIP advances by adding a minimal markup based on the overall cost of putting advances on its books, not based on unique CIP costs. The commenter noted that if unique CIP costs are singled out and spread only over the relatively small CIP advances portfolio, the resulting price markup may actually be greater than the current CIP markup. In response to the latter comment, the final rule does not include the pricing restriction of the proposed rule.

In the proposed rule, the Finance Board requested comment on whether the rule should contain a list of factors that could be the basis for deeper CIP discounts by the Banks. *See* 63 FR 25721. The proposed rule noted that several Banks vary CIP pricing based on the kinds of projects being financed and the income levels of the households benefiting from the project, such as projects that benefit families with incomes at or below 80 percent of the area median income. One Bank provided lower pricing for members that have been assigned a rating of outstanding under the Community Reinvestment Act. *See* 12 U.S.C. 2901 *et seq.* A Bank commenter supported inclusion of such a list in the rule in order to provide special incentives for borrowers to use CIP advances for projects that are difficult to develop. A trade association commenter and Bank commenter supported inclusion of a list of such factors in the rule as long as adoption of the factors was optional for the Banks. A number of Bank commenters opposed inclusion of a list of such factors, stating that the adoption of such pricing factors should be left to the discretion of the Banks in order to

ensure greater flexibility and creativity on the part of the Banks.

The Finance Board found these comments to be extremely useful. In response to these comments, § 970.5(d)(6) of the final rule authorizes each Bank to establish a fund (Discount Fund), as discussed further below, which the Bank may use to reduce the price of CIP or CICA advances below the advance prices provided by part 970. The Finance Board believes the Discount Fund authorized by the final rule will be a more productive method of addressing the points raised by the commenters than the inclusion of a list of factors for a Bank to consider contained in the proposal.

c. Pricing of AHP advances

Section 970.5(d)(3) of the final rule provides that a Bank shall price CICA advances made under AHP in accordance with parts 935 and 960 of the Finance Board's regulations (12 CFR parts 935, 960).

d. Advances to nonmember borrowers

Section 970.5(d)(4)(i) of the final rule provides that a Bank may offer advances under CICA programs to nonmember borrowers at the Bank's option, except for AHP and CIP, which are available only to members.

Consistent with proposed § 970.7(f)(2), § 970.5(d)(4)(ii) of the final rule provides that a Bank shall price advances to nonmember borrowers as provided in § 935.24 of the Finance Board's Advances Regulation (12 CFR 935.24), and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10b of the Bank Act (12 U.S.C. 1430b).

A consumer mortgage trade association and a member thrift expressed their opinion that the Banks do not have authority to provide advances to nonmembers under section 10(j)(10) of the Bank Act. The trade association also stated that the rule would allow the Banks to compete with well-functioning private markets, thereby destabilizing those markets. The Finance Board disagrees.

Section 10(j)(10) of the Bank Act provides that "[n]o provision of this subsection or subsection (i) of this section shall preclude any Bank from establishing *additional* community investment cash advance programs or contributing additional sums to the Affordable Housing Reserve Fund." *See id.* section 1430(j)(10) (emphasis added). While advances under AHP and CIP are restricted by statute to members, section 10(j)(10) states that the Banks may establish "additional" community

investment cash programs, *i.e.*, programs in addition to those specified in the Bank Act. There is nothing in the plain language of section 10(j)(10) to suggest or require that Bank advances under "additional" CICA programs be restricted solely to members. The Finance Board has determined that the statutory language is sufficiently broad to be reasonably interpreted to allow Bank lending to nonmembers, especially since the Banks already are authorized to lend to nonmember borrowers pursuant to section 10b of the Bank Act. *See id.* section 1430b. The final rule does not *require* that the Banks offer CICA programs to nonmember borrowers, but merely provides for such an option, if a Bank should choose to do so.

e. Pricing pass-through

Section 970.5(d)(5) of the final rule provides that a Bank may require that borrowers receiving CICA advances pass through the benefit of any price reduction from regular advance pricing to their borrowers. This provision extends the pricing pass-through option for CIP advances in proposed § 970.5(g) to all CICA advances, which was recommended by a trade association commenter. As suggested by commenters, the benefit of a price reduction may be passed through in a number of ways other than as a reduction in the interest rate on the end loan, such as through reduced fees or downpayment requirements on the end loan.

