

AMENDMENTS

2008—Pub. L. 110-289 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

REGULATIONS

Pub. L. 110-289, div. A, title I, §1141(b), July 30, 2008, 122 Stat. 2730, provided that: “Not later than the expiration of the 180-day period beginning on the date of enactment of this Act [July 30, 2008], the Director of the Federal Housing Finance Agency shall issue regulations pursuant to section 1363(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4613(b)] (as added by this section) establishing the critical capital level under such section.”

§ 4614. Capital classifications**(a) Enterprises**

For purposes of this subchapter, the Director shall classify the enterprises according to the following capital classifications:

(1) Adequately capitalized

An enterprise shall be classified as adequately capitalized if the enterprise—

(A) maintains an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise under section 4611 of this title; and

(B) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise under section 4612 of this title.

(2) Undercapitalized

An enterprise shall be classified as undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; or

(B) the enterprise is otherwise classified as undercapitalized under subsection (b)(1) of this section.

(3) Significantly undercapitalized

An enterprise shall be classified as significantly undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise;

(ii) does not maintain an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; and

(iii) maintains an amount of core capital that is equal to or exceeds the critical capital level established for the enterprise under section 4613 of this title; or

(B) the enterprise is otherwise classified as significantly undercapitalized under subsection (b)(2) of this section or section 4615(b) of this title.

(4) Critically undercapitalized

An enterprise shall be classified as critically undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) does not maintain an amount of core capital that is equal to or exceeds the critical capital level for the enterprise; or

(B) is otherwise classified as critically undercapitalized under subsection (b)(3) of this section or section 4616(b)(5)¹ of this title.

(b) Federal Home Loan Banks**(1) Establishment and criteria**

For purposes of this subchapter, the Director shall, by regulation—

(A) establish the capital classifications specified under paragraph (2) for the Federal Home Loan Banks;

(B) establish criteria for each such capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and

(C) shall classify the Federal Home Loan Banks according to such capital classifications.

(2) Classifications

The capital classifications specified under this paragraph are—

(A) adequately capitalized;

(B) undercapitalized;

(C) significantly undercapitalized; and

(D) critically undercapitalized.

(c) Discretionary classification**(1) Grounds for reclassification**

The Director may reclassify a regulated entity under paragraph (2) if—

(A) at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or the value of collateral pledged as security has decreased significantly or that the value of the property subject to mortgages held by the regulated entity (or securitized in the case of an enterprise) has decreased significantly;

(B) after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or

(C) pursuant to section 4631(b) of this title, the Director deems the regulated entity to be engaging in an unsafe or unsound practice.

(2) Reclassification

In addition to any other action authorized under this chapter, including the reclassifica-

¹ See References in Text note below.

tion of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1), the Director may classify a regulated entity—

(A) as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;

(B) as significantly undercapitalized, if the regulated entity is otherwise classified as undercapitalized; and

(C) as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized.

(d) Quarterly determination

The Director shall determine the capital classification of the regulated entities for purposes of this subchapter on not less than a quarterly basis (and as appropriate under subsection (c) of this section).

(e) Restriction on capital distributions

(1) In general

A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.

(2) Exception

Notwithstanding paragraph (1), the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(A) is made in connection with the issuance of additional shares or obligations of the regulated entity in at least an equivalent amount; and

(B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity.

(f) Implementation

Notwithstanding any other provision of this section, during the period beginning on October 28, 1992, and ending upon the effective date of section 4615 of this title (as provided in section 4615(c)¹ of this title), an enterprise shall be classified as adequately capitalized if the enterprise maintains an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise under section 4612 of this title.

(Pub. L. 102-550, title XIII, § 1364, Oct. 28, 1992, 106 Stat. 3976; Pub. L. 110-289, div. A, title I, §§ 1142(a), 1161(a)(3), July 30, 2008, 122 Stat. 2730, 2779.)

REFERENCES IN TEXT

Section 4616(b)(5) of this title, referred to in subsec. (a)(4)(B), was redesignated section 4616(b)(6) of this title by Pub. L. 110-289, div. A, title I, § 1144(5)(D), July 30, 2008, 122 Stat. 2733.

This chapter, referred to in subsec. (c)(2), was in the original “this title”, meaning title XIII of Pub. L. 102-550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII in the Code, see Short Title note set out under section 4501 of this title and Tables.

Section 4615(c) of this title, referred to in subsec. (f), was repealed and a new section 4615(c) was added by Pub. L. 110-289, div. A, title I, § 1143(6), July 30, 2008, 122 Stat. 2734. The new section 4615(c) does not relate to effective date.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-289, § 1142(a)(1), substituted “Enterprises” for “In general” in heading.

Subsec. (b). Pub. L. 110-289, § 1142(a)(4), added subsec. (b) and struck out former subsec. (b) which related to discretionary classification.

Subsec. (c). Pub. L. 110-289, § 1161(a)(3), which directed amendment of subsec. (c) by striking out the last sentence, was not executed as the probable intent of Congress. The amendment was probably intended to strike out the last sentence of former subsec. (c), now subsec. (d), as it existed prior to being struck out by Pub. L. 110-289, § 1142(a)(2)(C). See below.

Pub. L. 110-289, § 1142(a)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

Pub. L. 110-289, § 1142(a)(2)(C), struck out last sentence which read as follows: “The first such determination shall be made during the 3-month period beginning on the appointment of the Director.”

Pub. L. 110-289, § 1142(a)(2)(A), (B), substituted “regulated entities” for “enterprises” and “subsection (c)” for “subsection (b)”.

Subsec. (d). Pub. L. 110-289, § 1142(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 110-289, § 1142(a)(5), added subsec. (e).

Subsec. (f). Pub. L. 110-289, § 1142(a)(3), redesignated subsec. (d) as (f).

REGULATIONS

Pub. L. 110-289, div. A, title I, § 1142(b), July 30, 2008, 122 Stat. 2732, provided that: “Not later than the expiration of the 180-day period beginning on the date of enactment of this Act [July 30, 2008], the Director of the Federal Housing Finance Agency shall issue regulations to carry out section 1364(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [12 U.S.C. 4614(b)] (as added by this section), relating to capital classifications for the Federal Home Loan Banks.”

§ 4615. Supervisory actions applicable to undercapitalized regulated entities

(a) Mandatory actions

(1) Required monitoring

The Director shall—

(A) closely monitor the condition of any undercapitalized regulated entity;

(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed on an undercapitalized regulated entity under this section; and

(C) periodically review the plan, restrictions, and requirements applicable to an undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

(2) Capital restoration plan

A regulated entity that is classified as undercapitalized shall, within the time period provided in section 4622(b) and (d) of this title, submit to the Director a capital restoration plan that complies with section 4622 of this title and carry out the plan after approval.

(3) Restriction on capital distributions

A regulated entity that is classified as undercapitalized may not make any capital distribution that would result in the regulated entity being reclassified as significantly undercapitalized or critically undercapitalized.