

§ 4618. Notice of classification and enforcement action

(a) Notice

Before taking any action referred to in subsection (b), the Director shall provide to the regulated entity written notice of the proposed action, which states the reasons for the proposed action and the information on which the proposed action is based.

(b) Applicability

The requirements of subsection (a) shall apply to the following actions:

(1) Classification or reclassification of a regulated entity within a particular capital classification under section 4614 of this title.

(2) Any discretionary supervisory action pursuant to section 4615 of this title.

(3) Any discretionary supervisory action pursuant to section 4616 of this title except a decision to appoint a conservator under section 4616(b)(6)¹ of this title.

Notice of classification under paragraph (1) and notice of supervisory actions under paragraph (2) or (3) may be provided together in a single notice under subsection (a).

(c) Response period

(1) In general

During the 30-day period beginning on the date that a regulated entity is provided notice under subsection (a) of a proposed action, the regulated entity may submit to the Director any information relevant to the action that the regulated entity considers appropriate for consideration by the Director in determining whether to take such action. The Director may, at the discretion of the Director, hold an informal administrative hearing to receive and discuss such information and the proposed determination.

(2) Extended period

The Director may extend the period under paragraph (1) for good cause for not more than 30 additional days.

(3) Shortened period

The Director may shorten the period under paragraph (1) if the Director determines that the condition of the regulated entity so requires or the regulated entity consents.

(4) Failure to respond

The failure of a regulated entity to provide information during the response period under this subsection (as extended or shortened) shall waive any right of the regulated entity to comment on the proposed action of the Director.

(d) Consideration of information and determination

After the expiration of the response period under subsection (c) or upon receipt of information provided during such period by the regulated entity, whichever occurs earlier, the Director shall determine whether to take the action proposed, taking into consideration any rel-

evant information submitted by the regulated entity during the response period. The Director shall provide written notice of a determination to take action and the reasons for such determination to the regulated entity, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such notice shall respond to any information submitted during the response period.

(e) Effective date of actions

An action referred to in subsection (b) shall take effect upon receipt by the regulated entity of notice of the determination of the Director under subsection (d), unless otherwise provided in such notice.

(Pub. L. 102-550, title XIII, §1368, Oct. 28, 1992, 106 Stat. 3980; Pub. L. 110-289, div. A, title I, §1145(b)(1), July 30, 2008, 122 Stat. 2767.)

Editorial Notes

REFERENCES IN TEXT

Section 4616(b)(6) of this title, referred to in subsec. (b)(3), was repealed and a new par. (6) added by Pub. L. 110-289, div. A, title I, §1144(5)(C), (D), July 30, 2008, 122 Stat. 2733. The new par. (6) does not relate to appointment of a conservator.

AMENDMENTS

2008—Pub. L. 110-289 substituted “a regulated entity” for “an enterprise” and “the regulated entity” for “the enterprise” wherever appearing.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2. The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§§ 4619 to 4621. Repealed. Pub. L. 110-289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767

Section 4619, Pub. L. 102-550, title XIII, §1369, Oct. 28, 1992, 106 Stat. 3981; Pub. L. 110-289, div. A, title I, §1161(a)(6), July 30, 2008, 122 Stat. 2779, related to appointment of conservators.

Section 4620, Pub. L. 102-550, title XIII, §1369A, Oct. 28, 1992, 106 Stat. 3983, related to powers of conservators.

Section 4621, Pub. L. 102-550, title XIII, §1369B, Oct. 28, 1992, 106 Stat. 3984, related to liability protection for conservators.