The statutory provisions governing CIP do not require members that obtain CIP advances to pass on the benefit of the pricing differential between CIP advances and regular Bank advances to the owners or occupants of CIP-financed projects. *See* 12 U.S.C. 1430(i)(1). A 1996 survey of the Banks' CIP pricing policies indicated that two Banks specifically required such a pass-through and four Banks encouraged a pass-through.

f. Discount Fund

As discussed above, the Finance Board in the proposed rule requested comment on whether the rule should contain a list of factors that could be the basis for deeper CIP discounts by the Banks. *See* 63 FR 25721. A number of commenters opposed including an exclusive list of such factors in the rule. In lieu of that approach, § 970.5(d)(6) of the final rule provides that a Bank may establish a Discount Fund which the Bank may use to reduce the price of CIP or other CICA advances below the advance prices provided for by part 970. Price reductions made through the

Discount Fund must be made in accordance with a fair distribution scheme. This authority is intended to encourage the Banks to find sources of income both from within the Bank and from third party partners to be used to reduce the cost of financing for community lending. One Bank currently has established such a fund with monies received from a third party partner which the Bank uses to reduce the cost of CIP advances, with discounts below the CIP rate ranging from 50 to 300 basis points for maturities up to 20 years.

E. Reporting—§ 970.6

Section 970.6(a) of the final rule requires each Bank, by July 1, 1999, to provide to the Finance Board an initial assessment of the credit needs and market opportunities in a Bank's district for community lending.

Section 970.6(b) provides that, effective in 2000, each Bank annually shall provide to the Finance Board, on or before January 31, a Community Lending Plan (as outlined in § 936.6(a) (as amended by this final rule)).

Section 970.6(c) requires each Bank to provide such other reports concerning its CICA programs as the Finance Board may request from time to time.

F. Documentation—§ 970.7

Section 970.7(a) of the final rule provides that each Bank shall require the borrower to certify to the Bank that each project funded by a CICA advance (other than AHP) meets the respective targeting requirements of the CICA program. Such certification shall include a description of how the project meets the requirements, and where appropriate, a statistical summary or list of incomes of the borrowers, rents for the project, or salaries of jobs created or retained. The certification requirement is based on current documentation practices employed by the Banks for their CIPs.

Section 970.7(b) provides that for those CICA-funded projects that also receive funds from another targeted Federal economic development program that has income targeting requirements that are the same as, or more restrictive than, the targeting requirements of the applicable CICA program, the Bank shall permit the borrower to certify that compliance with the criteria of such Federal economic development program will meet the requirements of the respective CICA program.

Section 970.7(c) provides that such certifications shall satisfy the Bank's obligations to document compliance with the CICA lending provisions of part 970. Finance Board examination of the Banks for compliance with part 970

will be satisfied by demonstration of compliance with the documentation requirements of § 970.7. Examination as to whether any Bank's level of community lending is consistent with the carrying out of such Bank's mission would be undertaken pursuant to separate regulatory standards to be developed by the Finance Board in the future.

Several commenters recommended that the rule include specific CICA documentation and monitoring requirements in order to avoid discouraging member participation due to lack of clear requirements as to any reporting and monitoring burdens. Another Bank commenter stated that the proposed rule contained reporting requirements that would discourage program users from participating in CICA programs. The documentation requirements contained in the final rule should provide the clarity requested by the commenter without being so burdensome as to discourage participation by borrowers in CICA programs.

