§ 1229.8 Mandatory actions applicable to significantly undercapitalized Banks.

A Bank that is classified as significantly undercapitalized:

(a) Shall submit to the Director for approval a capital restoration plan that complies with the requirements and procedures established by §1229.11 of this part and receive approval from the Director for such plan;

(b) Fulfill all terms, conditions and obligations contained in the capital restoration plan once the plan is approved by the Director;

(c) Shall not make any capital distribution that would result in the Bank being reclassified as critically undercapitalized or that would violate any restriction on the redemption or repurchase of capital stock or the payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or any applicable regulation;

(d) Shall not make any capital distribution not otherwise prohibited under paragraph (c) of this section absent the prior written approval of the Director, provided that the Director may approve such distribution only if the Director determines that:

(1) The capital distribution will enhance the ability of the Bank to meet its risk-based and minimum capital requirements promptly;

(2) The capital distribution will contribute to the long-term financial safety and soundness of the Bank; or

(3) The capital distribution is otherwise in the public interest;

(e) Shall not without prior written approval of the Director pay a bonus to any executive officer, provided that for purposes of this paragraph a bonus shall include any amount paid or accruing to an executive officer under a profit sharing arrangement;

(f) Shall not without the prior written approval of the Director compensate an executive officer at a rate exceeding the average rate of compensation of that officer during the 12 months preceding the calendar month in which the Bank became significantly undercapitalized, provided however, that for purposes of calculating the executive officer’s average rate of compensation, such compensation shall not include any bonus or profit sharing...
§ 1229.9 Discretionary actions applicable to significantly undercapitalized Banks.

(a) Actions by the Director. The Director shall carry out this section by taking, at any time, one or more of the following actions with respect to a significantly undercapitalized Bank:

(1) Limit the increase in any obligations or class of obligations of the Bank, including any off-balance sheet obligations. Such limitation may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(2) Reduce the amount of any obligations or class of obligations held by the Bank, including any off-balance sheet obligations. Such reduction may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(3) Limit the increase in, or prohibit the growth of any asset or class of assets held by the Bank. Such limitation may be stated in an absolute dollar amount, as a percentage of current assets or in any other form chosen by the Director;

(4) Reduce the amount of any asset or class of asset held by the Bank. Such reduction may be stated in an absolute dollar amount, as a percentage of current obligations or in any other form chosen by the Director;

(5) Acquire new capital in the form and amount determined by the Director, which specifically may include requiring a Bank to increase its level of retained earnings;

(6) Modify, limit or terminate any activity of the Bank that the Director determines creates excessive risk;

(7) Take steps to improve the management at the Bank by:

(i) Ordering a new election for the Bank’s board of directors in accordance with procedures established by the Director;

(ii) Dismissing particular directors or executive officers, in accordance with section 1366(b)(3)(B) of the Safety and Soundness Act (12 U.S.C. 4616(b)(3)(B)), who held office for more than 180 days immediately prior to the date on which the Bank became undercapitalized, provided further that such dismissals shall not be considered removal pursuant to an enforcement action under section 1377 of the Safety and Soundness Act (12 U.S.C. 4636a) and shall not be subject to the requirements necessary to remove an officer or director under that section; or

(iii) Ordering the Bank to hire qualified executive officers, the hiring of whom, prior to employment by the Bank and at the option of the Director, may be subject to review and approval by the Director; or

(b) Additional safeguards. The Director may require a significantly undercapitalized Bank to take any other action not specifically listed in this section if the Director determines such action will help ensure the safe and sound operation of the Bank and the Bank's