

TITLE 12 - BANKS AND BANKING
CHAPTER 11 - FEDERAL HOME LOAN BANKS

§ 1426. Capital structure of Federal home loan banks

(a) Regulations

(1) Capital standards

Not later than 18 months after November 12, 1999, the Director shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—

- (A)** the leverage requirement specified in paragraph (2); and
- (B)** the risk-based capital requirements, in accordance with paragraph (3).

(2) Leverage requirement

(A) In general

The leverage requirement shall require each Federal home loan bank to maintain a minimum amount of total capital based on the total assets of the bank and shall be 5 percent.

(B) Treatment of stock and retained earnings

In determining compliance with the minimum leverage ratio established under subparagraph (A), the paid-in value of the outstanding Class B stock and the amount of retained earnings shall be multiplied by 1.5, and such higher amounts shall be deemed to be capital for purposes of meeting the 5 percent minimum leverage ratio, except that a Federal home loan bank's total capital (determined without taking into account any such multiplier) shall not be less than 4 percent of the total assets of the bank.

(3) Risk-based capital standards

(A) Risk-based capital standards

The Director shall, by regulation, establish risk-based capital standards for the Federal Home Loan Banks to ensure that the Federal Home Loan Banks operate in a safe and sound manner, with sufficient permanent capital and reserves to support the risks that arise in the operations and management of the Federal Home Loans Banks.

(B) Consideration of other risk-based standards

In establishing the risk-based standard under subparagraph (A), the Director shall take due consideration of any risk-based capital test established pursuant to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act [12 U.S.C. 4501 et seq.]), with such modifications as the Director determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

(4) Other regulatory requirements

The regulations issued by the Director under paragraph (1) shall—

(A) permit each Federal home loan bank to issue, with such rights, terms, and preferences, not inconsistent with this chapter and the regulations issued hereunder, as the board of directors of that bank may approve, any 1 or more of—

- (i)** Class A stock, which shall be redeemable in cash and at par 6 months following submission by a member of a written notice of its intent to redeem such shares; and
- (ii)** Class B stock, which shall be redeemable in cash and at par 5 years following submission by a member of a written notice of its intent to redeem such shares;

(B) provide that the stock of a Federal home loan bank may be issued to and held by only members of the bank, and that a bank may not issue any stock other than as provided in this section;

(C) prescribe the manner in which stock of a Federal home loan bank may be sold, transferred, redeemed, or repurchased; and

(D) provide the manner of disposition of outstanding stock held by, and the liquidation of any claims of the Federal home loan bank against, an institution that ceases to be a member of the bank, through merger or otherwise, or that provides notice of intention to withdraw from membership in the bank.

(5) Definitions of capital

For purposes of determining compliance with the capital standards established under this subsection—

(A) permanent capital of a Federal home loan bank shall include—

(i) the amounts paid for the Class B stock; and

(ii) the retained earnings of the bank (as determined in accordance with generally accepted accounting principles); and

(B) total capital of a Federal home loan bank shall include—

(i) permanent capital;

(ii) the amounts paid for the Class A stock;

(iii) consistent with generally accepted accounting principles, and subject to the regulation of the Director, a general allowance for losses, which may not include any reserves or allowances made or held against specific assets; and

(iv) any other amounts from sources available to absorb losses incurred by the bank that the Director determines by regulation to be appropriate to include in determining total capital.

(6) Transition period

Notwithstanding any other provision of this chapter, the requirements relating to purchase and retention of capital stock of a Federal home loan bank by any member thereof in effect on the day before November 12, 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) of this section has been approved by the Director and implemented by such bank.

(b) Capital structure plan

(1) Approval of plans

Not later than 270 days after the date of publication by the Director of final regulations in accordance with subsection (a) of this section, the board of directors of each Federal home loan bank shall submit for approval by the Director a plan establishing and implementing a capital structure for such bank that—

(A) the board of directors determines is best suited for the condition and operation of the bank and the interests of the members of the bank;

(B) meets the requirements of subsection (c) of this section; and

(C) meets the minimum capital standards and requirements established under subsection (a) of this section and other regulations prescribed by the Director.