G. Conforming Amendments to the Finance Board's Advances Regulation and Incentive Compensation Regulation

The final rule makes several conforming amendments to other regulations. First, the final rule amends the Finance Board's Advances Regulation in order to make clear that a Bank may make long-term advances for the purpose of financing community lending and affordable housing finance activities that meet the requirements of a CICA program. Specifically, the final rule amends the existing definition of "residential housing finance assets" in § 935.1 of the Advances Regulation to include loans or investments financed by CICA advances. See 12 CFR 935.1 (as amended). The final rule also revises certain provisions of the Advances Regulation regarding the use of long-term advances under the CIP in order to make clear that these provisions apply to all CICA programs, not just the CIP. See *id.* §§ 935.13(a)(5), 935.14(b)(2) (as amended). In addition, the final rule replaces the definition of "Community Investment Program" in the Advances Regulation with a new definition of "Community Investment Cash Advance," which, as discussed above, includes advances made under CICA programs, including the CIP. See *id.* § 935.1.

Second, the final rule replaces a reference to CIP with a reference to CICA in § 932.41(c)(2)(ii) of the Finance Board's Compensation Regulation, see *id.* § 932.41(c)(2)(ii) (as amended by the final rule), and deletes references to

"growth" in the activities to be considered to encourage quality over volume as the appropriate standard.

III. 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, see *id.* § 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 932

Banks, Banking, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

12 CFR Part 935

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

12 CFR Part 936

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

12 CFR Part 970

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

Accordingly, chapter IX, title 12, Code of Federal Regulations, is hereby amended as set forth below:

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1426, 1427, 1432; 42 U.S.C. 8101 *et seq.*

2. Amend § 932.41 by revising the first sentence of paragraph (c)(2)(ii) to read as follows:

§ 932.41 Compensation.

* * * * *

(c) *Incentive payments for Bank employees.*

* * * * *

(2) * * *

(ii) At least fifty percent of the Bank President's incentive payment shall be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to the

Bank's achievement of its housing finance mission, which shall include substantial consideration of innovative products directed at unmet credit needs, Community Investment Cash Advances (including Community Investment Program advances) as defined in § 935.1 of this chapter, non-advance credit support and risk management products for members, as well as advances, including long-term advances. * * *

PART 935—ADVANCES

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

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

2. Section 935.1 is amended by adding in alphabetical order the following definition of *Community Investment Cash Advance*, by removing the definition of *Community Investment Program*, and in the definition of *Residential housing finance assets* by republishing the introductory text and revising paragraph (4) to read as follows:

§ 935.1 Definitions.

Community Investment Cash Advance or *CICA* means any advance made through a program offered by a Bank under section 1430 of the Act and parts 960 and 970 of this chapter to provide advances for community lending and affordable housing, including advances made under: a Bank's Rural Development Advance (RDA) program, offered under section 1430(j)(10) of the Act; a Bank's Urban Development Advance (UDA) program, offered under section 1430(j)(10) of the Act; a Bank's Affordable Housing Program (AHP), offered under section 1430(j) of the Act; a Bank's Community Investment Program (CIP), offered under section 1430(i) of the Act; or any other program offered by a Bank that meets the requirements of part 970 of this chapter.

Residential housing finance assets means any of the following:

(4) Loans or investments financed by advances made pursuant to a CICA program;

§ 935.7 [Removed and reserved]

3. Section 935.7 is removed and reserved.

4. Section 935.13 is amended by revising paragraph (a)(5) to read as follows:

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders.

(a) * * *

(5) The requirements of paragraph (a)(2) of this section shall not apply to applications from non-savings association members for CICA advances.

5. Section 935.14 is amended by revising paragraph (b)(2) to read as follows:

§ 935.14 Limitations on long-term advances.

(b) * * *

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

PART 936—COMMUNITY SUPPORT REQUIREMENTS

1. The authority citation for part 936 continues to read as follows:

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

2. Amend § 936.1 by revising paragraphs (g) and (h) to read as follows:

§ 936.1 Definitions.

(g) *CICA* or *Community Investment Cash Advance* has the same meaning as in § 935.1 of this chapter.

