PART 1277—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS, CAPITAL STOCK AND CAPITAL PLANS

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Subpart A—Definitions

§ 1277.1 Definitions.

As used in this part:

Affiliated counterparty means a counterparty of a Bank that controls, is controlled by, or is under common control with another counterparty of the Bank. For the purposes of this definition only, direct or indirect ownership (including beneficial ownership) of more than 50 percent of the voting securities or voting interests of an entity constitutes control.

Bankruptcy remote means, in the context of any asset that a Bank has posted as collateral to a counterparty, that the asset would be excluded from that counterparty's estate in receivership, insolvency, liquidation, or similar proceeding.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by § 1277.20(a).

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified by § 1277.20(b).

Collateralized mortgage obligation, or *CMO*, means any instrument backed or collateralized by residential mortgages or residential mortgage securities, that includes two or more tranches or classes, or is otherwise structured in any manner other than as a pass-through security.

Commitment to make an advance or acquire a loan subject to certain drawdown means a legally binding agreement that commits the Bank to make an advance or acquire a loan, at or by a specified future date.

Credit derivative means a derivative contract that transfers credit risk.

Credit risk means the risk that the market value, or estimated fair value if market value is not available, of an obligation will decline as a result of deterioration in the creditworthiness of the obligor.

Derivatives clearing organization means an organization that clears derivative contracts and is registered with the Commodity Futures Trading Commission as a derivatives clearing organization pursuant to section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a–1), or that the Commodity Futures Trading Commission has exempted from registration by rule or order pursuant to section 5b(h) of the Commodity Exchange Act (7 U.S.C. 7a–1(h)), or is registered with the Securities and Exchange Commission as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1), or that the SEC has exempted from registration as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(k)).

Derivative contract means generally a financial contract the value of which is derived from the values of one or more underlying assets, reference rates, or

indices of asset values, or credit-related events. Derivative contracts include interest rate, foreign exchange rate, equity, precious metals, commodity, and credit derivative contracts, and any other instruments that pose similar counterparty credit risks.

Eligible master netting agreement has the same meaning as set forth in §1221.2 of this chapter.

Exchange rate contracts include cross-currency interest-rate swaps, forward foreign exchange rate contracts, currency options purchased, and any similar instruments that give rise to similar risks.

Former member means an institution for which the membership in a Bank has been terminated but which continues to hold stock in the Bank as required by the Bank's capital plan, and includes any successor to such institution that continues to hold the stock in the Bank that had been issued to the acquired institution.

General allowance for losses means an allowance established by the Bank in accordance with GAAP for losses, but which does not include any amounts held against specific assets of the Bank.

Government Sponsored Enterprise, or *GSE*, means a United States Government-sponsored agency or instrumentality established or chartered to serve public purposes specified by the United States Congress, but whose obligations are not obligations of the United States and are not guaranteed by the United States.

Internal cash-flow model means a model developed and used by a Bank to estimate the potential evolving changes in the cash flows and market values of a portfolio for each month, extending out for a period of years, subject to a variety of plausible time paths of changes in interest rates, volatilities, and option adjusted spreads, and that incorporates assumptions about new or revolving business, including the roll-off and possible replacement of assets and liabilities as required.

Internal market-risk model means a model developed and used by a Bank to estimate the potential change in the market value of a portfolio subject to an instantaneous change in interest rates, volatilities, and option-adjusted spreads.

Market risk means the risk that the market value, or estimated fair value if market value is not available, of a Bank's portfolio will decline as a result of changes in interest rates, foreign exchange rates, or equity or commodity prices.

Market value-at-risk is the loss in the market value of a Bank's portfolio measured from a base line case, where the loss is estimated in accordance with §1277.5.

Minimum investment means the minimum amount of stock that an institution is required to own in order to be a member of a Bank and in order to obtain advances and to engage in other business activities with the Bank in accordance with §1277.22.

Non-mortgage asset means an asset held by a Bank other than an advance, a non-rated asset, a residential mortgage asset, a collateralized mortgage obligation, or a derivative contract.

Non-rated asset means a Bank's cash, premises, plant and equipment, and investments authorized pursuant to §1265.3(e) and (f) of this chapter.

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people and systems, or from external events.

Permanent capital means the retained earnings of a Bank, determined in accordance with GAAP, plus the amount paid-in for the Bank's Class B stock.

Redeem or Redemption means the acquisition by a Bank of its outstanding Class A or Class B stock at par value following the expiration of the six-month or five-year statutory redemption period, respectively, for the stock.

Regulatory capital requirements means the minimum amounts of permanent and total capital that a Bank is required to maintain under section 6(a) of the Bank Act (12 U.S.C. 1426(a)) and any related regulations, as such requirements may be modified by the Director, or any similar requirement established for a Bank by regulation, order, written agreement or other action.

Repurchase means the acquisition by a Bank of excess stock prior to the expiration of the six-month or five-year

statutory redemption period for the stock.

Residential mortgage means a loan secured by a residential structure that contains one-to-four dwelling units, regardless of whether the structure is attached to real property. The term encompasses, among other things, loans secured by individual condominium or cooperative units and manufactured housing, whether or not the manufactured housing is considered real property under state law, and participation interests in such loans.

Residential mortgage asset, or *RMA,* means any residential mortgage, residential mortgage pool, or residential mortgage security.

Residential mortgage security means any instrument representing an undivided interest in a pool of residential mortgages.

Sales of federal funds subject to a continuing contract means an overnight federal funds loan that is automatically renewed each day unless terminated by either the lender or the borrower.

Total assets mean the total assets of a Bank, as determined in accordance with generally accepted accounting principles (GAAP).

Total capital of a Bank means the sum of permanent capital, the amounts paid-in for Class A stock, the amount of any general allowance for losses, and the amount of other instruments identified in a Bank's capital plan that the Director has determined to be available to absorb losses incurred by such Bank.

[80 FR 12755, Mar. 11, 2015, as amended at 84 FR 5325, Feb. 20, 2019]

Subpart B—Bank Capital Requirements

SOURCE: 84 FR 5326, Feb. 20, 2019, unless otherwise noted.

§ 1277.2 Total capital requirement.

Each Bank shall maintain at all times:

(a) Total capital in an amount at least equal to 4.0 percent of the Bank's total assets; and

(b) A leverage ratio of total capital to total assets of at least 5.0 percent of the Bank's total assets. For purposes of determining this leverage ratio, total capital shall be computed by multiplying the Bank's permanent capital by 1.5 and adding to this product all other components of total capital.

§ 1277.3 Risk-based capital requirement.

Each Bank shall maintain at all times permanent capital in an amount at least equal to the sum of its credit risk capital requirement, its market risk capital requirement, and its operational risk capital requirement, calculated in accordance with §§ 1277.4, 1277.5, and 1277.6, respectively.

§ 1277.4 Credit risk capital requirement.

(a) *General requirement.* Each Bank's credit risk capital requirement shall equal the sum of the Bank's individual credit risk capital charges for all advances, residential mortgage assets, CMOs, non-mortgage assets, non-rated assets, off-balance sheet items, and derivative contracts, as calculated in accordance with this section.

(b) *Credit risk capital charge for residential mortgage assets and collateralized mortgage obligations.* The credit risk capital charge for residential mortgages, residential mortgage pools, residential mortgage securities, and collateralized mortgage obligations shall be determined as set forth in paragraph (g) of this section.

(c) *Credit risk capital charge for advances, non-mortgage assets, and non-rated assets.* Except as provided in paragraph (j) of this section, each Bank's credit risk capital charge for advances, non-mortgage assets, and non-rated assets shall be equal to the amortized cost of the asset multiplied by the credit risk percentage requirement assigned to that asset pursuant to paragraph (f)(1) or (2) of this section. For any such asset carried at fair value where any change in fair value is recognized in the Bank's income, the Bank shall calculate the capital charge based on the fair value of the asset rather than its amortized cost.

(d) *Credit risk capital charge for off-balance sheet items.* Each Bank's credit risk capital charge for an off-balance sheet item shall be equal to the credit

equivalent amount of such item, as determined pursuant to paragraph (h) of this section, multiplied by the credit risk percentage requirement assigned to that item pursuant to paragraph (f)(1) of this section and Table 2 to this section, except that the credit risk percentage requirement applied to the credit equivalent amount for a standby letter of credit shall be that for an advance with the same remaining maturity as that of the standby letter of credit, as specified in Table 1 to this section.

(e) *Derivative contracts.* (1) Except as provided in paragraphs (e)(4) (transactions with members) and (5) (cleared transactions and foreign exchange rate contracts) of this section, the credit risk capital charge for a derivative contract entered into by a Bank shall equal, after any adjustment allowed under paragraph (e)(2) of this section, the sum of:

(i) The current credit exposure for the derivative contract, calculated in accordance with paragraph (i)(1) of this section, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to Table 2 to this section, provided that a Bank shall use the credit risk percentages from the column for instruments with maturities of one year or less for all such derivative contracts; plus

(ii) The potential future credit exposure for the derivative contract, calculated in accordance with paragraph (i)(2) of this section, multiplied by the credit risk percentage requirement assigned to that derivative contract pursuant to Table 2 to this section, where a Bank uses the actual remaining maturity of the derivative contract for the purpose of applying Table 2 to this section; plus

(iii) A credit risk capital charge applicable to the undiscounted amount of collateral posted by the Bank with respect to a derivative contract that exceeds the Bank's current payment obligation under that derivative contract, where the charge equals the amount of such excess collateral multiplied by the credit risk percentage requirement assigned under Table 2 to this section for the custodian or other party that holds the collateral, and where a Bank deems the exposure to have a remaining maturity of one year or less when applying Table 2 to this section.

(2)(i) A Bank may reduce the credit risk capital charge calculated under paragraph (e)(1) of this section by the amount of the discounted value of any collateral that is held by or on behalf of the Bank against an exposure from the derivative contract, and that satisfies the requirements of paragraph (e)(3) of this section. If the total amount of the discounted value of the collateral is less than the credit risk capital charge calculated under paragraph (e)(1) of this section for a particular derivative contract, then the credit risk capital charge for the derivative contract shall equal the amount of the initial charge that remains after having been reduced by the collateral. A Bank that uses a counterparty's pledged collateral to reduce the capital charge against a derivative contract under this provision, shall also apply a capital charge to the amount of the pledged collateral that it has used to reduce its credit exposure on the derivative contract. The amount of that capital charge shall be equal to the capital charge that would be required under paragraph (b) or (c) of this section, whichever applies to the type of collateral, as if the Bank were to own the collateral directly. In reducing the capital charge on a particular derivative contract, the Bank shall apply the discounted value of the collateral for that derivative contract in the following manner:

(A) First, to reduce the current credit exposure of the derivative contract subject to the capital charge; and

(B) Second, and only if the total discounted value of the collateral held exceeds the current credit exposure of the contract, any remaining amounts may be applied to reduce the amount of the potential future credit exposure of the derivative contract subject to the capital charge.

(ii) If a counterparty's payment obligations to a Bank under a derivative contract are unconditionally guaranteed by a third-party, then the credit risk percentage requirement applicable to the derivative contract may be that associated with the guarantor, rather than the Bank's counterparty.

(3) The credit risk capital charge may be reduced as described in paragraph (e)(2)(i) of this section for collateral held against the derivative contract exposure only if the collateral is:

(i) Held by, or has been paid to, the Bank or held by an independent, third-party custodian on behalf of the Bank pursuant to a custody agreement that meets the requirements of §1221.7(c) and (d) of this chapter;

(ii) Legally available to absorb losses;

(iii) Of a readily determinable value at which it can be liquidated by the Bank; and

(iv) Subject to an appropriate discount to protect against price decline during the holding period and the costs likely to be incurred in the liquidation of the collateral, provided that such discount shall equal at least the minimum discount required under appendix B to part 1221 of this chapter for collateral listed in that appendix, or shall be estimated by the Bank based on appropriate assumptions about the price risks and liquidation costs for collateral not listed in appendix B to part 1221.

(4) The credit risk capital charge for any derivative contracts entered into between a Bank and its members shall be calculated in accordance with paragraph (e)(1) of this section, except that the Bank shall use the credit risk percentage requirements from Table 1 to this section, which sets forth the credit risk percentage requirements for advances.

(5) Notwithstanding any other provision in this paragraph (e), the credit risk capital charge for:

(i) A foreign exchange rate contract (excluding gold contracts) with an original maturity of 14 calendar days or less shall be zero; and

(ii) A derivative contract cleared by a derivatives clearing organization shall equal 0.16 percent times the sum of the following:

(A) The current credit exposure for the derivative contract, calculated in accordance with paragraph (i)(1)(i) of this section;

(B) The potential future credit exposure for the derivative contract calculated in accordance with paragraph (i)(2) of this section; and

(C) The amount of collateral posted by the Bank and held by the derivatives clearing organization, clearing member, or custodian in a manner that is not bankruptcy remote, but only to the extent the amount exceeds the Bank's current credit exposure to the derivatives clearing organization.

(f) *Determination of credit risk percentage requirements*—(1) *General.* (i) Each Bank shall determine the credit risk percentage requirement applicable to each advance and each non-rated asset by identifying the appropriate category from Table 1 or 3 to this section, respectively, to which the advance or non-rated asset belongs. Except as provided in paragraphs (f)(2) and (3) of this section, each Bank shall determine the credit risk percentage requirement applicable to each non-mortgage asset, off-balance sheet item, and derivative contract by identifying the appropriate category set forth in Table 2 to this section to which the asset, item, or contract belongs as determined in accordance with paragraph (f)(1)(ii) of this section, and remaining maturity. Each Bank shall use the applicable credit risk percentage requirement to calculate the credit risk capital charge for each asset, item, or contract in accordance with paragraph (c), (d), or (e) of this section, respectively. The relevant categories and credit risk percentage requirements are provided in the following Tables 1 through 3 to this section—

TABLE 1 TO § 1277.4—REQUIREMENT FOR ADVANCES

Maturity of advances	Percentage applicable to advances
Advances with:	
Remaining maturity <=4 years	0.09
Remaining maturity >4 years to 7 years	0.23
Remaining maturity >7 years to 10 years	0.35
Remaining maturity >10 years	0.51

TABLE 2 TO § 1277.4—REQUIREMENT FOR INTERNALLY RATED NON-MORTGAGE ASSETS, OFF-BALANCE SHEET ITEMS, AND DERIVATIVE CONTRACTS

[Based on remaining contractual maturity]