(2) Approval of modifications

The board of directors of a Federal home loan bank shall submit to the Director for approval any modifications that the bank proposes to make to an approved capital structure plan.

(c) Contents of plan

The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

(1) Minimum investment

(A) In general

Each capital structure plan of a Federal home loan bank shall require each member of the bank to maintain a minimum investment in the stock of the bank, the amount of which shall be determined in a manner to be prescribed by the board of directors of each bank and to be included as part of the plan.

(B) Investment alternatives

(i) In general

In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any 1 or more of the requirements referred to in clause (ii), or any other provisions approved by the Director.

(ii) Authorized requirements

A requirement is referred to in this clause if it is a requirement for—

(I) a stock purchase based on a percentage of the total assets of a member; or

(II) a stock purchase based on a percentage of the outstanding advances from the bank to the member.

(C) Minimum amount

Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the minimum capital requirements established by the Director under subsection (a) of this section.

(D) Adjustments to minimum required investment

The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum investment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels established by the Director, and shall require each member to comply promptly with any adjustments to the required minimum investment.

(2) Transition rule

(A) In general

The capital structure plan of each Federal home loan bank shall specify the date on which it shall take effect, and may provide for a transition period of not longer than 3 years to allow the bank to come into compliance with the capital requirements prescribed under subsection (a) of this section, and to allow any institution that was a member of the bank on November 12, 1999, to come into compliance with the minimum investment required pursuant to the plan.

(B) Interim purchase requirements

The capital structure plan of a Federal home loan bank may allow any member referred to in subparagraph (A) that would be required by the terms of the capital structure plan to increase its investment in the stock of the bank to do so in periodic installments during the transition period.

(3) Disposition of shares

The capital structure plan of a Federal home loan bank shall provide for the manner of disposition of any stock held by a member of that bank that terminates its membership or that provides notice of its intention to withdraw from membership in that bank.

(4) Classes of stock

(A) In general

The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by the Director in accordance with its regulations.

(B) Rights requirement

A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with regulations of the Director and market requirements.

(C) Reduced minimum investment

The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B¹ in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by the Director.

(D) Liquidation of claims

The capital structure plan of a Federal home loan bank shall provide for the liquidation in an orderly manner, as determined by the bank, of any claim of that bank against a member, including claims for any applicable prepayment fees or penalties resulting from prepayment of advances prior to stated maturity.

(5) Limited transferability of stock

The capital structure plan of a Federal home loan bank shall—

(A) provide that any stock issued by that bank shall be available only to and held only by members of that bank and tradable only between that bank and its members; and

(B) establish standards, criteria, and requirements for the issuance, purchase, transfer, retirement, and redemption of stock issued by that bank.

(6) Bank review of plan

Before filing a capital structure plan with the Director, each Federal home loan bank shall conduct a review of the plan by—

(A) an independent certified public accountant, to ensure, to the extent possible, that implementation of the plan would not result in any write-down of the redeemable bank stock investment of its members; and

(B) at least one major credit rating agency, to determine, to the extent possible, whether implementation of the plan would have any material effect on the credit ratings of the bank.

(d) Termination of membership

(1) Voluntary withdrawal

Any member may withdraw from a Federal home loan bank if the member provides written notice to the bank of its intent to do so and if, on the date of withdrawal, there is in effect a certification by the Director that the withdrawal will not cause the Federal Home Loan Bank System to fail to meet its obligation under section 1441b (f)(2)(C) of this title to contribute to the debt service for the obligations issued by the Resolution Funding Corporation. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

(2) Involuntary withdrawal**(A) In general**

The board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to regulations of the Director, it determines that—

- (i) the member has failed to comply with a provision of this chapter or any regulation prescribed under this chapter; or
- (ii) the member has been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a Federal or State authority with regulatory and supervisory responsibility for the member.