(h) *Community lending* has the same meaning as in § 970.3 of this chapter.

3. Amend § 936.5 by revising paragraph (e) to read as follows:

§ 936.5 Restrictions on access to long-term advances.

(e) *CICA*. A member that is subject to a restriction on access to long-term advances under this part shall not be eligible to participate in a CICA program offered under parts 960 and 970 of this chapter. The restriction in this paragraph (e) shall not apply to CICA applications or funding approved before the date the restriction is imposed.

4. Amend § 936.6 by revising paragraphs (a) introductory text, (a)(2) and (a)(4), removing paragraph (b), redesignating paragraph (c) as paragraph (b) and revising it, and adding paragraph (a)(5) to read as follows:

§ 936.6 Bank community support programs.

(a) *Requirement*. Consistent with the safe and sound operation of the Bank, each Bank shall establish and maintain

a community support program. A Bank's community support program shall:

- * * *
- (2) Promote and expand affordable housing finance;
- * * *
- (4) Encourage members to increase their community lending and affordable housing finance activities by providing incentives such as awards or technical assistance to nonprofit housing developers or community groups with outstanding records of participation in community lending or affordable housing finance partnerships with members;

(5) Include an annual Community Lending Plan, approved by the Bank's board of directors and subject to modification, which shall require the Bank to:

- (i) Conduct market research in the Bank's district;
 - (ii) Describe how the Bank will address identified credit needs and market opportunities in the Bank's district for community lending;
 - (iii) Consult with its Advisory Council and with members, nonmember borrowers, and public and private economic development organizations in the Bank's district in developing and implementing its Community Lending Plan; and
 - (iv) Establish quantitative community lending performance goals.
- (b) *Notice*. A Bank shall provide annually to each of its members a written notice:

(1) Identifying CICA programs and other Bank activities that may provide opportunities for a member to meet the community support requirements and to engage in community lending; and

(2) Summarizing community lending and affordable housing activities undertaken by members, nonmember borrowers, nonprofit housing developers, community groups, or other entities in the Bank's district, that may provide opportunities for a member to meet the community support requirements and to engage in community lending.

5. Revise § 936.7 to read as follows:

§ 936.7 Reports.

Each Advisory Council annual report required to be submitted to the Finance Board pursuant to section 10(j)(11) of the Act shall include an analysis of the Bank's community lending and affordable housing activities.

6. Subchapter F, consisting of part 970, is added to chapter IX to read as follows:

SUBCHAPTER F—COMMUNITY INVESTMENT

PART 970—Community Investment Cash Advance Programs

Sec.

970.1 Scope.

970.2 Purpose.

970.3 Definitions.

970.4 Community Lending Plan.

970.5 Community Investment Cash Advance Programs.

970.6 Reporting.

970.7 Documentation.

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

§ 970.1 Scope.

Section 10(j)(10) of the Act authorizes the Banks to offer Community Investment Cash Advance (CICA) programs. (See 12 U.S.C. 1430(j)(10)). This part establishes requirements for all CICA programs offered by a Bank, except for a Bank's Affordable Housing Program (AHP), which is governed specifically by part 960 of this chapter.

§ 970.2 Purpose.

The purpose of this part is to identify community lending projects that the Banks may support through the establishment of CICA programs under section 10(j)(10) of the Act. (12 U.S.C. 1430(j)(10)). Pursuant to this part, a Bank may offer Rural Development Advance (RDA) or Urban Development Advance (UDA) programs, or both, for community lending using the targeted beneficiaries or targeted income levels specified in § 970.3 of this part, without prior Finance Board approval. A Bank also may offer other CICA programs for community lending using targeted beneficiaries and targeted income levels other than those specified in § 970.3 of this part, established by the Bank with the prior approval of the Finance Board. In addition, a Bank shall offer CICA programs under section 10(i) of the Act (Community Investment Program (CIP), 12 U.S.C. 1430(i)), and section 10(j) of the Act (Affordable Housing Program (AHP), 12 U.S.C. 1430(j)).

