

information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 crop year began on August 1, 1996, and the marketing order requires that the rate of assessment for each crop year apply to all assessable raisins handled during such crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new subpart titled "Assessment Rates" consisting of § 989.347 is added immediately following § 989.221 to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 989.347 Assessment rate.

On and after August 1, 1996, an assessment rate of \$5.00 per ton is established for assessable California raisins.

Dated: October 1, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. 96-61]

Terms and Conditions for Advances

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) is adopting a final rule that amends its regulation on terms and conditions for advances. The final rule requires a Federal Home Loan Bank (FHLBank) that offers putable advances to provide appropriate written disclosures and to offer replacement advance funding in the event that the FHLBank terminates the putable advance prior to its stated maturity date.

EFFECTIVE DATE: The final rule will become effective November 7, 1996.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Assistant Director, Financial Management Division, Office of Policy, (202) 408-2976, or, Janice A. Kaye, Attorney-Advisor, Office of General Counsel, (202) 408-2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under section 10 of the Federal Home Loan Bank Act (Bank Act), each FHLBank has the authority to make secured advances¹ to its members. See 12 U.S.C. 1430. To ensure that the FHLBanks operate their advance programs in a safe and sound manner, 12 U.S.C. 1422a(a)(3)(A), and pursuant to its authority to supervise the FHLBanks and ensure that the FHLBanks carry out their housing finance mission and remain adequately capitalized and able to raise funds in the capital markets, *id.* § 1422a(a)(3)(B), the Finance Board promulgated a final rule governing FHLBank advance programs in May 1993. See 58 FR 29456 (May 20, 1993), *codified at* 12 CFR part 935.

Since that time, the FHLBanks have developed a new type of advance product called a "putable advance." A putable advance is one that a FHLBank may, at its discretion, put back to a member for immediate repayment prior to the maturity of the advance on dates

specified in the advances agreement. Putable advances present to a member borrower the risk that a FHLBank will exercise the put option and terminate the advance prior to its maturity date thereby placing the borrower at a disadvantage. For example, if a FHLBank were to terminate a putable advance prior to its maturity date in a rising interest rate environment, any replacement advance funding offered to the member might be extended at higher market interest rates. On the other hand, since the member borrower is incurring the interest rate risk associated with putable advance funding, a FHLBank is able to offer a putable advance at an interest rate that can be significantly lower than that available on a regular advance. FHLBank members have expressed considerable interest in the lower cost funding available through the use of putable advances.

The Finance Board's advances regulation does not address putable advances, and the practices with respect to this type of advance funding vary from FHLBank to FHLBank. To provide for uniformity and consistency in practice among the FHLBanks that offer putable advances and to reinforce the role of the FHLBanks as sources of liquidity for member institutions, the Finance Board approved for publication a proposed rule to amend its advances regulation to address specifically the issuance of putable advances. The proposed rule was published in the Federal Register on August 2, 1996, with a 30-day public comment period that closed on September 3, 1996. See 61 FR 40364 (Aug. 2, 1996). The Finance Board received a total of four comments in response to the notice of proposed rulemaking, two from FHLBanks and two from industry trade associations. The commenters generally supported the Finance Board's proposal. Specific comments are discussed in § II of the *Supplementary Information*.

II. Analysis of Public Comments and the Final Rule

The final rule adds a new subsection (d), putable advances, to § 935.6 of its advances regulation, which concerns the terms and conditions for advances.

A. Disclosure

To ensure that members are fully apprised of the risks associated with putable advance funding, § 935.6(d)(1) requires a FHLBank that provides a putable advance to a member to disclose in writing to such member the risks associated with putable advance funding. Such risks include the option risk described in § I of the *Supplementary Information* and the

¹ For purposes of the Finance Board regulation governing advances, 12 CFR part 935, an advance is a loan from a FHLBank that is provided pursuant to a written agreement, supported by a note or other written evidence of the borrower's obligation, and fully secured by collateral in accordance with the Bank Act and Finance Board regulations. See *id.* § 935.1.

potentially adverse impact on a member's liquidity if a FHLBank terminates a putable advance prior to the stated maturity date.

A trade association commenter strongly supported the written disclosure requirement and recommended that the disclosure contain information regarding the interest rate environments in which a FHLBank might exercise the put option. The Finance Board believes that the disclosure required by the proposed rule already encompasses this type of information. However, to provide further clarification, the final rule states that the disclosure should include detail sufficient to describe the type and nature of the risks associated with putable advances.

B. Replacement Funding

To preclude the possibility that putable advance funding might cause liquidity problems for members, § 935.6(d)(2) of the proposed rule would have required a FHLBank that terminates a putable advance prior to its maturity date to offer replacement funding to the member at the market rate for the remaining term to maturity of the putable advance. To provide maximum utility to FHLBank members and flexibility to both members and the FHLBanks, one FHLBank commenter suggested that the term to maturity of the replacement funding should be determined through negotiations between the FHLBank and the member. The other FHLBank commenter suggested that, in order to provide FHLBank members with some protection from interest rate changes, a member should be permitted to elect at the time of origination of the putable advance whether replacement funding will be priced at the market rate or a predetermined rate negotiated between the FHLBank and the member. The Finance Board has decided to incorporate these suggestions into the final rule.

Section 935.6(d)(2) of the final rule requires a FHLBank that terminates a putable advance prior to its maturity date to offer replacement funding to the member. Paragraph (d)(2)(i) provides that at the option of the member, the term to maturity of replacement funding may be either the remaining term to maturity of the putable advance or a term to maturity agreed upon between the FHLBank and the member. Paragraph (d)(2)(ii) provides that at the option of the member, replacement funding may be priced at either the market rate or a predetermined rate agreed upon between the FHLBank and the member. Although the final rule

requires a FHLBank to offer replacement funding, it does not obligate the member to accept the offer.

In the notice of proposed rulemaking, the Finance Board stated that the FHLBanks should consider replacement funding to be a conversion of the outstanding advance rather than a new extension of credit. To ensure that there is no conflict between the putable advances provision and § 935.5 of the Finance Board's advances regulation, 12 CFR 935.5, which establishes limitations on access to FHLBank advances, a FHLBank commenter suggested clarifying the final rule. The Finance Board agrees with this suggestion and has added a new paragraph to the final rule, § 936.5(d)(2)(iii), providing that, for purposes of part 935, replacement funding is the conversion of an outstanding advance, not the renewal of an existing advance or the extension of a new advance.

A trade association commenter supported the development of new advance products that help FHLBank members to meet their liquidity and credit needs. The commenter recommended that, in addition to putable advances, the FHLBanks should offer "callable advances" that would be callable at the option of the FHLBank member. A FHLBank would factor the cost of the call provision into the coupon, much as it includes the cost of the put in the price of a putable advance, rather than through a prepayment penalty. All of the FHLBanks currently offer callable advances and all but two factor the full cost of the option into the advance coupon.

C. Definition of "Putable Advance"

The Finance Board adopted the definition of the term "putable advance" in § 935.6(d)(3) of the proposed rule without change. For purposes of § 935.6(d), the term "putable advance" means an advance that a FHLBank may, at its discretion, terminate and require the member to repay prior to the stated maturity date of the advance.

III. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, the FHLBanks are not "small entities." *Id.* section 601(6). Since this final rule contains only technical revisions to an existing rule that applies only to the FHLBanks, it does not impose any additional regulatory requirements on small entities. Thus, in accordance with the provisions of the RFA, the Board of Directors of the Finance Board hereby

certifies that this final rule will not have a significant economic impact on a substantial number of small entities. *Id.* section 605(b).

List of Subjects in 12 CFR Part 935

Credit, Federal home loan banks.

Accordingly, the Board of Directors of the Finance Board hereby amends part 935, chapter IX, title 12, Code of Federal Regulations, as follows:

PART 935—ADVANCES

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

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

2. In § 935.6, paragraph (d) is added to read as follows:

§ 935.6 Terms and conditions for advances.

* * * * *

(d) *Putable advances.* (1) *Disclosure.*

A Bank that offers a putable advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable advance funding. The disclosure should include detail sufficient to describe such risks.

(2) *Replacement funding.* If a Bank terminates a putable advance prior to the stated maturity date of such advance, the Bank shall offer to provide replacement funding to the member.

(i) *Term to maturity.* At the option of the member, a Bank shall offer replacement funding:

(A) For the remaining term to maturity of the putable advance; or

(B) For a term to maturity agreed upon between the Bank and the member.

(ii) *Interest rate.* At the option of the member, a Bank shall price replacement funding:

(A) At the market rate of interest; or

(B) At a predetermined rate of interest agreed upon between the Bank and the member.

(iii) *Conversion.* For purposes of this part, replacement funding shall be considered the conversion of an outstanding advance, and shall not be considered the renewal of an existing advance or the extension of a new advance.

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

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

Bruce A. Morrison,
Chairperson.

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