(B) Stock disposition

An institution, the membership of which is terminated in accordance with subparagraph (A)—

- (i) shall surrender redeemable stock to the Federal home loan bank, and shall receive in cash the par value of the stock, upon the expiration of the applicable notice period under subsection (a)(4)(A) of this section;
- (ii) shall receive any dividends declared on its redeemable stock, during the applicable notice period under subsection (a)(4)(A) of this section; and
- (iii) shall not be entitled to any other rights or privileges accorded to members after the date of the termination.

(C) Commencement of notice period

With respect to an institution, the membership of which is terminated in accordance with subparagraph (A), the applicable notice period under subsection (a)(4) of this section for each class of redeemable stock shall commence on the earlier of—

- (i) the date of such termination; or
- (ii) the date on which the member has provided notice of its intent to redeem such stock.

(3) Liquidation of indebtedness

Upon the termination of the membership of an institution for any reason, the outstanding indebtedness of the member to the bank shall be liquidated in an orderly manner, as determined by the bank and, upon the extinguishment of all such indebtedness, the bank shall return to the member all collateral pledged to secure the indebtedness.

(e) Redemption of excess stock**(1) In general**

A Federal home loan bank, in its sole discretion, may redeem or repurchase, as appropriate, any shares of Class A or Class B stock issued by the bank and held by a member that are in excess of the minimum stock investment required of that member.

(2) Excess stock

Shares of stock held by a member shall not be deemed to be “excess stock” for purposes of this subsection by virtue of a member’s submission of a notice of intent to withdraw from membership or termination of its membership in any other manner.

(3) Priority

A Federal home loan bank may not redeem any excess Class B stock prior to the end of the 5-year notice period, unless the member has no Class A stock outstanding that could be redeemed as excess.

(f) Impairment of capital

If the Director or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital

of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of the Director while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable capital stock if, following the redemption, the bank would fail to satisfy any minimum capital requirement.

(g) Rejoining after divestiture of all shares

(1) In general

Except as provided in paragraph (2), and notwithstanding any other provision of this chapter, an institution that divests all shares of stock in a Federal home loan bank may not, after such divestiture, acquire shares of any Federal home loan bank before the end of the 5-year period beginning on the date of the completion of such divestiture, unless the divestiture is a consequence of a transfer of membership on an uninterrupted basis between banks.

(2) Exception for withdrawals from membership before 1998

Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of the Director and the requirements of this chapter.

(h) Treatment of retained earnings

(1) In general

The holders of the Class B stock of a Federal home loan bank shall own the retained earnings, surplus, undivided profits, and equity reserves, if any, of the bank.

(2) Exception

Except as specifically provided in this section or through the declaration of a dividend or a capital distribution by a Federal home loan bank, or in the event of liquidation of the bank, a member shall have no right to withdraw or otherwise receive distribution of any portion of the retained earnings of the bank.

(3) Limitation

A Federal home loan bank may not make any distribution of its retained earnings unless, following such distribution, the bank would continue to meet all applicable capital requirements.

Footnotes

¹ So in original. Probably should be “Class B stock”.

(July 22, 1932, ch. 522, § 6, 47 Stat. 727; June 27, 1934, ch. 847, § 509, 48 Stat. 1264; May 28, 1935, ch. 150, § 2, 49 Stat. 293; June 27, 1950, ch. 369, § 2, 64 Stat. 257; Aug. 11, 1955, ch. 783, title I, § 109(a)(1), 69 Stat. 640; Pub. L. 87–210, §§ 1, 2, Sept. 8, 1961, 75 Stat. 482, 483; Pub. L. 96–153, title III, § 327, Dec. 21, 1979, 93 Stat. 1121; Pub. L. 97–320, title III, §§ 353, 355, Oct. 15, 1982, 96 Stat. 1507, 1508; Pub. L. 97–457, § 16, Jan. 12, 1983, 96 Stat. 2509; Pub. L. 101–73, title VII, §§ 701(b)(1), (3)(A), 706, 710 (b)(2), (3), 715, Aug. 9, 1989, 103 Stat. 412, 416, 418, 421; Pub. L. 106–102, title VI, § 608, Nov. 12, 1999, 113 Stat. 1456; Pub. L. 106–569, title XII, § 1224, Dec. 27, 2000, 114 Stat. 3036; Pub. L. 110–289, div. A, title I, § 1110(b), title II, § 1204(4), (10), July 30, 2008, 122 Stat. 2676, 2786.)

