

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2154. Capital adequacy of banks and institutions

(a) Minimum levels of capital

The Farm Credit Administration shall cause System institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such System institutions and by using such other methods as the Farm Credit Administration deems appropriate. The Farm Credit Administration may establish such minimum level of capital for a System institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the System institution.

(b) Failure to maintain minimum levels; directives; plans for achieving minimum levels; proposals affecting compliance

(1) Failure of a System institution to maintain capital at or above its minimum level as established under subsection (a) may be deemed by the Farm Credit Administration, in its discretion, to constitute an unsafe and unsound practice within the meaning of this chapter.

(2) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Farm Credit Administration may issue a directive to a System institution that fails to maintain capital at or above its required level as established under subsection (a). Such directive may require the System institution to submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and timing by which the System institution shall achieve its required capital level, but may not require merger or consolidation without a majority vote of the voting stockholders or the contributors to the guaranty fund of the institution.

(3) The Farm Credit Administration may consider such System institution's progress in adhering to any plan required under paragraph (2) whenever such System institution, or an affiliate thereof, seeks the requisite approval of the Farm Credit Administration for any proposal that would divert earnings, diminish capital, or otherwise impede such System institution's progress in achieving its minimum capital level. The Farm Credit Administration may deny such approval where it determines that such proposal would adversely affect the ability of the System institution to comply with such plan.

(c) Enhancement of capital adequacy of banks

Each bank shall have on hand at the time of issuance of any note, bond, debenture, or other similar obligation and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under this chapter or real or personal property acquired in connection with loans made under this chapter, obligations of the United States or any agency thereof direct or fully guaranteed, other bank assets (including marketable securities) approved by the Farm

Credit Administration, or cash, in an aggregate value equal to the total amount of notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

(Pub. L. 92-181, title IV, § 4.3, Dec. 10, 1971, 85 Stat. 611; Pub. L. 99-205, title I, § 101(3), Dec. 23, 1985, 99 Stat. 1678; Pub. L. 100-233, title III, § 304, title VIII, §§ 804(a)(3), 805(q), Jan. 6, 1988, 101 Stat. 1621, 1715, 1716; Pub. L. 100-399, title VII, § 702(b), Aug. 17, 1988, 102 Stat. 1006.)

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100-233, § 804(a)(3), struck out subpar. (A) designation and struck out subpar. (B) which read as follows: "Any directive issued under this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 2267 of this title to the same extent as an effective and outstanding order issued under section 2261 of this title that has become final."

Subsec. (c). Pub. L. 100-233, § 805(q), which directed the amendment of subsec. (c) by substituting "direct or fully guaranteed" for "direct of fully guaranteed" was repealed by Pub. L. 100-399, § 702(b). See Construction of 1988 Amendment note below.

Pub. L. 100-233, § 304, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Each bank shall have on hand at the time of issuance of any long-term notes, bonds, debentures, or other similar obligations and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under the authority of this chapter, obligations of the United States or any agency thereof direct or fully guaranteed, other readily marketable securities approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of long-term notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable."

1985—Pub. L. 99-205 substituted "Capital adequacy of banks and associations" for "Aggregate of obligations; collateral" in section catchline.

Subsec. (a). Pub. L. 99-205 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "No issue of long-term notes, bonds, debentures, or other similar obligations by a bank or banks shall be approved in an amount which, together with the amount of other bonds, debentures, long-term notes, or other similar obligations issued and outstanding, exceeds twenty times the capital and surplus of all the banks which will be primarily liable on the proposed issue, or such lesser amount as the Farm Credit Administration shall establish by regulation."

Subsecs. (b), (c). Pub. L. 99-205 added subsec. (b) and redesignated former subsec. (b) as (c).

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CONSTRUCTION OF 1988 AMENDMENT

Pub. L. 100-399, title VII, § 702(b), Aug. 17, 1988, 102 Stat. 1006, provided that section 805(q) of Pub. L. 100-233, cited as a credit to this section, is repealed and that subsec. (c) of this section shall be applied and administered as if such section had not been enacted.

MINIMUM CAPITAL ADEQUACY STANDARDS

Pub. L. 100-233, title III, § 301(a), Jan. 6, 1988, 101 Stat. 1608, as amended by Pub. L. 100-399, title III, § 301(a), Aug. 17, 1988, 102 Stat. 993, provided that:

"(1) IN GENERAL.—

"(A) ESTABLISHMENT.—Within 120 days after the date of the enactment of this Act [Jan. 6, 1988], the Farm Credit Administration shall issue regulations under section 4.3(a) of the Farm Credit Act of 1971 (12

U.S.C. 2154(c) [12 U.S.C. 2154(a)] that establish minimum permanent capital adequacy standards for Farm Credit System institutions.

