

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 to 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.

(4) Restriction of asset growth

An undercapitalized regulated entity shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, unless—

(A) the Director has accepted the capital restoration plan of the regulated entity;

(B) any increase in total assets is consistent with the capital restoration plan; and

(C) the ratio of tangible equity to assets of the regulated entity increases during the calendar quarter at a rate sufficient to enable the regulated entity to become adequately capitalized within a reasonable time.

(5) Prior approval of acquisitions and new activities

An undercapitalized regulated entity shall not, directly or indirectly, acquire any interest in any entity or engage in any new activity, unless—

(A) the Director has accepted the capital restoration plan of the regulated entity, the regulated entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

(B) the Director determines that the proposed action will further the purpose of this subchapter.

(b) Reclassification from undercapitalized to significantly undercapitalized

The Director shall reclassify as significantly undercapitalized a regulated entity that is classified as undercapitalized (and the regulated entity shall be subject to the provisions of section 4616 of this title) if—

(1) the regulated entity does not submit a capital restoration plan that is substantially in compliance with section 4622 of this title within the applicable period or the Director does not approve the capital restoration plan submitted by the regulated entity; or

(2) the Director determines that the regulated entity has failed to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director in any material respect.

(c) Other discretionary safeguards

The Director may take, with respect to an undercapitalized regulated entity, any of the actions authorized to be taken under section 4616 of this title with respect to a significantly undercapitalized regulated entity, if the Director determines that such actions are necessary to carry out the purpose of this subchapter.

(Pub. L. 102-550, title XIII, §1365, Oct. 28, 1992, 106 Stat. 3978; Pub. L. 110-289, div. A, title I, §1143, July 30, 2008, 122 Stat. 2732.)

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-289, §1143(4)(B), added par. (1). Former par. (1) redesignated (2).

Pub. L. 110-289, §1143(2), substituted “A regulated entity” for “An enterprise”.

Subsec. (a)(2). Pub. L. 110-289, §1143(4)(A), redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pub. L. 110-289, §1143(1), (2), substituted “the regulated entity” for “the enterprise” and “A regulated entity” for “An enterprise”.

Subsec. (a)(3). Pub. L. 110-289, §1143(4)(A), redesignated par. (2) as (3).

Subsec. (a)(4), (5). Pub. L. 110-289, §1143(4)(C), added pars. (4) and (5).

Subsec. (b). Pub. L. 110-289, §1143(5)(A), (B), substituted “Reclassification” for “Discretionary reclassification” in heading and “shall” for “may” in introductory provisions.

Pub. L. 110-289, §1143(1), (3), substituted “a regulated entity” for “an enterprise” and “the regulated entity” for “the enterprise” in introductory provisions.

Subsec. (b)(1). Pub. L. 110-289, §1143(1), substituted “the regulated entity” for “the enterprise” in two places.

Subsec. (b)(2). Pub. L. 110-289, §1143(5)(C), struck out “make, in good faith, reasonable efforts necessary to” before “comply with” and inserted “in any material respect” before period at end.

Pub. L. 110-289, §1143(1), substituted “the regulated entity” for “the enterprise”.

Subsec. (c). Pub. L. 110-289, §1143(6), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “This section shall take effect upon the expiration of the 1-year period beginning on the date of the effectiveness of the regulations issued under section 4611(e) of this title establishing the risk-based capital test.”

§ 4616. Supervisory actions applicable to significantly undercapitalized regulated entities**(a) Mandatory supervisory actions****(1) Capital restoration plan**

A regulated entity that is classified as significantly undercapitalized shall, within the time period under 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.

(2) Restrictions on capital distributions**(A) Prior approval**

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

(B) Standard for approval

The Director may approve a capital distribution by a regulated entity classified as significantly undercapitalized only if the Director determines that the distribution (i) will enhance the ability of the regulated entity to meet the risk-based capital level and the minimum capital level for the regulated entity promptly, (ii) will contribute to the long-term financial safety and soundness of the regulated entity, or (iii) is otherwise in the public interest.

(b) Specific actions

In addition to any other actions taken by the Director (including actions under subsection (a) of this section), the Director shall carry out this section by taking, at any time, 1 or more of the following actions with respect to a regulated entity that is classified as significantly undercapitalized: