

(c) Regulations and orders of Federal banking agencies

The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after November 30, 1983.

(Pub. L. 98-181, title I [title IX, §907], Nov. 30, 1983, 97 Stat. 1280.)

§ 3907. Capital adequacy

(a)(1) Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate. Each appropriate Federal banking agency shall seek to make the capital standards required under this section or other provisions of Federal law for insured depository institutions countercyclical so that the amount of capital required to be maintained by an insured depository institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution.

(2) Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.

(b)(1) Failure of a banking institution to maintain capital at or above its minimum level as established pursuant to subsection (a) may be deemed by the appropriate Federal banking agency, in its discretion, to constitute an unsafe and unsound practice within the meaning of section 1818 of this title.

(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the appropriate Federal banking agency may issue a directive to a banking institution that fails to maintain capital¹ at or above its required level as established pursuant to subsection (a).

(B)(i) Such directive may require the banking institution to submit and adhere to a plan acceptable to the appropriate Federal banking agency describing the means and timing by which the banking institution shall achieve its required capital level.

(ii) Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 1818(i) of this title to the same extent as an effective and outstanding order issued pursuant to section 1818(b) of this title which has become final.

(3)(A) Each appropriate Federal banking agency may consider such banking institution's progress in adhering to any plan required under this subsection whenever such banking institution, or an affiliate thereof, or the holding company which controls such banking institution,

seeks the requisite approval of such appropriate Federal banking agency for any proposal which would divert earnings, diminish capital, or otherwise impede such banking institution's progress in achieving its minimum capital level.

(B) Such appropriate Federal banking agency may deny such approval where it determines that such proposal would adversely affect the ability of the banking institution to comply with such plan.

(C) The Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall encourage governments, central banks, and regulatory authorities of other major banking countries to work toward maintaining and, where appropriate, strengthening the capital bases of banking institutions involved in international lending.

(Pub. L. 98-181, title I [title IX, §908], Nov. 30, 1983, 97 Stat. 1280; Pub. L. 111-203, title VI, §616(c), July 21, 2010, 124 Stat. 1615.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-203 inserted at end “Each appropriate Federal banking agency shall seek to make the capital standards required under this section or other provisions of Federal law for insured depository institutions countercyclical so that the amount of capital required to be maintained by an insured depository institution increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the insured depository institution.”

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the transfer date, see section 616(e) of Pub. L. 111-203, set out as a note under section 1467a of this title.

§ 3908. Foreign loan evaluations

(a) Projects requiring an economic feasibility evaluation; content of evaluation

(1) In any case in which one or more banking institutions extend credit, whether by loan, lease, guarantee, or otherwise, which individually or in the aggregate exceeds \$20,000,000, to finance any project which has as a major objective the construction or operation of any mining operation, any metal or mineral primary processing operation, any fabricating facility or operation, or any metal-making operations (semi and finished) located outside the United States or its territories and possessions, a written economic feasibility evaluation of such foreign project shall be prepared and approved in writing by a senior official of the banking institution, or, if more than one banking institution is involved, the lead banking institution, prior to the extension of such credit.

(2) Such evaluation shall—

(A) take into account the profit potential of the project, the impact of the project on world markets, the inherent competitive advantages and disadvantages of the project over the entire life of the project, and the likely effect of the project upon the overall long-term economic development of the country in which the project is located; and

(B) consider whether the extension of credit can reasonably be expected to be repaid from revenues generated by such foreign project

¹ So in original. Probably should be “capital”.