§ 970.3 Definitions.

As used in this part:

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

Advance has the same meaning as in § 935.1 of this chapter.

AHP means the Affordable Housing Program, the CICA program required to be offered pursuant to section 10(j) of the Act (12 U.S.C. 1430(j)) and part 960 of this chapter.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board of Directors means the Board of Directors of the Finance Board.

Champion Community means a community which developed a strategic plan and applied for designation by either the Secretary of HUD or the Secretary of the USDA as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.

CICA or *Community Investment Cash Advance* has the same meaning as in § 935.1 of this chapter.

CICA program or *Community Investment Cash Advance program* means:

(1) A Bank's AHP;

(2) A Bank's CIP;

(3) REA Bank's RDA program or UDA program using any combination of the targeted beneficiaries and targeted income levels specified in § 970.3 of this part; and

(4) Any other program offered by a Bank using targeted beneficiaries and targeted income levels other than those specified in § 970.3 of this part, established by the Bank with the prior approval of the Finance Board.

CIP means the Community Investment Program, a CICA program required to be offered pursuant to section 10(i) of the Act (12 U.S.C. 1430(i)).

Community lending means providing financing for economic development projects for targeted beneficiaries.

Economic development projects means:

(1) Commercial, industrial, manufacturing, social service, and public facility projects and activities; and

(2) Public or private infrastructure projects, such as roads, utilities, and sewers.

Family means one or more persons living in the same dwelling unit.

Finance Board means the agency established as the Federal Housing Finance Board.

Housing projects means projects or activities that involve the purchase, construction or rehabilitation of, or predevelopment financing for:

(1) Individual owner-occupied housing units, each of which is purchased or owned by a family with an income at or below the targeted income level;

(2) Projects involving multiple units of owner-occupied housing in which at least 51% of the units are owned or are intended to be purchased by families with incomes at or below the targeted income level;

(3) Rental housing where at least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(4) Manufactured housing parks where:

(i) At least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(ii) The project is located in a neighborhood with a median income at or below the targeted income level.

HUD means the United States

Department of Housing and Urban Development.

Median income for the area. (1) *Owner-occupied housing projects and economic development projects.* For purposes of owner-occupied housing projects and economic development projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD;

(ii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iii) The median income for the area, as published by the USDA; or

(iv) The median income for any definable geographic area, as published by a Federal, state, or local government entity for purposes of that entity's housing and economic development programs, and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(2) *Rental housing projects.* For purposes of rental housing projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for any definable geographic area, as published by a Federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 and 933.25 of this chapter.

MSA means a Metropolitan Statistical Area as designated by the Office of Management and Budget.

Neighborhood means:

(1) A census tract or block numbering area;

(2) A unit of local government with a population of 25,000 or less;

(3) A rural county; or

(4) A geographic location designated in comprehensive plans, ordinances, or other local documents as a

neighborhood, village, or similar geographic designation that is within the boundary of but does not encompass the entire area of a unit of general local government.

Nonmember borrower means an entity that has been approved as a nonmember mortgagee pursuant to Subpart B of part 935 of this chapter.

Provide financing means:

- (1) Originating loans;
- (2) Purchasing a participation interest, or providing financing to participate, in a loan consortium for CICA-eligible housing or economic development projects;
- (3) Making loans to entities that, in turn, make loans for CICA-eligible housing or economic development projects;
- (4) Purchasing mortgage revenue bonds or mortgage-backed securities, where all of the loans financed by such bonds and all of the loans backing such securities, respectively, meet the eligibility requirements of the CICA program under which the member or nonmember borrower receives an advance;
- (5) Creating or maintaining a secondary market for loans, where all such loans are mortgage loans meeting the eligibility requirements of the CICA program under which the member or nonmember borrower receives an advance;
- (6) Originating CICA-eligible loans within 3 months prior to receiving the CICA advance; and
- (7) Purchasing low-income housing tax credits.

