

minimum capital level, including general provisions, provisions relating to 18-month transition, and provisions relating to linked portfolio assets.

### § 2279bb-3. Critical capital level

For purposes of this part, the critical capital level for the Corporation shall be an amount of core capital equal to 50 percent of the total minimum capital amount determined under section 2279bb-2 of this title.

(Pub. L. 92-181, title VIII, §8.34, as added Pub. L. 102-237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1874; amended Pub. L. 104-105, title I, §115, Feb. 10, 1996, 110 Stat. 167.)

#### Editorial Notes

##### AMENDMENTS

1996—Pub. L. 104-105 amended section generally. Prior to amendment, section read as follows: “For purposes of this part, the critical capital level for the Corporation shall be an amount of core capital equal to the sum of—

“(1) 1.25 percent of the aggregate on-balance sheet assets of the Corporation (other than assets referred to in paragraph (3)), as determined in accordance with generally accepted accounting principles;

“(2) 0.25 percent of the unpaid principal balance of outstanding securities guaranteed by the Corporation and backed by pools of qualified loans and substantially equivalent instruments issued or guaranteed by the Corporation, and other off-balance sheet obligations of the Corporation; and

“(3) a percentage of any aggregate assets of the Corporation acquired pursuant to the linked portfolio option under section 2279aa-6(g) of this title, which shall be—

“(A) during the 5-year period beginning on December 13, 1991, one-half of the percentage that is determined under section 2279bb-2(c)(1) of this title; and

“(B) after the expiration of such 5-year period, 1.25 percent of any such aggregate assets.”

### § 2279bb-4. Enforcement levels

#### (a) In general

The Director shall classify the Corporation, for purposes of this part, according to the following enforcement levels:

##### (1) Level I

The Corporation shall be classified as within level I if the Corporation—

(A) maintains an amount of regulatory capital that is equal to or exceeds the risk-based capital level established under section 2279bb-1 of this title; and

(B) equals or exceeds the minimum capital level established under section 2279bb-2 of this title.

##### (2) Level II

The Corporation shall be classified as within level II if—

(A) the Corporation—

(i) maintains an amount of regulatory capital that is less than the risk-based capital level; and

(ii) equals or exceeds the minimum capital level; or

(B) the Corporation is otherwise classified as within level II under subsection (b) of this section.

#### (3) Level III

The Corporation shall be classified as within level III if—

(A) the Corporation—

(i) does not equal or exceed the minimum capital level; and

(ii) equals or exceeds the critical capital level established under section 2279bb-3 of this title; or

(B) the Corporation is otherwise classified as within level III under subsection (b) of this section.

#### (4) Level IV

The Corporation shall be classified as within level IV if the Corporation—

(A) does not equal or exceed the critical capital level; or

(B) is otherwise classified as within level IV under subsection (b) of this section.

#### (b) Discretionary classification

If at any time the Director determines in writing (and provides written notification to the Corporation and the Farm Credit Administration) that the Corporation is taking any action not approved by the Director that could result in a rapid depletion of core capital or that the value of the property subject to mortgages securitized by the Corporation or property underlying securities guaranteed by the Corporation, has decreased significantly, the Director may classify the Corporation—

(1) as within level II, if the Corporation is otherwise within level I;

(2) as within level III, if the Corporation is otherwise within level II; or

(3) as within level IV, if the Corporation is otherwise within level III.

#### (c) Quarterly determination

The Director shall determine the classification of the Corporation for purposes of this part on not less than a quarterly basis (and as appropriate under subsection (b)). The first such determination shall be made for the quarter ending March 31, 1992.

#### (d) Notice

Upon determining under subsection (b) or (c) that the Corporation is within level II or III, the Director shall provide written notice to the Congress and to the Corporation—

(1) that the Corporation is within such level;

(2) that the Corporation is subject to the provisions of section 2279bb-5 or 2279bb-6 of this title, as applicable; and

(3) stating the reasons for the classification of the Corporation within such level.

(Pub. L. 92-181, title VIII, §8.35, as added Pub. L. 102-237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1874; amended Pub. L. 104-105, title I, §116, Feb. 10, 1996, 110 Stat. 168; Pub. L. 115-334, title V, §5411(50), Dec. 20, 2018, 132 Stat. 4685.)