“(B) BASIS FOR ESTABLISHMENT.—The standards established under subparagraph (A) shall apply to an institution based on the financial statements of the institution prepared in accordance with generally accepted accounting principles.

“(C) RATIO OF CAPITAL TO ASSETS.—The standards established under subparagraph (A) shall specify fixed percentages representing the ratio of permanent capital of the institution to the assets of the institution, taking into consideration relative risk factors as determined by the Farm Credit Administration.

“(D) PHASE-IN PERIOD.—The standards established under subparagraph (A) shall be phased in during the 5-year period beginning on the date of the enactment of this Act [Jan. 6, 1988].

“(2) EMERGENCY POWER NOT AVAILABLE.—The Farm Credit Administration shall not invoke the emergency provisions of section 5.17(c)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2251(c)(2) [12 U.S.C. 2252(c)(2)]) with respect to the issuance of the regulations required under paragraph (1)(A).

“(3) PROHIBITIONS DURING TRANSITION PERIOD.—During the 5-year period specified in paragraph (1)(D), the Farm Credit Administration shall not initiate any receivership, conservatorship, liquidation, or enforcement action against any System institution certified to issue preferred stock under section 6.27 of the Farm Credit Act of 1971 (as added by section 201 of this Act) [12 U.S.C. 2278b-7], solely because of the failure of such institution to meet minimum permanent capital adequacy standards unless such action is recommended or concurred in by the Farm Credit System Assistance Board established under section 6.0 of such Act (as added by section 201 of this Act) [former 12 U.S.C. 2278a].

“(4) PERMANENT CAPITAL.—For purposes of this subsection, the term ‘permanent capital’ has the same meaning given that term in section 4.3A(a)(1) of the Farm Credit Act of 1971 [12 U.S.C. 2154a(a)(1)].”

§ 2154a. Capitalization of System institutions

(a) Definitions

As used in this section:

(1) Permanent capital

The term “permanent capital” means—

(A) current year retained earnings;

(B) allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(C) all surplus (less allowances for losses);

(D) stock issued by a System institution, except—

(i) stock that may be retired by the holder of the stock on repayment of the holder’s loan, or otherwise at the option or request of the holder; or

(ii) stock that is protected under section 2162 of this title or is otherwise not at risk; and

(E) any other debt or equity instruments or other accounts that the Farm Credit Administration determines appropriate to be considered permanent capital.

(2) Stock

The term “stock” means voting and non-voting stock (including preferred stock),

equivalent contributions to a guaranty fund, participation certificates, allocated equities, and other forms and types of equities.

(b) Adoption of bylaws

Subject to approval by shareholders under subsection (c)(2), each bank and association shall adopt bylaws, developed by its board of directors, that provide for the capitalization of the institution in accordance with subsection (c)(1).

(c) Requirements of bylaws

(1) In general

Notwithstanding any other provision of this chapter, the bylaws adopted under subsection (b)—

(A) shall provide for such classes, par value, and amounts of the stock of the institution, the manner in which such stock shall be issued, transferred, and retired, and the payment of dividends and patronage refunds, as determined appropriate by the Board of Directors, subject to this section;

(B) may provide for the charging of loan origination fees as determined appropriate by the Board of Directors;

(C) shall enable the institution to meet the capital adequacy standards established under the regulations issued under section 2154(a) of this title;

(D) shall provide for the issuance of voting stock, which may only be held by—

(i) borrowers who are farmers, ranchers, or producers or harvesters of aquatic products, and cooperative associations eligible to borrow from System institutions under this chapter;

(ii) persons and entities eligible to borrow from the banks for cooperatives, as described in section 2124(c)(ii) of this title;

(iii) in the case of a Central Bank for Cooperatives, other banks for cooperatives; and

(iv) in the case of banks other than banks for cooperatives, System associations;

(E) shall require that—

(i) as a condition of borrowing from or through the institution, any borrower who is entitled to hold voting stock or participation certificates shall, at the time a loan is made, acquire voting stock or participation certificates in an amount not less than \$1,000 or 2 percent of the amount of the loan, whichever is less; and

(ii) within 2 years after the loan of a borrower is repaid in full, any voting stock held by the borrower be converted to non-voting stock;

(F) may provide that persons who are not borrowers from the institution may hold nonvoting stock of the institution;

(G) shall require that any holder of voting stock issued before the adoption of bylaws under this section exchange a portion of such stock for new voting stock;

(H) do not need to provide for maximum or minimum standards of borrower stock ownership based on a percentage of the loan of