FHFA Credit Rating	Applicable percentage				
	<=1 year	>1 yr to 3 yrs	>3 yrs to 7 yrs	>7 yrs to 10 yrs	>10 yrs
U.S. Government Securities	0.00	0.00	0.00	0.00	0.00
FHFA 1	0.20	0.59	1.37	2.28	3.32
FHFA 2	0.36	0.87	1.88	3.07	4.42
FHFA 3	0.64	1.31	2.65	4.22	6.01
FHFA 4	3.24	4.79	7.89	11.51	15.64
FHFA 5	9.24	11.46	15.90	21.08	27.00
FHFA 6	15.99	18.06	22.18	26.99	32.49
FHFA 7	100.00	100.00	100.00	100.00	100.00

TABLE 3 TO § 1277.4—REQUIREMENT FOR NON-RATED ASSETS

Type of unrated asset	Applicable percentage
Cash	0.00
Premises, Plant and Equipment	8.00
Investments Under 12 CFR 1265.3(e) & (f)	8.00

(ii) Each Bank shall develop a methodology to be used to assign an internal credit risk rating to each counterparty, asset, item, and contract that is subject to Table 2 to this section. The methodology shall involve an evaluation of counterparty or asset risk factors, and may incorporate, but must not rely solely on, credit ratings prepared by credit rating agencies. Each Bank shall align its various internal credit ratings to the appropriate categories of FHFA Credit Ratings included in Table 2 to this section. In doing so, FHFA Categories 7 through 1 shall include assets of progressively higher credit quality. After aligning its internal credit ratings to the appropriate categories of Table 2 to this section, each Bank shall assign each counterparty, asset, item, and contract to the appropriate FHFA Credit Rating category based on the applicable internal credit rating.

(2) *Exception for assets subject to a guarantee or secured by collateral.* (i) When determining the applicable credit risk percentage requirement from Table 1 to this section for a non-mortgage asset that is subject to an unconditional guarantee by a third-party guarantor or is secured as set forth in paragraph (f)(2)(ii) of this section, the Bank may substitute the credit risk percentage requirement associated with the guarantor or the collateral, as appropriate, for the credit risk percentage requirement associated with that portion of the asset subject to the guarantee or covered by the collateral.

(ii) For purposes of paragraph (f)(2)(i) of this section, a non-mortgage asset shall be considered to be secured if the collateral is:

(A) Actually held by the Bank, or an independent third-party custodian on the Bank's behalf, or, if posted by a Bank member and permitted under the Bank's collateral agreement with that member, by the Bank's member or an affiliate of that member where the term ''affiliate'' has the same meaning as in § 1266.1 of this chapter;

(B) Legally available to absorb losses;

(C) Of a readily determinable value at which it can be liquidated by the Bank;

(D) Held in accordance with the provisions of the Bank's member products policy established pursuant to § 1239.30 of this chapter, if the collateral has been posted by a member or an affiliate of a member; and

(E) Subject to an appropriate discount to protect against price decline during the holding period and the costs likely to be incurred in the liquidation of the collateral.

(3) *Exception for obligations of the Enterprises.* A Bank may use a credit risk capital charge of zero for any debt instrument or obligation issued by an Enterprise, other than a residential mortgage security or a collateralized mortgage obligation, provided that, and only for so long as, the Enterprise receives capital support or other form of direct financial assistance from the United States government that enables

the Enterprise to repay those obligations.

(4) *Methodology and model review.* A Bank shall provide to FHFA upon request the methodology, model, and any analyses used by the Bank to assign any non-mortgage asset, off-balance sheet item, or derivative contract to an FHFA Credit Rating category. FHFA may direct a Bank to promptly revise its methodology or model to address any deficiencies identified by FHFA.

(g) *Credit risk capital charges for residential mortgage assets*—(1) *Bank determination of credit risk percentage.* (i) Each Bank's credit risk capital charge for a residential mortgage, residential mortgage pool, residential mortgage security, or collateralized mortgage obligation shall be equal to the asset's amortized cost multiplied by the credit risk percentage requirement assigned to that asset pursuant to paragraph (g)(1)(ii) or (g)(2) of this section. For any such asset carried at fair value where any change in fair value is recognized in the Bank's income, the Bank shall calculate the capital charge based on the fair value of the asset rather than its amortized cost.

(ii) Each Bank shall determine the credit risk percentage requirement applicable to each residential mortgage, residential mortgage pool, and residential mortgage security by identifying the appropriate FHFA RMA category set forth in the following Table 4 to this section to which the asset belongs, and shall determine the credit risk percentage requirement applicable to each collateralized mortgage obligation by identifying the appropriate FHFA CMO category set forth in Table 4 to this section to which the asset belongs, with the appropriate categories being determined in accordance with paragraph (g)(1)(iii) of this section.

(iii) Each Bank shall develop a methodology to estimate the potential future stress losses on its residential mortgages, residential mortgage pools, residential mortgage securities, and collateralized mortgage obligations, as may yet occur from the current amortized cost (or fair value) of those assets, and that converts those loss estimates into a stress loss percentage for each asset, expressed as a percentage of its amortized cost (or fair value). A Bank shall use the stress loss percentage for each asset to determine the appropriate FHFA RMA or CMO ratings category for that asset, as set forth in Table 4 to this section. A Bank shall do so by assigning each such asset to the category whose credit risk percentage requirement equals the asset's stress loss percentage, or to the category with the next highest credit risk percentage requirement. For residential mortgages and residential mortgage pools, the methodology shall involve an evaluation of the residential mortgages and residential mortgage pools and any credit enhancements or guarantees, including an assessment of the creditworthiness of the providers of such enhancements or guarantees. In the case of a residential mortgage security or collateralized mortgage obligation, the methodology shall involve an evaluation of the underlying mortgage collateral, the structure of the security, and any credit enhancements or guarantees, including an assessment of the creditworthiness of the providers of such enhancements or guarantees.

TABLE 4 TO § 1277.4—REQUIREMENT FOR RESIDENTIAL MORTGAGE ASSETS AND CMOS

	Credit risk percentage
Categories for residential mortgage assets:	
FHFA RMA 1	0.37
FHFA RMA 2	0.60
FHFA RMA 3	0.86
FHFA RMA 4	1.20
FHFA RMA 5	2.40
FHFA RMA 6	4.80
FHFA RMA 7	34.00
Categories for Collateralized Mortgage Obligations:	
FHFA CMO 1	0.37
FHFA CMO 2	0.60
FHFA CMO 3	1.60
FHFA CMO 4	4.45
FHFA CMO 5	13.00
FHFA CMO 6	34.00
FHFA CMO 7	100.00

(2) *Exceptions.* (i) A Bank may use a credit risk capital charge of zero for any residential mortgage asset or collateralized mortgage obligation, or portion thereof, guaranteed by an Enterprise as to payment of principal and interest, provided that, and only for so long as, the Enterprise receives capital support or other form of direct financial assistance from the United States

government that enables the Enterprise to repay those obligations;

(ii) A Bank may use a credit risk capital charge of zero for any residential mortgage asset or collateralized mortgage obligation, or any portion thereof, guaranteed or insured as to payment of principal and interest by a department or agency of the United States government that is backed by the full faith and credit of the United States; and

(iii) A Bank shall provide to FHFA upon request the methodology, model, and any analyses used to estimate the potential future stress losses on its residential mortgages, residential mortgage pools, residential mortgage securities, and collateralized mortgage obligations, and to determine a stress loss percentage for each such asset. FHFA may direct a Bank to promptly revise its methodology or model to address any deficiencies identified by FHFA.