References in Text

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, referred to in subsec. (a)(3)(B), is title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to chapter 46 (§ 4501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note under section 4501 of this title and Tables.

Amendments

2008—Pub. L. 110–289, § 1204(10), substituted “the Director” for “the Finance Board” wherever appearing in subsecs. (a)(1), (3)(B), (4) to (6), (b)(1)(C), (2), (c)(1), (4)(A), (C), (6), (d)(1), (f), and (g).

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Subsec. (a)(3)(A). Pub. L. 110–289, § 1110(b)(1), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: “Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

“(i) the credit risk to which the Federal home loan bank is subject; and

“(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.”

Subsec. (a)(3)(B). Pub. L. 110–289, § 1110(b)(2), substituted “(A)” for “(A)(ii)”.

Subsec. (b)(1). Pub. L. 110–289, § 1204(4)(A), (10), substituted “the Director” for “the Finance Board” and “approval by the Director” for “Finance Board approval” in introductory provisions.

Subsecs. (c)(4)(B), (d)(2)(A). Pub. L. 110–289, § 1204(4)(B), substituted “regulations of the Director” for “Finance Board regulations”.

2000—Subsec. (a)(1). Pub. L. 106–569 substituted “18 months” for “1 year” in introductory provisions.

1999—Pub. L. 106–102 amended section generally, substituting present provisions for provisions authorizing banks to issue capital stock and providing for minimum subscriptions, retirement of oversubscriptions, cancellation of oversubscriptions, aggregate unpaid loan principal, reports and information, payments for stock, transfer or hypothecation of stock, withdrawal or removal of members, surrender and cancellation of stock, prepayment penalties, disposal of stock, dividends, and acquisition of membership after expiration of period of withdrawal.

1989—Subsec. (a). Pub. L. 101–73, §§ 701(b)(1), (3)(A), 706 (1), redesignated subsec. (b) as (a), substituted “Board” for “board”, and struck out former subsec. (a) which related to minimum amount of capital stock and subscription books.

Subsec. (b). Pub. L. 101–73, §§ 701(b)(1), (3)(A), 706 (1), redesignated subsec. (c) as (b) and substituted “Board may” for “Federal Home Loan Bank Board may” in par. (1), and “The Board” for “The Federal Home Loan Bank Board” in par. (5). Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 101–73, § 706(1), redesignated subsecs. (d) and (h) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 101–73, § 710(b)(3), which directed amendment of subsec. (e) by striking out “or deprive any nonmember borrower of the privilege of further advances,” after “remove any member from membership,” was executed by striking “or deprive any nonmember borrower of the privilege of obtaining further advances,” as the probable intent of Congress.

Pub. L. 101–73, § 710(b)(2), struck out “or nonmember borrower” after “such member” wherever appearing.

Pub. L. 101–73, § 706(2), substituted “If any member’s membership in a Federal Home Loan Bank is terminated, the indebtedness of such member to the Federal Home Loan Bank shall be liquidated in an orderly manner (as determined by the Federal Home Loan Bank), and upon completion of such liquidation, the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled. Any such liquidation shall be deemed a prepayment of any such indebtedness, and shall be subject to any penalties or other fees applicable to such prepayment.” for “In any such case, the indebtedness of such member or nonmember borrower to the Federal Home Loan Bank shall be liquidated, and the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled, except that in the case of a voluntary withdrawal, such liquidation shall be deemed a prepayment of any such indebtedness, and shall be subject to any penalties applicable to such prepayment.”

Pub. L. 101–73, §§ 701(b)(1), (3)(A), 706 (1), redesignated subsec. (i) as (e), substituted “Board” for “board” wherever appearing, and struck out former subsec. (e) which related to loans to institutions not authorized to subscribe to stock.

Subsec. (f). Pub. L. 101–73, §§ 701(b)(1), (3)(A), 706 (1), redesignated subsec. (j) as (f), substituted “Board” for “board”, and struck out former subsec. (f) which related to subscription by United States, maximum amounts, and payments.