RDA or Rural Development Advance means an advance made pursuant to an RDA program.

RDA program or Rural Development Advance program means a program offered by a Bank for community lending in rural areas.

Rural area means:

- (1) A unit of general local government with a population of 25,000 or less;
- (2) An unincorporated area outside an MSA; or
- (3) An unincorporated area within an MSA that qualifies for housing or economic development assistance from the USDA.

Small business means a "small business concern," as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration under 13 CFR part 121, or any successor provisions.

Targeted beneficiaries means beneficiaries determined by the geographical area in which a project is located (Geographically Defined Beneficiaries), by the individuals who

benefit from a project as employees or service recipients (Individual Beneficiaries), or by the nature of the project itself (Activity Beneficiaries), as follows:

(1) Geographically Defined Beneficiaries:

- (i) The project is located in a neighborhood with a median income at or below the targeted income level;
- (ii) The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of the USDA;
- (iii) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of HUD;
- (iv) The project is located in an Indian area, as defined by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), Alaskan Native Village, or Native Hawaiian Home Land;
- (v) The project is located in an area and involves a property eligible for a Brownfield Tax Credit;
- (vi) The project is located in an area affected by a military base closing and is a "community in the vicinity of the installation" as defined by the Department of Defense at 32 CFR part 176;
- (vii) The project is located in a designated community under the Community Adjustment and Investment Program as defined under 22 U.S.C. 290m-2;
- (viii) The project is located in a Federally declared disaster area; or
- (ix) The project is located in a state declared disaster area, or qualifies for assistance under another Federal or state targeted economic development program, approved by the Finance Board.

(2) Individual Beneficiaries:

- (i) The annual salaries for at least 51% of the permanent full- and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level; or
- (ii) At least 51% of the families who otherwise benefit from (other than through employment), or are provided services by, the project have incomes at or below the targeted income level.

(3) Activity Beneficiaries: Projects that qualify as small businesses.

(4) Other Targeted Beneficiaries. A Bank may designate, with the prior approval of the Finance Board, other targeted beneficiaries for its community lending.

(5) Only targeted beneficiaries identified in paragraphs (1)(i) through

(1)(iv), and (2)(i) and (2)(ii) of this definition are eligible for CIP advances.

Targeted income level means:

- (1) For rural areas, incomes at or below 115 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;
- (2) For urban areas, incomes at or below 100 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;
- (3) For CICA advances provided under CIP:

(i) For economic development projects, incomes at or below 80 percent of the median income for the area; or

(ii) For housing projects, incomes at or below 115 percent of the median income for the area, both as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four; or

(4) For CICA advances provided under any other CICA program offered by a Bank, a targeted income level established by the Bank with the prior approval of the Finance Board.

UDA or Urban Development Advance means an advance made pursuant to a UDA program.

UDA program or Urban Development Advance program means a program offered by a Bank for community lending in urban areas.

Urban area means:

- (1) A unit of general local government with a population of more than 25,000; or
- (2) An unincorporated area within an MSA that does not qualify for housing or economic development assistance from the USDA.

USDA means the United States Department of Agriculture.

§ 970.4 Community Lending Plan

Each Bank shall develop and adopt an annual Community Lending Plan pursuant to § 936.6 of this chapter.

§ 970.5 Community Investment Cash Advance Programs.

(a) *In general.*

(1) Each Bank shall offer an AHP in accordance with part 960 of this chapter.

(2) Each Bank shall offer a CIP to provide financing for housing projects and for eligible community lending at the appropriate targeted income levels.

(3) Each Bank may offer RDA programs or UDA programs, or both, for

community lending using the targeted beneficiaries or targeted income levels specified in § 970.3 of this part, without prior Finance Board approval.

(4) Each Bank may offer CICA programs for community lending using targeted beneficiaries and targeted income levels other than those specified in § 970.3 of this part, established by the Bank with the prior approval of the Finance Board.