#### Editorial Notes

##### AMENDMENTS

2018—Subsec. (e). Pub. L. 115-334 struck out subsec. (e). Text read as follows: “Notwithstanding paragraphs (1) and (2) of subsection (a), during the period beginning

on December 13, 1991, and ending on the effective date of the risk based capital regulation issued by the Director under section 2279bb-1 of this title, the Corporation shall be classified as within level I if the Corporation equals or exceeds the minimum capital level established under section 2279bb-2 of this title.”

1996—Subsec. (e). Pub. L. 104-105 substituted “during the period beginning on December 13, 1991, and ending on the effective date of the risk based capital regulation issued by the Director under section 2279bb-1 of this title,” for “during the 30-month period beginning on December 13, 1991,”.

#### **§ 2279bb-5. Mandatory actions applicable to level II**

##### **(a) Capital restoration plan**

If the Corporation is classified as within level II, the Corporation shall, within the time period determined by the Director, submit to the Director a capital restoration plan and, after approval, carry out the plan.

##### **(b) Restriction on dividends**

If the Corporation is classified as within level II, the Corporation may not make any payment of dividends that would result in the Corporation being reclassified as within level III or IV.

##### **(c) Reclassification from level II to level III**

The Director shall immediately reclassify the Corporation as within level III (and the Corporation shall be subject to the provisions of section 2279bb-6 of this title), if—

(1) the Corporation is within level II; and

(2)(A) the Corporation does not submit a capital restoration plan that is approved by the Director; or

(B) the Director determines that the Corporation has failed to make, in good faith, reasonable efforts necessary to comply with such a capital restoration plan and fulfill the schedule for the plan approved by the Director.

##### **(d) Effective date**

This section shall take effect upon the expiration of the 30-month period beginning on December 13, 1991.

(Pub. L. 92-181, title VIII, §8.36, as added Pub. L. 102-237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1876.)

#### **§ 2279bb-6. Supervisory actions applicable to level III**

##### **(a) Mandatory supervisory actions**

###### **(1) Capital restoration plan**

If the Corporation is classified as within level III, the Corporation shall, within the time period determined by the Director, submit to the Director a capital restoration plan and, after approval, carry out the plan.

###### **(2) Restrictions on dividends**

###### **(A) Prior approval**

If the Corporation is classified as within level III, the Corporation—

(i) may not make any payment of dividends that would result in the Corporation being reclassified as within level IV; and

(ii) may make any other payment of dividends only if the Director approves the payment before the payment.

##### **(B) Standard for approval**

If the Corporation is classified as within level III, the Director may approve a payment of dividends by the Corporation only if the Director determines that the payment (i) will enhance the ability of the Corporation to meet the risk-based capital level and the minimum capital level promptly, (ii) will contribute to the long-term safety and soundness of the Corporation, or (iii) is otherwise in the public interest.

##### **(3) Reclassification from level III to level IV**

The Director shall immediately reclassify the Corporation as within level IV if—

(A) the Corporation is classified as within level III; and

(B)(i) the Corporation does not submit a capital restoration plan that is approved by the Director; or

(ii) the Director determines that the Corporation has failed to make, in good faith, reasonable efforts necessary to comply with such a capital restoration plan and fulfill the schedule for the plan approved by the Director.

##### **(b) Discretionary supervisory actions**

In addition to any other actions taken by the Director (including actions under subsection (a)), the Director may, at any time, take any of the following actions if the Corporation is classified as within level III:

###### **(1) Limitation on increase in obligations**

Limit any increase in, or order the reduction of, any obligations of the Corporation, including off-balance sheet obligations.

###### **(2) Limitation on growth**

Limit or prohibit the growth of the assets of the Corporation or require contraction of the assets of the Corporation.

###### **(3) Prohibition on dividends**

Prohibit the Corporation from making any payment of dividends.

###### **(4) Acquisition of new capital**

Require the Corporation to acquire new capital in any form and in any amount sufficient to provide for the reclassification of the Corporation as within level II.

###### **(5) Restriction of activities**

Require the Corporation to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the Corporation.

###### **(6) Conservatorship**

Appoint a conservator for the Corporation consistent with this chapter.

##### **(c) Effective date**

This section shall take effect on January 1, 1992.

(Pub. L. 92-181, title VIII, §8.37, as added Pub. L. 102-237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1876.)

#### **§ 2279bb-7. Repealed. Pub. L. 115-334, title V, §5411(51), Dec. 20, 2018, 132 Stat. 4685**

Section, Pub. L. 92-181, title VIII, §8.38, as added Pub. L. 104-105, title I, §117, Feb. 10, 1996, 110 Stat. 168, related to recapitalization of Corporation.