§ 4622. Capital restoration plans

(a) Contents

Each capital restoration plan submitted under this subchapter shall set forth a feasible plan for restoring the core capital of the regulated entity subject to the plan to an amount not less

¹ See References in Text note below.

than the minimum capital level for the regulated entity and for restoring the total capital of the regulated entity to an amount not less than the risk-based capital level for the regulated entity. Each capital restoration plan shall—

- (1) specify the level of capital the regulated entity will achieve and maintain;
- (2) describe the actions that the regulated entity will take to become classified as adequately capitalized;
- (3) establish a schedule for completing the actions set forth in the plan;
- (4) specify the types and levels of activities (including existing and new programs) in which the regulated entity will engage during the term of the plan; and
- (5) describe the actions that the regulated entity will take to comply with any mandatory and discretionary requirements imposed under this subchapter.

(b) Deadlines for submission

The Director shall, by regulation, establish a deadline for submission of a capital restoration plan, which may not be more than 45 days after the regulated entity is notified in writing that a plan is required. The regulations shall provide that the Director may extend the deadline to the extent that the Director determines it necessary. Any extension of the deadline shall be in writing and for a time certain.

(c) Approval

The Director shall review each capital restoration plan submitted under this section and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Director may extend the period for approval or disapproval for any plan for a single additional 30-day period if the Director determines it necessary. The Director shall provide written notice to any regulated entity submitting a plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(d) Resubmission

If the Director disapproves the initial capital restoration plan submitted by the regulated entity, the regulated entity shall submit an amended plan acceptable to the Director within 30 days or such longer period that the Director determines is in the public interest.

(Pub. L. 102-550, title XIII, §1369C, Oct. 28, 1992, 106 Stat. 3985; Pub. L. 110-289, div. A, title I, §1145(b)(2), July 30, 2008, 122 Stat. 2767.)

Editorial Notes

AMENDMENTS

2008—Pub. L. 110-289 substituted “regulated entity” for “enterprise” wherever appearing.

§ 4623. Judicial review of Director action

(a) Jurisdiction

(1) Filing of petition

A regulated entity that is not classified as critically undercapitalized and is the subject of a classification under section 4614 of this

title or a discretionary supervisory action taken under this subchapter by the Director (other than action to appoint a conservator under section 4616 or 4617 of this title or action under section 4619¹ of this title) may obtain review of the classification or action by filing, within 10 days after receiving written notice of the Director’s action, a written petition requesting that the classification or action of the Director be modified, terminated, or set aside.

(2) Place for filing

A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(b) Scope of review

The Court may modify, terminate, or set aside an action taken by the Director and reviewed by the Court pursuant to this section only if the court finds, on the record on which the Director acted, that the action of the Director was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(c) Unavailability of stay

The commencement of proceedings for judicial review pursuant to this section shall not operate as a stay of any action taken by the Director. Pending judicial review of the action, the court shall not have jurisdiction to stay, enjoin, or otherwise delay any supervisory action taken by the Director with respect to a regulated entity that is classified as significantly or critically undercapitalized or any action of the Director that results in the classification of a regulated entity as significantly or critically undercapitalized.

(d) Limitation on jurisdiction

Except as provided in this section, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this subchapter (other than appointment of a conservator under section 4616 or 4617 of this title or action under section 4619¹ of this title) or to review, modify, suspend, terminate, or set aside such classification or action.

(Pub. L. 102-550, title XIII, §1369D, Oct. 28, 1992, 106 Stat. 3985; Pub. L. 110-289, div. A, title I, §1145(b)(3), July 30, 2008, 122 Stat. 2767.)

Editorial Notes

REFERENCES IN TEXT

Section 4619 of this title, referred to in subsecs. (a)(1) and (d), was repealed by Pub. L. 110-289, div. A, title I, §1145(b)(4), July 30, 2008, 122 Stat. 2767.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-289, §1145(b)(3)(B), substituted “A regulated entity” for “An enterprise”.

Subsec. (c). Pub. L. 110-289, §1145(b)(3)(A), substituted “a regulated entity” for “an enterprise” in two places.

§ 4624. Reviews of enterprise assets and liabilities

(a) In general

The Director shall, by regulation, establish criteria governing the portfolio holdings of the

¹ See References in Text note below.