

# Federal Housing Finance Board

## Memorandum

May 1, 1991

TO: Philip L. Conover  
Director, District Banks Directorate

FROM: Beth L. Climo  
General Counsel

SUBJECT: Minimum Stock Requirement for Election of Directors

### ISSUE:

Whether stock purchased to secure advances pursuant to sections 10(c) and 10(e)(1) of the Federal Home Loan Bank Act ("Bank Act") is voting stock for purposes of electing directors.<sup>1</sup>

### CONCLUSION:

Stock held as collateral for advances under sections 10(c) and 10(e)(1) of the Bank Act should be included in the computation of the number of votes for purposes of electing directors under section 7(b) of the Bank Act.

### DISCUSSION:

#### 1) INTRODUCTION

According to section 932.12 of the Federal Housing Finance Board's ("Finance Board's") regulations, each Federal Home Loan Bank ("FHLBank") is required to report to the Finance Board the number of shares of stock each of its members was required to hold at the end of the preceding calendar year for purposes of the vote computation for electing directors.<sup>2</sup> In order to advise the FHLBanks on the proper formula for calculating members' stock requirements, you have asked whether stock purchased to secure advances pursuant to sections 10(c) and 10(e)(1) of the Federal Home Loan Bank Act ("Bank Act") is voting stock for purposes of that computation.

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1. 12 U.S.C.A. §§ 1430(c) and (e)(1) (West Supp. 1990).

2. 12 C.F.R. § 932.12 (1990).

The number of votes a member is allowed for purposes of electing directors under section 7(b) of the Bank Act is equal to the number of shares of stock the member is required to maintain at the end of the calendar year.<sup>3</sup> However, no member is allowed more votes than the average number of shares of stock held by all members in the state where the member is located. This average is calculated by dividing the total number of outstanding shares of FHLBank stock held by members in a state by the number of members in that state.<sup>4</sup>

Section 6(b)(1) requires each FHLBank at the end of the calendar year to adjust the amount of stock held by each member so that the member maintains at least its minimum stock subscription. Members can purchase more stock than is required under the Bank Act. However, because such stock is not required under the Bank Act, it is not voting stock for purposes of director elections under section 7(b).<sup>5</sup>

In previous director elections, the FHLBanks computed the number of votes a member is entitled to on the basis of one percent of the aggregate unpaid principal of each member's home mortgage loans, home purchase contracts, and similar obligations, but not less than \$500, (i.e., the minimum stock purchase requirements under section 6(b) of the Bank Act). For the reasons discussed below, we conclude that stock held as collateral for advances under sections 10(c) and 10(e)(1) of the Bank Act also should be included in the computation of the number of votes for purposes of electing directors under section 7(b) of the Bank Act.

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3. Section 7(b) of the Bank Act governs the election of FHLBank directors. It provides in pertinent part:

[E]ach member may cast for such office a number of votes equal to the number of shares of stock in such bank required by this chapter to be held by such member at the end of the calendar year next preceding the election, as determined pursuant to regulation of the Board, but not in excess of the average number of shares of stock in such bank required by this chapter to be held at the end of such calendar year by the respective members of such bank located in such State, as so determined...

12 U.S.C.A. § 1427(b) (West Supp. 1990).

4. Id.

5. In fact, if a member holds more than its minimum stock subscription, section 6(b)(1) authorizes the FHLBank to retire the excess amount of stock held by such member, unless such stock is being held as collateral for advances under section 10(c) of the Bank Act. 12 U.S.C.A. § 1426(b)(1) (West Supp. 1990).

II) THE AMOUNT OF STOCK REQUIRED TO BE MAINTAINED BY MEMBERS UNDER THE BANK ACT

A) Minimum Stock Purchase Requirements

Section 6(b) of the Bank Act requires all members to purchase FHLBank stock equal to one percent of the member's "aggregate unpaid loan principal" (i.e., home mortgage loans, home purchase contracts and similar obligations)/ but not less than \$500.<sup>7</sup> In addition, section 10(e)(3), as added by section 714 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA").<sup>8</sup> requires each member to purchase FHLBank stock as if at least 30 percent of its assets consist of home mortgage loans. If a member's portfolio of home mortgage loans falls below 30 percent of its total assets, section 10(e)(3) requires it to compute its minimum stock subscription as if it has 30 percent of its total assets in home mortgage loans. Thus, a member is required to maintain a minimum stock subscription equal to at least [1% of (30% x total assets)] rather than one percent of aggregate unpaid loan principal.<sup>9</sup>

The stock requirements under sections 6(b) and 10(e)(3) are mandatory minimum levels of stock a member must hold under the Bank Act. Since the section 7(b) vote calculation is based on number of shares of stock "required," a member which maintains no outstanding advances is entitled to one vote for each share held pursuant to its minimum stock subscription as computed under sections 6(b) and 10(e)(3).