(h) *Calculation of credit equivalent amount for off-balance sheet items*—(1) *General requirement*. The credit equivalent amount for an off-balance sheet item shall be determined by an FHFA-approved model or shall be equal to the face amount of the instrument multiplied by the credit conversion factor assigned to such risk category of instruments by the following Table 5 to this section, subject to the exceptions in paragraph (h)(2) of this section.

TABLE 5 TO § 1277.4—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

Instrument	Credit conversion factor (in percent)
Asset sales with recourse where the credit risk remains with the Bank	100
Commitments to make advances subject to certain drawdown.	
Commitments to acquire loans subject to certain drawdown.	
Standby letters of credit	50
Other commitments with original maturity of over one year.	
Other commitments with original maturity of one year or less	20

(2) *Exceptions*. The credit conversion factor shall be zero for ''Other Commitments With Original Maturity of Over One Year'' and ''Other Commitments With Original Maturity of One Year or Less'' for which Table 5 to this section would otherwise apply credit conversion factors of 50 percent or 20 percent, respectively, if the commitments are unconditionally cancelable, or effectively provide for automatic cancellation due to the deterioration in a borrower's creditworthiness, at any time by the Bank without prior notice.

(i) *Calculation of credit exposures for derivative contracts*—(1) *Current credit exposure*—(i) *Single derivative contract*. The current credit exposure for derivative contracts that are not subject to an eligible master netting agreement shall be:

(A) If the mark-to-market value of the contract is positive, the mark-to-market value of the contract; or

(B) If the mark-to-market value of the contract is zero or negative, zero.

(ii) *Derivative contracts subject to an eligible master netting agreement*. The current credit exposure for multiple uncleared derivative contracts executed with a single counterparty and subject to an eligible master netting agreement shall be calculated on a net basis and shall equal:

(A) The net sum of all positive and negative mark-to-market values of the individual derivative contracts subject to the eligible master netting agreement, if the net sum of the mark-to-market values is positive; or

(B) Zero, if the net sum of the mark-to-market values is zero or negative.

(2) *Potential future credit exposure*. The potential future credit exposure for derivative contracts, including derivative contracts with a negative mark-to-market value, shall be calculated:

(i) Using an internal initial margin model that meets the requirements of § 1221.8 of this chapter and is approved by FHFA for use by the Bank, or using an initial margin model that has been approved under regulations similar to § 1221.8 of this chapter for use by the

Bank's counterparty to calculate initial margin for those derivative contracts for which the calculation is being done; or

(ii) By applying the standardized approach in appendix A to part 1221 of this chapter; or

(iii) Using an initial margin model that is employed by a derivatives clearing organization.

(j) *Credit risk capital charge for non-mortgage assets hedged with credit derivatives*—(1) *Credit derivatives with a remaining maturity of one year or more.* The credit risk capital charge for a non-mortgage asset that is hedged with a credit derivative that has a remaining maturity of one year or more may be reduced only in accordance with paragraph (j)(3) or (4) of this section and only if the credit derivative provides substantial protection against credit losses.

(2) *Credit derivatives with a remaining maturity of less than one year.* The credit risk capital charge for a non-mortgage asset that is hedged with a credit derivative that has a remaining maturity of less than one year may be reduced only in accordance with paragraph (j)(3) of this section and only if the remaining maturity on the credit derivative is identical to or exceeds the remaining maturity of the hedged non-mortgage asset and the credit derivative provides substantial protection against credit losses.

(3) *Credit risk capital charge reduced to zero.* The credit risk capital charge for a non-mortgage asset shall be zero if a credit derivative is used to hedge the credit risk on that asset in accordance with paragraph (j)(1) or (2) of this section, provided that:

(i) The remaining maturity for the credit derivative used for the hedge is identical to or exceeds the remaining maturity for the hedged non-mortgage asset, and either:

(A) The non-mortgage asset referenced in the credit derivative is identical to the hedged non-mortgage asset; or

(B) The non-mortgage asset referenced in the credit derivative is different from the hedged non-mortgage asset, but only if the asset referenced in the credit derivative and the hedged non-mortgage asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to, or more junior than, the hedged non-mortgage asset and has the same maturity as the hedged non-mortgage asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the credit derivative contract calculated pursuant to paragraph (e) of this section is still applied.

(4) *Capital charge reduction in certain other cases.* The credit risk capital charge for a non-mortgage asset hedged with a credit derivative in accordance with paragraph (j)(1) of this section shall equal the sum of the credit risk capital charges for the hedged and unhedged portion of the non-mortgage asset provided that:

(i) The remaining maturity for the credit derivative is less than the remaining maturity for the hedged non-mortgage asset and either:

(A) The non-mortgage asset referenced in the credit derivative is identical to the hedged non-mortgage asset; or

(B) The non-mortgage asset referenced in the credit derivative is different from the hedged non-mortgage asset, but only if the asset referenced in the credit derivative and the hedged non-mortgage asset have been issued by the same obligor, the asset referenced in the credit derivative ranks pari passu to, or more junior than, the hedged non-mortgage asset and has the same maturity as the hedged non-mortgage asset, and cross-default clauses apply; and

(ii) The credit risk capital charge for the unhedged portion of the non-mortgage asset equals:

(A) The credit risk capital charge for the non-mortgage asset, calculated as the amortized cost, or fair value, of the non-mortgage asset multiplied by that asset's credit risk percentage requirement assigned pursuant to paragraph (f)(1) of this section where the appropriate credit rating is that for the non-mortgage asset and the appropriate maturity is the remaining maturity of the non-mortgage asset; minus

(B) The credit risk capital charge for the non-mortgage asset, calculated as the amortized cost, or fair value, of the non-mortgage asset multiplied by that

asset's credit risk percentage requirement assigned pursuant to paragraph (f)(1) of this section where the appropriate credit rating is that for the non-mortgage asset but the appropriate maturity is deemed to be the remaining maturity of the credit derivative; and

(iii) The credit risk capital charge for the hedged portion of the non-mortgage asset is equal to the credit risk capital charge for the credit derivative, calculated in accordance with paragraph (e) of this section.

(k) *Frequency of calculations.* Each Bank shall perform all calculations required by this section at least quarterly, unless otherwise directed by FHFA, using the advances, residential mortgages, residential mortgage pools, residential mortgage securities, collateralized mortgage obligations, non-rated assets, non-mortgage assets, off-balance sheet items, and derivative contracts held by the Bank, and, if applicable, the values of, or FHFA Credit Ratings categories for, such assets, off-balance sheet items, or derivative contracts as of the close of business of the last business day of the calendar period for which the credit risk capital charge is being calculated.

§ 1277.5 Market risk capital requirement.

(a) *General requirement.* (1) Each Bank's market risk capital requirement shall equal the market value of the Bank's portfolio at risk from movements in interest rates, foreign exchange rates, commodity prices, and equity prices that could occur during periods of market stress, where the market value of the Bank's portfolio at risk is determined using an internal market-risk model that fulfills the requirements of paragraph (b) of this section and that has been approved by FHFA.

