

## Federal Housing Finance Agency.

## § 1229.4

### § 1229.3 Criteria for a Bank's capital classification.

(a) *Adequately capitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered adequately capitalized if, at the time of the determination under §1229.2(a) of this subpart, the Bank has sufficient permanent and total capital, as applicable, to meet or exceed its risk-based and minimum capital requirements.

(b) *Undercapitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered undercapitalized if, at the time of the determination under §1229.2(a) of this subpart, the Bank does not have sufficient permanent or total capital, as applicable, to meet any one or more of its risk-based or minimum capital requirements but such deficiency is not of a magnitude to classify the Bank as significantly undercapitalized or critically undercapitalized.

(c) *Significantly undercapitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered significantly undercapitalized if, at the time of the determination under §1229.2(a) of this subpart, the amount of permanent or total capital held by the Bank is less than 75 percent of what is required to meet any one of its risk-based or minimum capital requirements but the magnitude of the Bank's deficiency in total capital is not sufficient to classify it as critically undercapitalized.

(d) *Critically undercapitalized.* Except where the Director has exercised authority to reclassify a Bank, a Bank shall be considered critically undercapitalized if, at the time of the determination under §1229.2(a) of this subpart, the total capital held by the Bank is less than or equal to the critical capital level for a Bank as defined under §1229.1 of this subpart.

### § 1229.4 Reclassification by the Director.

(a) *Discretionary reclassification.* Where the Director determines that any of the grounds described in paragraph (b) of this section exist, the Director may reclassify a Bank as:

(1) Undercapitalized, if it is otherwise classified as adequately capitalized;

(2) Significantly undercapitalized, if it is otherwise classified as undercapitalized; or

(3) Critically undercapitalized if it is otherwise classified as significantly undercapitalized.

(b) *Grounds for discretionary reclassification.* Notwithstanding any other provision of this subpart, the Director may at any time reclassify a Bank under this section if:

(1) The Director determines in writing that:

(i) The Bank is engaging in conduct that could result in the rapid depletion of permanent or total capital;

(ii) The value of collateral pledged to the Bank has decreased significantly; or

(iii) The value of property subject to mortgages owned by the Bank has decreased significantly.

(2) The Director determines, after notice to the Bank and opportunity for an informal hearing before the Director, that a Bank is in an unsafe and unsound condition; or

(3) The Director finds, under §1371(b) of Safety and Soundness Act (12 U.S.C. 4631(b)), that the Bank is engaging in an unsafe and unsound practice because the Bank's asset quality, management, earnings or liquidity were found to be less than satisfactory during the most recent examination, and any deficiency has not been corrected.

(c) *Procedures.* Before finalizing any action to reclassify a Bank under this section, the Director shall provide a Bank written notice describing the proposed action and an opportunity to submit information that the Bank considers relevant to the Director's proposed action in accordance with §1229.12 of this subpart.

(d) *Duration.* Any condition, action or inaction by a Bank that is the basis for a decision to reclassify a Bank under this section or under any other authority provided the Director may be considered by the Director and form the basis of further, subsequent actions to reclassify the Bank until such time as the Bank remedies such condition or takes necessary action to correct such situation to the satisfaction of the Director.