§ 1323. Issuance of capital notes by domestic life insurance companies. (a) A domestic life insurance company may at any time or from time to time issue capital notes pursuant to this section in an aggregate principal amount not exceeding (1) twenty-five percent of its total adjusted capital (including the aggregate principal amount of outstanding notes) as of the end of the immediately preceding calendar year, less (2) the aggregate principal amount of outstanding notes; provided, however, that capital notes shall not be issued for an aggregate principal amount which would cause the aggregate principal amount of all such insurer's capital notes scheduled to mature in any calendar year to exceed five percent, or the aggregate principal amount of all such insurer's capital notes scheduled to mature in any three consecutive calendar years to exceed twelve percent, of the insurer's total adjusted capital as of the end of the calendar year immediately preceding the issuance of such capital notes. For purposes of this section, outstanding notes shall include the outstanding aggregate principal amount of capital notes issued pursuant to this section and the outstanding aggregate principal amount of advances or borrowings incurred pursuant to section one thousand three hundred seven of this article.

(b) No such insurer shall issue capital notes pursuant to this section unless the terms thereof shall have been approved by the superintendent as not adverse to the interests of the insurer's policyholders.

(c) The insurer shall not pay or redeem the principal amount of any capital notes, make any sinking fund payment or pay any interest on such notes, and such principal, payment and interest shall not become due or payable if, based on the preceding year-end annual statement filed with the superintendent: (1) (A) the insurer's total adjusted capital is less than such insurer's company action level RBC or (B) the insurer's total adjusted capital is less than the product of 2.5 and its authorized control level RBC and there is a negative trend, as determined in accordance with section one thousand three hundred twenty-two of this article or (2) the aggregate of all such payments or redemptions made during the current calendar year would if made immediately prior to the preceding year-end have caused (A) the insurer's total adjusted capital to be less than such insurer's company action level RBC or (B) the insurer's total adjusted capital at such time to be less than the

product of 2.5 and its authorized control level RBC and there is a negative trend, as determined in accordance with section one thousand three hundred twenty-two of this article. Notwithstanding the foregoing, upon request by the insurer, the superintendent may approve, in whole or in part, any such payment or redemption on the capital notes if and at such time or times as in his judgment the financial condition of such insurer warrants. The amount of such redemptions or payments of principal amounts of any capital notes which cannot be made as the result of the provisions of this subsection may accumulate at the rate of interest of the capital notes.

(d) Capital notes issued pursuant to this section: (1) may provide (A) for interest payments at fixed or adjustable rates, sinking fund payments, and payments and redemptions of principal, in each case in accordance with the terms of the capital note and without the prior approval of the superintendent except to the extent that such approval is required pursuant to this subsection or subsection (c) of this section, (B) that such capital notes automatically become due and payable in the event the insurer becomes subject to an order of rehabilitation, liquidation or conservation granted pursuant to a proceeding under article seventy-four of this chapter, and (C) for such other features as the superintendent determines are appropriate for capital notes issued by a life insurance company; and (2) shall provide that if at the end of any calendar year the total amount of such insurer's total adjusted capital (including the aggregate principal amount of outstanding notes) is less than three times the aggregate principal amount of outstanding notes, the superintendent may notify such insurer that the financial condition of such insurer does not warrant the payment or redemption or sinking fund payment, in whole or in part, on the capital notes. Such action by the superintendent shall, without any action on the part of the insurer or any other person, automatically defer such payment or redemption until such time as the superintendent finds that the financial condition warrants such payment or redemption. The amount of such redemptions or payments of principal amounts of any capital notes so deferred may accumulate at the rate of interest of the capital notes.

(e) Capital notes issued pursuant to this section shall be considered part of such insurer's total adjusted capital but shall not be

considered part of such insurer's surplus; provided, however, (1) that, in the case of any capital note maturing fifteen years or less from the year in which such capital note is issued, one-fifth of the aggregate principal amount of such capital note shall be subtracted from total adjusted capital in each year starting with the fifth year immediately preceding the calendar year in which such capital note is scheduled to mature; and (2) that, in the case of any capital note maturing more than fifteen years from the year in which such capital note is issued; one-tenth of the aggregate principal amount of such capital note shall be subtracted from total adjusted capital in each year starting with the tenth year immediately preceding the calendar year in which such capital note is scheduled to mature, and further provided that, in no event shall the amount included in total adjusted capital for any capital note exceed the principal amount, at issue, of such outstanding capital note less the aggregate of all sinking fund payments made on such capital note. Such insurer shall be required to disclose the aggregate principal amount of capital notes then outstanding as a liability on its financial statements filed with the superintendent pursuant to this article.

(f) As used in this section, the terms "total adjusted capital", "company action level RBC" and "authorized control level RBC" shall have the same meanings as set forth with respect to such terms in section one thousand three hundred twenty-two of this article.