(2) A Bank may substitute an internal cash-flow model to derive a market risk capital requirement in place of that calculated using an internal market-risk model under paragraph (a)(1) of this section, provided that:

(i) The Bank obtains FHFA approval of the internal cash-flow model and of the assumptions to be applied to the model; and

(ii) The Bank demonstrates to FHFA that the internal cash-flow model subjects the Bank's assets and liabilities, off-balance sheet items, and derivative contracts, including related options, to a comparable degree of stress for such factors as will be required for an internal market-risk model.

(b) *Measurement of market value-at-risk under a Bank's internal market-risk model.* (1) Except as provided under paragraph (a)(2) of this section, each Bank shall use an internal market-risk model that estimates the market value of the Bank's assets and liabilities, off-balance sheet items, and derivative contracts, including any related options, and measures the market value of the Bank's portfolio at risk of its assets and liabilities, off-balance sheet items, and derivative contracts, including related options, from all sources of the Bank's market risks, except that the Bank's model need only incorporate those risks that are material.

(2) The Bank's internal market-risk model may use any generally accepted measurement technique, such as variance-covariance models, historical simulations, or Monte Carlo simulations, for estimating the market value of the Bank's portfolio at risk, provided that any measurement technique used must cover the Bank's material risks.

(3) The measures of the market value of the Bank's portfolio at risk shall include the risks arising from the non-linear price characteristics of options and the sensitivity of the market value of options to changes in the volatility of the options' underlying rates or prices.

(4) The Bank's internal market-risk model shall use interest rate and market price scenarios for estimating the market value of the Bank's portfolio at risk, but at a minimum:

(i) The Bank's internal market-risk model shall provide an estimate of the market value of the Bank's portfolio at risk such that the probability of a loss greater than that estimated shall be no more than one percent;

(ii) The Bank's internal market-risk model shall incorporate scenarios that reflect changes in interest rates, interest rate volatility, option-adjusted spreads, and shape of the yield curve,

and changes in market prices, equivalent to those that have been observed over 120-business day periods of market stress. For interest rates, the relevant historical observations should be drawn from the period that starts at the end of the previous month and goes back to the beginning of 1998;

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to FHFA;

(B) Representative of the periods of the greatest potential market stress given the Bank's portfolio; and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations among interest rates.

(5) For any consolidated obligations denominated in a currency other than U.S. Dollars or linked to equity or commodity prices, each Bank shall, in addition to fulfilling the criteria of paragraph (b)(4) of this section, calculate an estimate of the market value of its portfolio at risk resulting from material foreign exchange, equity price or commodity price risk, such that, at a minimum:

(i) The probability of a loss greater than that estimated shall not exceed one percent;

(ii) The scenarios reflect changes in foreign exchange, equity, or commodity market prices that have been observed over 120-business day periods of market stress, as determined using historical data that is from an appropriate period;

(iii) The total number of, and specific historical observations identified by the Bank as, stress scenarios shall be:

(A) Satisfactory to FHFA;

(B) Representative of the periods of the greatest potential stress given the Bank's portfolio; and

(C) Comprehensive given the modeling capabilities available to the Bank; and

(iv) The measure of the market value of the Bank's portfolio at risk may incorporate empirical correlations within or among foreign exchange rates, equity prices, or commodity prices.

(c) *Independent validation of Bank internal market-risk model or internal cash-flow model.* (1) Each Bank shall conduct an independent validation of its internal market-risk model or internal cash-flow model within the Bank that is carried out by personnel not reporting to the business line responsible for conducting business transactions for the Bank. Alternatively, the Bank may obtain independent validation by an outside party qualified to make such determinations. Validations shall be done periodically, commensurate with the risk associated with the use of the model, or as frequently as required by FHFA.

(2) The results of such independent validations shall be reviewed by the Bank's board of directors and provided promptly to FHFA.

(d) *FHFA approval of Bank internal market-risk model or internal cash-flow model.* (1) Each Bank shall obtain FHFA approval of an internal market-risk model or an internal cash-flow model, including subsequent material adjustments to the model made by the Bank, prior to the use of any model. Each Bank shall make such adjustments to its model as may be directed by FHFA.

(2) A model and any material adjustments to such model that were approved by FHFA or the Federal Housing Finance Board shall be deemed to meet the requirements of paragraph (d)(1) of this section, unless such approval is revoked or amended by FHFA.

(e) *Frequency of calculations.* Each Bank shall perform any calculations or estimates required under this section at least quarterly, unless otherwise directed by FHFA, using the assets, liabilities, and off-balance sheet items (including derivative contracts and options) held by the Bank, and if applicable, the values of any such holdings, as of the close of business of the last business day of the calendar period for which the market risk capital requirement is being calculated.

§ 1277.6 Operational risk capital requirement.

(a) *General requirement.* Except as authorized under paragraph (b) of this section, each Bank's operational risk

capital requirement shall at all times equal 30 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement.

(b) *Alternative requirements.* With the approval of FHFA, each Bank may have an operational risk capital requirement equal to less than 30 percent but no less than 10 percent of the sum of the Bank's credit risk capital requirement and market risk capital requirement if:

(1) The Bank provides an alternative methodology for assessing and quantifying an operational risk capital requirement; or

(2) The Bank obtains insurance to cover operational risk from an insurer acceptable to FHFA and on terms acceptable to FHFA.

§ 1277.7 Limits on unsecured extensions of credit; reporting requirements.

(a) *Unsecured extensions of credit to a single counterparty.* A Bank shall not extend unsecured credit to any single counterparty (other than a GSE described in and subject to the requirements of paragraph (c) of this section) in an amount that would exceed the limits of this paragraph (a). If a third-party provides an irrevocable, unconditional guarantee of repayment of a credit (or any part thereof), the third-party guarantor may be considered the counterparty for purposes of calculating and applying the unsecured credit limits of this section with respect to the guaranteed portion of the transaction.

(1) *General limits.* All unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank's on- and off-balance sheet and derivative transactions (but excluding the amount of sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract) shall not exceed the product of the maximum capital exposure limit applicable to such counterparty, as determined in accordance with the following Table 1 to this section, multiplied by the lesser of:

(i) The Bank's total capital; or

(ii) The counterparty's Tier 1 capital, or if Tier 1 capital is not available, total capital (in each case as defined by the counterparty's principal regulator) or some similar comparable measure identified by the Bank.

(2) *Overall limits including sales of overnight federal funds.* All unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank's on- and off-balance sheet and derivative transactions, including the amounts of sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, shall not exceed twice the limit calculated pursuant to paragraph (a)(1) of this section.

(3) *Limits for certain obligations issued by state, local, or tribal governmental agencies.* The limit set forth in paragraph (a)(1) of this section, when applied to the marketable direct obligations of state, local, or tribal government units or agencies that are excluded from the prohibition against investments in whole mortgage loans or other types of whole loans, or interests in such loans, by §1267.3(a)(4)(iii) of this chapter, shall be calculated based on the Bank's total capital and the internal credit rating assigned to the particular obligation, as determined in accordance with paragraph (a)(4) of this section. If a Bank owns series or classes of obligations issued by a particular state, local, or tribal government unit or agency, or has extended other forms of unsecured credit to such entity falling into different rating categories, the total amount of unsecured credit extended by the Bank to that government unit or agency shall not exceed the limit associated with the highest-rated obligation issued by the entity and actually purchased by the Bank.