B) Stock Held As Collateral For Advances

In addition to the minimum stock purchase requirements under sections 6(b) and 10(e)(3), the Bank Act employs an advances/capital stock ratio which requires members to hold additional stock as collateral for outstanding advances. Section 10(c) of the Bank Act requires members to maintain stock equal to at least

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6. The term 'aggregate unpaid loan principal' is defined as the aggregate unpaid principal of a subscriber's home mortgage loans, home purchase contracts and similar obligations. See 12 U.S.C.A. § 1426(b)(4) (West Supp. 1990).

7. 12 U.S.C.A. § 1426(b)(1) (West Supp. 1990).

8. Pub. L. 101-73, Title VII, § 714, 103 Stat. 412 (August 9, 1989).

9. 12 U.S.C.A. § 1430(e)(3) (West Supp. 1990).

five percent of outstanding advances.<sup>10</sup> Furthermore, section 6(b) prohibits a FHLBank from retiring such stock when calculating the amount of stock a member holds at the end of the calendar year? This also is a mandatory stock requirement, which in this case is held as collateral for advances. Thus, if a member maintains advances, the collateral stock should be included in the computation of the number of votes a member is allowed when electing directors under section 7(b).

C) Non-QTL Advances/Capital Stock Ratio

Additional stock requirements apply to members which are not "qualified thrift lenders" ("non-QTL members") as defined in section 10(m) of the Home Owners Loan Act ("HOLA")<sup>12</sup>. Under section 10(e)(1) of the Bank Act, as amended by section 714 of FIRREA,<sup>13</sup> non-QTL members must meet a more stringent advances/capital stock ratio in order to access the advances window.<sup>14</sup> A non-QTL member must maintain stock equal to at least five percent of its total advances divided by such member's actual

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10. Section 10(c) of the Bank Act provides in pertinent part:

At no time shall the aggregate outstanding advances made by any Federal Home Loan Bank to any member exceed twenty times the amounts paid in by such member for outstanding capital stock held by it exceed twenty times the value of the security required to be deposited under section 6(e). [sic]

12 U.S.C.A. § 1430(c) (West Supp. 1990).

11. See Note 5 supra.

12. In order to have QTL status, a savings association's qualified thrift investments ("QTIs") must equal or exceed 60 percent of the savings association's total assets on an average basis in three out of every four quarters and two out of every three years. 12 U.S.C.A. § 1467a(m) (West Supp. 1990). QTIs include inter alia loans, equity positions or securities backed by mortgages, which are related to domestic real estate or manufactured housing. 12 U.S.C.A. § 1467a(m)(4)(B) (West supp. 1990). FHLBank members that have 60 percent of their total tangible assets in QTIs are considered QTLs. The 60 percent QTL test will increase to 70 percent on July 1, 1991.

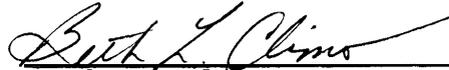
13. Pub. L. 101-73, Title VI, § 714, 103 Stat. 412 (August 9, 1989).

14. 12 U.S.C.A. § 1430(e)(1) (West Supp. 1990).

thrift investment percentage.<sup>15</sup> Section 10(e)(1) also prohibits a FHLBank from retiring such stock?

The additional stock required to be maintained under the advances/capital stock ratio in section 10(e)(1) of the Bank Act also should be included in the calculation of the number of votes a member is allowed when electing directors. As discussed above, in calculating the number of votes, section 7(b) refers to stock required to be held "by this chapter" rather than what is required only under section 6(b). Thus, the total amount of stock required under the Bank Act, including additional stock held as collateral under sections 10(c) and 10(e)(1), should be included as voting stock under section 7(b).

The rule of statutory construction that statutes related to the same subject matter are to be construed together and reconciled if possible supports this interpretation.<sup>17</sup> Sections 6(b), 10(e)(3), 10(c) and 10(e)(1) are reconcilable and are easily construed together. For example, if a member maintains no advances, it must hold stock equal to its minimum stock subscriptions in either section 6(b) or 10(e)(3). If a member maintains advances and is a QTL member, it must meet the five percent advances/capital stock ratio in section 10(c). If the member is a non-QTL, it must meet the more stringent advances/capital stock ratio under section 10(e)(1). Thus, additional stock held as collateral for advances under sections 10(c) and 10(e)(1) should be included in the calculation of the number of votes a member has for purposes of electing directors under section 7(b) of the Bank Act.



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15. 12 U.S.C.A. § 1430(e)(1) (West Supp. 1990). For purposes of this requirement, the "actual thrift investment percentage" currently is defined as the amount of an institution's QTIs divided by the total amount of the institution's tangible assets. 12 U.S.C.A. § 1430(e), which states that the term "actual thrift investment percentage" has the same meaning as in section 10(m) of the Home Owners' Loan Act. A member's QTIs are its loans, equity positions or securities backed by mortgages, which are related to domestic real estate or manufactured housing. 12 U.S.C.A. § 1467a(m)(4)(B) (West Supp. 1990).

16. See Note 5 supra.

17. Sutherland, Statutes and Statutory Construction, § 51.01 (4th ed. 1984).