Subsec. (g). Pub. L. 101–73, § 706(1), redesignated subsec. (k) as (g) and struck out former subsec. (g) which related to retirement of stock of United States.

Subsec. (h). Pub. L. 101–73, § 715, substituted “10” for “five”.

Pub. L. 101–73, § 706(3), substituted “charter as a Federal savings association (as defined in section 1813 of this title)” for “charter from the Federal Home Loan Bank Board”.

Pub. L. 101–73, § 706(1), redesignated subsec. (m) as (h). Former subsec. (h) redesignated (d).

Subsecs. (i) to (k). Pub. L. 101–73, § 706(1), redesignated former subsecs. (i) to (k) as (e) to (g), respectively.

Subsec. (m). Pub. L. 101-73, § 706(1), redesignated former subsec. (m) as (h).

1983—Subsec. (m). Pub. L. 97-457 substituted “banks or in connection with obtaining a charter from the Federal Home Loan Bank Board” for “Banks” after “between”.

1982—Subsec. (c)(2). Pub. L. 97-320, § 353, struck out cl. (i) limitations which had prohibited members from reducing stock to less than the amount held on Sept. 8, 1961, except for a reduction at any time to not less than 2 percent of its aggregate unpaid loan principal as of the beginning of the calendar year in which reduction was made, but not less than \$500, or if reduced to less than 2 percent, such reduction to be in the discretion of the Board; and reenacted cl. (ii) limitations as par. (2), substituting “the Board defining such term” for “said Board defining said term”.

Subsec. (i). Pub. L. 97-320, § 355(a), provided for treatment of a liquidation of indebtedness, in the case of a voluntary withdrawal of an institution from membership, as a prepayment of the indebtedness, subject to applicable prepayment penalties.

Subsec. (m). Pub. L. 97-320, § 355(b), added subsec. (m).

1979—Subsec. (c)(2)(ii). Pub. L. 96-153 substituted “twenty” for “twelve”.

1961—Subsec. (c). Pub. L. 87-210, § 1, amended subsection generally, and among other changes, authorized the bank to adjust at the end of each calendar year, under Board regulations, the stock held by each member, to retire stock of members in excess of required amounts, prohibited members to reduce stock to less than the amount held on Sept. 8, 1961, except for a reduction at any time to not less than 2 percent of its aggregate unpaid loan principal as of the beginning of the calendar year in which reduction is made, but not less than \$500, or if reduced to less than 2 percent, such reduction to be in the discretion of the Board, provided that no bank shall act so as to cause the aggregate outstanding advances, within the meaning of regulations of the Board defining said term, to exceed 12 times the amounts paid in by members for outstanding capital stock held by such members, defined term “aggregate unpaid loan principal” and authorized the board to require members to submit reports and information for purposes of this subsection.

Subsec. (l). Pub. L. 87-210, § 2, repealed subsec. (l) which required members to acquire, hold and maintain their stock holding in an amount equal to at least 2 per centum of the aggregate of the unpaid principal of such member’s home mortgage loans, home-purchase contracts, and similar obligations, but not less than \$500, and provided for the retirement of Government-owned stock.

1955—Subsec. (i). Act Aug. 11, 1955, provided that a Federal savings and loan association may not withdraw voluntarily, inserted proviso clause in item (ii), and inserted provisions authorizing removal of a member institution which has a management or home-financing policy of a character inconsistent with sound and economical home financing or with the purposes of this chapter.

1950—Subsec. (l). Act June 27, 1950, added subsec. (l).

1935—Subsec. (k). Act May 28, 1935, omitted exception clause relating to stock held by the United States.

1934—Subsecs. (c), (e). Act June 27, 1934, substituted “\$500” for “\$1,500”.

Effective Date of 1961 Amendment

Section 7 of Pub. L. 87-210 provided that: “This Act [amending this section and section 1727 of this title and enacting provisions set out as a note under section 1727 of this title] shall become effective on January 1 next following the date of its enactment [Sept. 8, 1961].”