(4) *Bank determination of applicable maximum capital exposure limits.* A Bank shall determine the maximum capital exposure limit for each counterparty by assigning the counterparty to the appropriate FHFA Credit Rating category of Table 1 to this section, based upon the Bank's internal credit rating for that counterparty. In all cases, a Bank shall use the same FHFA Credit Rating category for a particular counterparty when determining its unsecured credit limit under this section as it would use under Table 2 to §1277.4 for determining the risk-based capital

charge for obligations issued by that counterparty under § 1277.4(f).

TABLE 1 TO § 1277.7—MAXIMUM LIMITS ON UNSECURED EXTENSIONS OF CREDIT TO A SINGLE COUNTER-PARTY BY FHFA CREDIT RATING CATEGORY

FHFA Credit Rating	Maximum capital exposure limit (in percent)
FHFA 1	15
FHFA 2	14
FHFA 3	9
FHFA 4	3
FHFA 5 and Below	1

(b) *Unsecured extensions of credit to affiliated counterparties*—(1) *In general.* The total amount of unsecured extensions of credit by a Bank to a group of affiliated counterparties that arise from the Bank's on- and off-balance sheet and derivative transactions, including sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, shall not exceed 30 percent of the Bank's total capital.

(2) *Relation to individual limits.* The aggregate limits calculated under paragraph (b)(1) of this section shall apply in addition to the limits on extensions of unsecured credit to a single counterparty imposed by paragraph (a) of this section.

(c) *Special limits for certain GSEs.* Unsecured extensions of credit by a Bank that arise from the Bank's on- and off-balance sheet and derivative transactions, including from the purchase of any debt or from any sales of federal funds with a maturity of one day or less and from sales of federal funds subject to a continuing contract, with a GSE that is operating with capital support or another form of direct financial assistance from the United States government that enables the GSE to repay those obligations, shall not exceed the Bank's total capital.

(d) *Extensions of unsecured credit after reduced rating.* If a Bank revises its internal credit rating for any counterparty or obligation, it shall assign the counterparty or obligation to the appropriate FHFA Credit Rating category based on the revised rating. If the revised internal rating results in a lower FHFA Credit Rating category, then any subsequent extensions of unsecured credit shall comply with the maximum capital exposure limit applicable to that lower rating category, but a Bank need not unwind or liquidate any existing transaction or position that complied with the limits of this section at the time it was entered. For purposes of this paragraph (d), the renewal of an existing unsecured extension of credit, including any decision not to terminate any sales of federal funds subject to a continuing contract, shall be considered a subsequent extension of unsecured credit that can be undertaken only in accordance with the lower limit.

(e) *Reporting requirements*—(1) *Total unsecured extensions of credit.* Each Bank shall report monthly to FHFA the amount of the Bank's total unsecured extensions of credit arising from on- and off-balance sheet and derivative transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of:

(i) The Bank's total capital; or

(ii) The counterparty's, or affiliated counterparties' combined, Tier 1 capital, or if Tier 1 capital is not available, total capital (in each case as defined by the counterparty's principal regulator), or some similar comparable measure identified by the Bank.

(2) *Total secured and unsecured extensions of credit.* Each Bank shall report monthly to FHFA the amount of the Bank's total secured and unsecured extensions of credit arising from on- and off-balance sheet and derivative transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of the Bank's total assets.

(3) *Extensions of credit in excess of limits.* A Bank shall report promptly to FHFA any extension of unsecured credit that exceeds any limit set forth in paragraph (a), (b), or (c) of this section. In making this report, a Bank shall provide the name of the counterparty or group of affiliated counterparties to which the excess unsecured credit has been extended, the dollar amount of the applicable limit which has been exceeded, the dollar amount by which the Bank's extension of unsecured credit exceeds such limit, the dates for which the Bank was not in compliance with

the limit, and a brief explanation of the circumstances that caused the limit to be exceeded.

(f) *Measurement of unsecured extensions of credit*—(1) *In general.* For purposes of this section, unsecured extensions of credit will be measured as follows:

(i) For on-balance sheet transactions (other than a derivative transaction addressed by paragraph (f)(1)(iii) of this section), an amount equal to the sum of the amortized cost of the item plus net payments due the Bank. For any such item carried at fair value where any change in fair value would be recognized in the Bank's income, the Bank shall measure the unsecured extension of credit based on the fair value of the item, rather than its amortized cost;

(ii) For off-balance sheet transactions, an amount equal to the credit equivalent amount of such item, calculated in accordance with §1277.4(h); and

(iii) For derivative transactions not cleared by a derivatives clearing organization, an amount equal to the sum of:

(A) The Bank's current and potential future credit exposures under the derivative contract, where those values are calculated in accordance with §1277.4(i)(1) and (2) respectively, reduced by the amount of any collateral held by or on behalf of the Bank against the credit exposure from the derivative contract, as allowed in accordance with the requirements of §1277.4(e)(2) and (3); and

(B) The value of any collateral posted by the Bank that exceeds the current amount owed by the Bank to its counterparty under the derivative contract, where the collateral is held by a person or entity other than a third-party custodian that is acting under a custody agreement that meets the requirements of §1221.7(c) and (d) of this chapter.

(2) *Status of debt obligations purchased by the Bank.* Any debt obligation or debt security (other than mortgage-backed or other asset-backed securities or acquired member assets) purchased by a Bank shall be considered an unsecured extension of credit for the purposes of this section, except for:

(i) Any amount owed the Bank against which the Bank holds collateral in accordance with §1277.4(f)(2)(ii); or

(ii) Any amount which FHFA has determined on a case-by-case basis shall not be considered an unsecured extension of credit.

(g) *Exceptions to unsecured credit limits.* The following items are not subject to the limits of this section:

(1) Obligations of, or guaranteed by, the United States;

(2) A derivative transaction accepted for clearing by a derivatives clearing organization, including collateral posted by the Bank with the derivatives clearing organization associated with that derivative transaction;

(3) Any extension of credit from one Bank to another Bank; and

(4) A bond issued by a state housing finance agency, if the Bank documents that the obligation in question is:

(i) Principally secured by high quality mortgage loans or high quality mortgage-backed securities (or funds derived from payments on such assets or from payments from any guarantees or insurance associated with such assets);

(ii) The most senior class of obligation, if the bond has more than one class; and

(iii) Determined by the Bank to be rated no lower than FHFA 2, in accordance with this section.

§1277.8 Reporting requirements.

Each Bank shall report information related to capital and other matters addressed by this part in accordance with instructions provided in the Data Reporting Manual issued by FHFA, as amended from time to time.

Subpart C—Bank Capital Stock

§1277.20 Classes of capital stock.

The authorized capital stock of a Bank shall consist of the following instruments:

(a) Class A stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank's capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value; and

(3) Be redeemable in cash only on six-months written notice to the Bank.

(b) Class B stock, which shall:

(1) Have a par value as determined by the board of directors of the Bank and stated in the Bank's capital plan;

(2) Be issued, redeemed, and repurchased only at its stated par value;

(3) Be redeemable in cash only on five-years written notice to the Bank; and

(4) Confer an ownership interest in the retained earnings, surplus, undivided profits, and equity reserves of the Bank.

(c) Any one or more subclasses of Class A or Class B stock, each of which may have different rights, terms, conditions, or preferences as may be authorized in the Bank's capital plan, provided, however, that each subclass of stock shall have all of the characteristics of its respective class, as specified in paragraph (a) or (b) of this section.

§ 1277.21 Issuance of capital stock.

A Bank may issue either one or both classes of its capital stock (including subclasses), as authorized by § 1277.20, and shall not issue any other class of capital stock. A Bank shall issue its stock only to its members, or to former members to the extent those institutions are required to maintain a minimum stock investment for existing activities under the capital plan, and only in book-entry form. The Bank shall act as its own transfer agent. All capital stock shall be issued in accordance with the Bank's capital plan.

§ 1277.22 Minimum investment in capital stock.

(a) A Bank shall require each member to maintain a minimum investment in the capital stock of the Bank, both as a condition to becoming and remaining a member of the Bank and as a condition to transacting business with the Bank or obtaining advances and other services from the Bank. The amount of the required minimum investment shall be determined in accordance with the Bank's capital plan and shall be sufficient to ensure that the Bank remains in compliance with its regulatory capital requirements. A Bank shall require each member to maintain its minimum investment for as long as the institution remains a member of the Bank and shall require each member and former member to maintain its minimum investment for as long as the institution engages in any activity with the Bank for which the capital plan requires the institution to maintain capital stock.

(b) A Bank may establish the minimum investment as a percentage of the total assets of an institution, as a percentage of the advances outstanding to that institution, as a percentage of any other business activity conducted with the institution, on any other basis that is approved by the Director, or any combination thereof.

(c) A Bank may require that the minimum investment requirement be satisfied through the purchase of either Class A or Class B stock, or through the purchase of one or more combinations of Class A and Class B stock that have been authorized by the board of directors of the Bank in its capital plan. A Bank, in its discretion, may establish a lower minimum investment to the extent the requirement is met through investment in Class B stock than if the requirement is met through investment in Class A stock, provided that such reduced investment provides sufficient capital for the Bank to remain in compliance with its regulatory capital requirements.

(d) Each member, or if applicable, former member, of a Bank shall at all times maintain an investment in the capital stock of the Bank in an amount that is sufficient to satisfy the minimum investment required under the Bank's capital plan.

§ 1277.23 Dividends.

(a) *In general.* A Bank may pay dividends on Class A or Class B stock, including any subclasses of such stock, only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. The capital plan may establish different dividend rates or preferences for each class or subclass of stock, which may include a dividend that tracks the economic performance of certain Bank assets, such as Acquired Member Assets. A member, including a member that has provided

the Bank with a notice of intent to withdraw from membership, or a former member shall be entitled to receive any dividends that a Bank declares on its capital stock while such institution owns the stock.

(b) *Limitation on payment of dividends.* In no event shall a Bank declare or pay any dividend on its capital stock if after doing so the Bank would fail to meet any of its regulatory capital requirements, nor shall a Bank that is not in compliance with any of its regulatory capital requirements declare or pay any dividend on its capital stock.

§ 1277.24 Liquidation, merger, or consolidation.

The respective rights of the Class A and Class B stockholders, in the event that the Bank is liquidated, merged, or otherwise consolidated with another Bank, shall be determined in accordance with the capital plan of the Bank, provided, however, that nothing in the capital plan shall be construed to limit any rights or authority granted FHFA under the Bank Act or the Safety and Soundness Act to issue any regulation or order or to take any other action that may affect or otherwise alter the rights or privileges of stock holders in a liquidation, merger, or consolidation of a Bank.

§ 1277.25 Transfer of capital stock.

A Bank in its capital plan may allow a member or former member to transfer any excess stock to a member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership. Any such stock transfers shall be at par value and shall be effective upon being recorded on the appropriate books and records of the Bank. The Bank may, in its capital plan, require that the transfer be approved by the Bank before such transfer can occur.

§ 1277.26 Redemption and repurchase of capital stock.

(a) *Redemption.* (1) A member or former member may have its stock in a Bank redeemed by providing written notice to the Bank in accordance with this section. A member or former member shall provide six-months written notice for Class A stock and five-years written notice for Class B stock. The notice shall indicate the number of shares of Bank stock that are to be redeemed. No more than one notice of redemption may be outstanding at one time for the same shares of Bank stock. At the expiration of the applicable notice period, the Bank shall pay to the member or other institution holding the stock the stated par value of that stock in cash.

(2) A member may cancel a notice of redemption by so informing the Bank in writing, and the Bank may impose a fee (to be specified in its capital plan) with respect to any cancellation of a pending notice of redemption. A request by a member (whose membership has not been terminated) to redeem specific shares of stock shall automatically be cancelled if the Bank is prevented from redeeming the member's stock by paragraph (c) of this section within five business days from the end of the expiration of the applicable redemption notice period because the member would fail to maintain its minimum investment in the stock of the Bank after such redemption. The automatic cancellation of a member's redemption request shall have the same effect as if the member had cancelled its notice to redeem stock prior to the end of the redemption notice period, and a Bank may impose a fee (to be specified in its capital plan) for automatic cancellation of a redemption request.

(3) A Bank shall not be obligated to redeem its capital stock other than in accordance with this paragraph.

(b) *Repurchase.* A Bank, in its discretion and without regard to the applicable redemption periods, may repurchase excess stock in accordance with the capital plan of that Bank. A Bank undertaking such a stock repurchase at its own initiative shall provide reasonable notice prior to repurchasing any excess stock, with the period of such notice to be specified in the Bank's capital plan, and shall pay the stated par value of that stock in cash. A member's submission of a notice of intent to withdraw from membership, or its

termination of membership in any other manner, shall not, in and of itself, cause any Bank stock to be deemed excess stock for purposes of this section.

(c) *Limitation.* In no event may a Bank redeem or repurchase any stock if, following the redemption or repurchase, the Bank would fail to meet its regulatory capital requirements, or if the member or former member would fail to maintain its minimum investment in the stock of the Bank, as required by § 1277.22.

§ 1277.27 Other restrictions on the repurchase or redemption of Bank stock.

(a) *Capital impairment.* A Bank may not redeem or repurchase any capital stock without the prior written approval of the Director if the Director or the board of directors of the Bank has determined that the Bank has incurred or is likely to incur losses that result in or are likely to result in charges against the capital of the Bank. This prohibition shall apply even if a Bank is currently in compliance with its regulatory capital requirements, and shall remain in effect for however long the Bank continues to incur such charges or until the Director determines that such charges are not expected to continue.

(b) *Bank discretion to suspend redemption.* A Bank, upon the approval of its board of directors, or of a subcommittee thereof, may suspend redemption of stock if the Bank reasonably believes that continued redemption of stock would cause the Bank to fail to meet its regulatory capital requirements, would prevent the Bank from maintaining adequate capital against a potential risk that may not be adequately reflected in its regulatory capital requirements, or would otherwise prevent the Bank from operating in a safe and sound manner. A Bank shall notify the Director in writing within two business days of the date of the decision to suspend the redemption of stock, providing the reasons for the suspension and the Bank's strategies and time frames for addressing the conditions that led to the suspension. The Director may require the Bank to re-institute the redemption of stock. A Bank shall not repurchase any stock without the written permission of the Director during any period in which the Bank has suspended redemption of stock under this paragraph.

Subpart D—Bank Capital Plans

§ 1277.28 Bank capital plans.