(b) *Mixed-use projects.* (1) For projects funded under CICA programs other than CIP, involving a combination of housing projects and economic development projects, only the economic development components of the project must meet the appropriate targeted income level for the respective CICA program.

(2) For projects funded under CIP, both the housing and economic development components of the project must meet the appropriate targeted income levels.

(c) *Refinancing.* CICA advances other than AHP may be used to refinance economic development projects and housing projects, provided that any equity proceeds of the refinancing of rental housing and manufactured housing parks are used to rehabilitate the projects or to preserve affordability for current residents.

(d) *Pricing and Availability of CICA advances.*

(1) *Advances to members.* For CICA programs other than AHP and CIP, a Bank shall price advances to members as provided in § 935.6 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Act. (12 U.S.C. 1430(a)).

(2) *Pricing of CIP advances.* The price of CICA advances made under CIP shall not exceed the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs.

(3) *Pricing of AHP advances.* A Bank shall price CICA advances made under AHP in accordance with parts 935 and 960 of this chapter.

(4) *Advances to nonmember borrowers.* (i) A Bank may offer advances under CICA programs to nonmember borrowers at the Bank's option, except for AHP and CIP, which are available only to members.

(ii) A Bank shall price advances to nonmember borrowers as provided in § 935.24 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10b of the Act. (12 U.S.C. 1430b).

(5) *Pricing pass-through.* A Bank may require that borrowers receiving CICA advances pass through the benefit of any price reduction from regular advance pricing to their borrowers.

(6) *Discount Fund.* (i) A Bank may establish a fund which the Bank may use to reduce the price of CIP or other CICA advances below the advance prices provided for by this part.

(ii) Price reductions made through the Discount Fund shall be made in accordance with a fair distribution scheme.

§ 970.6 Reporting.

(a) By July 1, 1999, each Bank shall provide to the Finance Board an initial assessment of the credit needs and market opportunities in a Bank's district for community lending.

(b) Effective in 2000, each Bank annually shall provide to the Finance Board, on or before January 31, a Community Lending Plan.

(c) Each Bank shall provide such other reports concerning its CICA programs as the Finance Board may request from time to time.

§ 970.7 Documentation.

(a) A Bank shall require the borrower to certify to the Bank that each project funded by a CICA advance (other than AHP) meets the respective targeting requirements of the CICA program. Such certification shall include a description of how the project meets the requirements, and where appropriate, a statistical summary or list of incomes of the borrowers, rents for the project, or salaries of jobs created or retained.

(b) For those CICA-funded projects that also receive funds from another targeted Federal economic development program that has income targeting requirements that are the same as, or more restrictive than, the targeting requirements of the applicable CICA program, the Bank shall permit the borrower to certify that compliance with the criteria of such Federal economic development program will meet the requirements of the respective CICA program.

(c) Such certifications shall satisfy the Bank's obligations to document compliance with the CICA lending provisions of this part.

Dated: October 28, 1998.

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

Bruce A. Morrison,
Chairman.

[FR Doc. 98-31489 Filed 11-25-98; 8:45 am]

BILLING CODE 6725-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-SW-05-AD; Amendment 39-10918; AD 98-24-32]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model AS-365N2, SA-360C, SA-365C, C1, C2, N, N1, and SA-366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS-365N2, SA-360C, SA-365C, C1, C2, N, N1, and SA-366G1 helicopters. This action requires inspecting for broken or out-of-tolerance attachment springs on the tail rotor hub fairing (fairing), replacing broken attachment springs and attachment springs that are out-of-tolerance, and marking the fairing to indicate compliance with this AD. This amendment is prompted by three in-service reports of failed attachment springs. The actions specified in this AD are intended to prevent failure of an attachment spring, which could cause loss of the fairing, damage to the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective December 14, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98-SW-05-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5296, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS-365N2, SA-360C, SA-365C, C1, C2, N, N1, and SA-366G1 helicopters. The DGAC advises that inspecting for broken or out-of-tolerance attachment springs on the fairing, replacing broken attachment springs and attachment