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SEC. 1426 (6) CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS**(a) Regulations.**

(1) **CAPITAL STANDARDS.** Not later than 18 months after the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, the Finance Board 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) *In general.* 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.

(B) *Consideration of other risk-based standards.* In establishing the risk-based standard under subparagraph (A)(ii), the Finance Board 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), with such modifications as the Finance Board 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 Finance Board under paragraph (1) shall—

(A) permit each Federal home loan bank to issue, with such rights, terms, and preferences, not inconsistent with this Act 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 Finance Board, 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 Finance Board determines by regulation to be appropriate to include in determining total capital.

(6) TRANSITION PERIOD. Notwithstanding any other provision of this Act, 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 the date of the enactment of the Federal Home Loan Bank System Modernization Act of 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) has been approved by the Finance Board 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 Finance Board of final regulations in accordance with subsection (a), the board of directors of each Federal home loan bank shall submit for Finance Board approval 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); and

(C) meets the minimum capital standards and requirements established under subsection (a) and other regulations prescribed by the Finance Board.

(2) APPROVAL OF MODIFICATIONS. The board of directors of a Federal home loan bank shall submit to the Finance Board for approval any modifications that the bank proposes to make in 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 Finance Board.

(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 Finance Board under subsection (a).

(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 Finance Board, 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), and to allow any institution that was a member of the bank on the date of the enactment of the Federal Home Loan Bank System Modernization Act of 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 Finance Board in accordance with its regulations.

(B) Rights requirements. 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 Finance Board regulations 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 B in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by the Finance Board.

(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 Finance Board, 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 Finance Board that the withdrawal will not cause the Federal Home Loan Bank System to fail to meet its obligation under section 21B(f)(2)(C) 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 Finance Board regulations, it determines that—

(I) the member has failed to comply with a provision of this Act or any regulation prescribed under this Act; 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);

(II) shall receive any dividends declared on its redeemable stock, during the applicable notice period under subsection (a)(4)(A); 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) 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 Finance Board 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 Finance Board 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 Act, 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 Finance Board and the requirements of this Act.

(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.