Each Bank shall have in place a capital plan approved by the Bank's board of directors and the Director. The capital plan shall include, at a minimum, provisions addressing the following matters:

(a) *Minimum investment.* (1) The capital plan shall require each member, and if applicable each former member, to purchase and maintain a minimum investment in the capital stock of the Bank and prescribe the manner for calculating the minimum investment, in accordance with § 1277.22.

(2) The capital plan shall specify the amount and class (or classes) of Bank stock that an institution is required to own in order to become and remain a member of the Bank, and to obtain advances from, or to engage in other business transactions with, the Bank. If a Bank requires that the minimum investment be satisfied through the purchase of one or more combinations of Class A and Class B stock, the authorized combinations of stock shall be specified in the capital plan, which shall afford the option of satisfying the minimum investment through the purchase of any such combination of stock.

(3) The capital plan shall require the board of directors of the Bank to monitor and, as necessary, to adjust, the minimum investment to ensure that outstanding stock remains sufficient for the Bank to comply with its regulatory capital requirements. The plan shall require each member or, where required by the plan, former member, to comply promptly with any adjusted minimum investment established by the board of directors of the Bank, but may allow a reasonable time to do so and may allow a reduction in outstanding business with the Bank as an alternative to purchasing additional stock.

(b) *Classes of capital stock.* The capital plan shall specify the class or classes of

stock (including subclasses, if any) that the Bank will issue, and shall establish the par value, rights, terms, and preferences associated with each class (or subclass) of stock. A Bank may establish preferences relating to, but not limited to, the dividend, voting, or liquidation rights for each class or subclass of Bank stock. Any voting preferences established by the Bank pursuant to §1261.6 of this chapter shall expressly state the voting rights of each class of stock with regard to the election of Bank directors. The capital plan shall provide that the owners of the Class B stock own the retained earnings, surplus, undivided profits, and equity reserves of the Bank, but shall have no right to receive any portion of those items, except through declaration of a dividend or capital distribution approved by the board of directors or through the liquidation of the Bank.

(c) *Dividends.* The capital plan shall establish the manner in which the Bank will pay dividends, if any, on each class or subclass of stock, and shall provide that the Bank may not declare or pay any dividends if it is not in compliance with any regulatory capital requirement or if after paying the dividend it would not be in compliance with any regulatory capital requirement.

(d) *Stock transactions.* The capital plan shall establish the criteria for the issuance, redemption, repurchase, transfer, and retirement of stock issued by the Bank. The capital plan also:

(1) Shall provide that the Bank may not issue stock other than in accordance with §1277.21;

(2) Shall provide that the stock of the Bank may be issued only to and held only by the members of that Bank, and by former members to the extent necessary to meet requirements set forth in a capital plan;

(3) Shall specify whether the stock of the Bank may be transferred, as allowed under §1277.25, and, if such transfer is allowed, shall specify the procedures to effect such transfer, and provide that the transfer shall be undertaken only in accordance with §1277.25;

(4) Shall specify that the stock of the Bank may be traded only among the Bank and its members, and former members;

(5) May provide for a minimum investment based on investment in Class B stock that is lower than a minimum investment based on investment in Class A stock, provided that the level of investment is sufficient for the Bank to comply with its regulatory capital requirements;

(6) Shall specify the fee, if any, to be imposed upon cancellation of a request to redeem Bank stock or upon cancellation of a request to withdraw from membership; and

(7) Shall specify the period of notice that the Bank will provide before the Bank, on its own initiative, determines to repurchase any excess Bank stock.

(e) *Termination of membership.* The capital plan shall address the manner in which the Bank will provide for the disposition of its capital stock that is held by institutions that terminate their membership, and the manner in which the Bank will liquidate claims against such institutions, including claims resulting from prepayment of advances prior to their stated maturity.

§1277.29 Amendments to a Bank's capital plan.

(a) *In general.* A Bank's board of directors shall approve any amendments to the Bank's capital plan and submit such amendment to the Director for approval. No such amendment may take effect until it has been approved by the Director.

(b) *Submission of amendments for approval.* Any request for approval of capital plan amendments should be submitted to the Deputy Director for the Division of Federal Home Loan Bank Regulation and should include the following:

(1) The name of the Bank making the request and the name, title, and contact information of the official filing the request;

(2) The name, title and contact information of the staff member(s) whom FHFA may contact for additional information;

(3) A certification by an executive officer of the Bank with knowledge of the facts that the representations made in the request are accurate and complete.

The following form of certification may be used: ''I hereby certify that the statements contained in the submission are true and complete to the best of my knowledge. [Name and Title]'';

(4) A written, narrative description of the proposed amendments to the Bank's capital plan and a discussion of the Bank's reasons for the proposed changes;

(5) The amended capital plan as approved by the Bank's board of directors;

(6) A version of the Bank's capital plan showing all proposed changes to its previously approved capital plan;

(7) Resolutions of the Bank's board of directors:

(i) Approving the proposed capital plan amendments; and

(ii) Authorizing the filing of the application for approval of the amendments and concurring in substance with the supporting documentation provided;

(8) An opinion of counsel demonstrating that the proposed amendments comply with the Bank Act, FHFA regulations and any other applicable law or regulation. If the amendments would be identical in substance to provisions approved for other Banks' capital plans, a Bank's legal analysis may reference the other capital plans that contain the provisions in question;

(9) An analysis of the effect of the proposed amendments, if any, on the Bank's capital levels and the Bank's ability to meet its regulatory capital requirements;

(10) *Pro forma* financial statements from the end of the quarter immediately prior to the date of submission of the request for approval through at least the end of the next two years, showing the impact of the proposed changes, if any, on capital levels; and

(11) A discussion of and an explanation for changes to the Bank's strategic plan, if any, which may be related to the capital plan amendments.

(c) *FHFA consideration of the amendment.* The Director may approve any amendment to a Bank's capital plan as submitted or may condition approval on the Bank's compliance with certain stated conditions.

PART 1278—VOLUNTARY MERGERS OF FEDERAL HOME LOAN BANKS

Sec.

AUTHORITY: 12 U.S.C. 1432(a), 1446, 4511.

SOURCE: 76 FR 72833, Nov. 28, 2011, unless otherwise noted.

§ 1278.1 Definitions.

Constituent Bank means a Bank that is proposing to merge with one or more other Banks. Each Bank entering into a merger is a Constituent Bank, regardless of whether it is also a Continuing Bank.

Continuing Bank means a Bank that will exist as the result of a merger of two or more Constituent Banks, and when used in the singular shall include the plural.

Disclosure Statement means a written document that contains, to the extent applicable, all of the items that a Bank would be required to include in a Form S–4 Registration Statement under the Securities Act of 1933 (or any successor form promulgated by the United States Securities and Exchange Commission governing disclosure required for securities issued in business combination transactions) when prepared as a prospectus as directed in Part I of the form, if the Bank were required to provide such a prospectus to its shareholders in connection with a merger.

Effective Date means the date on which the organization certificate of the Continuing Bank becomes effective as provided under § 1278.7.

Financial Statements means statements of condition, income, capital, and cash flows, with explanatory notes, in such form as the Banks are required to include in their filings made under the Securities and Exchange Act of 1934.

Merge or *Merger* means:

(1) A merger of one or more Banks into another Bank;

(2) A consolidation of two or more Banks resulting in a new Bank;