Approved Clyde D. Graeber Feb 11 88
Date

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions.

The meeting was called to order by Clyde D. Graeber at
Chairperson

3:30 ~~xx~~ a.m./p.m. on February 9, 1988 in room 527-S of the Capitol.

All members were present except: Norman Justice, Excused; and Kenneth King, Absent

Committee staff present: Bill Wolff, Research Department
Myrta Anderson, Research Department
Bruce Kinzie, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Michael D. Heitman, Deputy Commissioner, KBD
Harold Stones, Kansas Bankers Association
Bob Atterberry, President, Southgate Trust Co., Prairie Village, Kansas

Chairman Clyde D. Graeber brought the meeting to order.

Michael D. Heitman, Deputy Commissioner, Kansas Banking Department, testified that H.B. 2737 amends K.S.A. 17-2021 which establishes capital requirements for new trust companies (See Attachment 1).

It is suggested that Line 21 be amended to delete the words "common" and "stock" and shall read: "The capital of any new trust company."

Exhibit A requests that K.S.A. 17-2004 and 17-2018 be changed as shown in attachment 1.

There are now three trust companies in Kansas and there is an application for another trust company in Andover, Kansas. The present statute establishes a capital requirement based upon the population and this needs to be changed.

It was asked if there were any others wishing to appear and Bob Atterberry, President, Southgate Trust Co., Prairie Village, Kansas, introduced himself stating that Southgate Trust Company was a wholly owned subsidiary and not in the lending business. Their competition is not with other banks but with investment brokers, Sears, etc. He stated there should be no changes and did not feel the banking board should be able to decide different capital requirements for different Trust Companies.

After disucssion, Vice-Chairman Eckert moved and Representative Ott seconded that the amendment be added to HB 2737. Final action will be taken on Thursday, February 11. The Hearing on H.B. 2737 was closed.

Harold Stones, Kansas Bankers Association was the next person to testify on SB 496, an act relating to banks and banking; concerning capital requirements; amending K.S.A. 1987 Supp. 9-901b and repealing the existing section (See Attachment 2).

Mr. Stones stated this bill would bring our state statutes into conformity with federal guidelines relating to capital forbearance and assist some rural banks immediately in need of assistance.

After the discussion, the hearing was closed and Representative Wilbert moved and Vice Chairman Eckert seconded the motion to pass the bill out of committee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions,

room 527-S Statehouse, at 3:30 ~~XXX~~ a.m./p.m. on February 9, 1988

Representative Wilbert moved and Vice Chairman Eckert seconded the motion to pass the bill out of committee.

Representative Ott requested that the bill not be passed out and that it be brought up again at the meeting on Thursday, February 11.

Representative Wilbert rescinded his motion.

Representative Roper moved and Representative Green seconded the approval of the minutes of the February 2nd meeting.

The meeting adjourned at 4:20 P.M.

Date: February 9, 1988

GUEST REGISTER

NAME	ORGANIZATION	ADDRESS
Robert B Atteberry	Southgate Trust Co	Prairie Village KS.
Joe D. Morris	KCSI	Topeka
Chuck Stones	KsBankers Assn	Topeka
Harold Stones	"	"
Jim Maag	"	"

TESTIMONY OF: MICHAEL D. HEITMAN, DEPUTY BANK COMMISSIONER
KANSAS BANKING DEPARTMENT

PRESENTED TO: THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

DATE: FEBRUARY 9, 1988

H.B. 2737 amends K.S.A. 17-2021 which establishes capital requirements for new trust companies.

Currently, the capital of a new trust company is determined by the populaton of the city in which it is to be located. There is no relationship between the business risk associated with the proposed business plan and the level of required capital. A pending application being considered by the State Banking Board has brought this matter forward.

This pending application proposes to locate a new trust company in Andover, Kansas, whose primary business plan is to primarily act as trustee, paying agent, registrar, and transfer agent for bonds issued by church groups throughout the United States. The applicant anticipates annual revenue of $25,000,000 in the first year and growth in excess of $100,000,000 in several years. Obviously, this trust company's business pursuits are not focused within the community it is proposing to locate, yet the present statute establishes a capital requirement based upon the population of Andover, Kansas.

The State Banking Board considers the present statute to be flawed inasmuch as the business pursuits of a proposed new trust company are not considered as a part of establishing its minimum capital requirement. It is at the Board's request that we propose a change in the subject statute. The proposed new language eliminates the graduated capital levels based upon population, establishes a minimum capital requirement of $250,000, and gives the State Banking Board the authority to require additional beginning capital if warranted by the nature and volume of anticipated business. This authority to evaluate anticipated business and require additional levels of capital based upon identified risks is identical to that which is a part of K.S.A. 9-901(a) pertaining to new bank charters.

SUGGESTED AMENDMENTS - (1) Line 21 refers to "the common capital stock". This should be amended to read "the capital". "Common" refers to a specific type of capital stock and "capital stock" consists of a portion of the overall capital. (2) K.S.A. 17-2004 makes reference to capital levels inconsistent

Atch 1

with the proposed amendment to K.S.A. 17-2021. First K.S.A. 17-2004 states that the capital stock of any trust company shall not be less than $100,000 nor more than $1,000,000. If H.B. 2737 was passed as written, the minimum capital stock for a new trust company would be $150,000 ($250,000 x .60). Additionally, there does not appear to be a need for the $1,000,000 ceiling as it would only serve as a potential limit to minimum capital requirements established by the State Banking Board. Second, K.S.A. 17-2004 authorizes an increase in capital stock to any amount not exceeding $1,000,000 or a reduction not to any amount less than $100,000 by resolution of the stockholders. Again, this provision of K.S.A. 17-2004 would conflict with H.B. 2737.

Third, K.S.A. 17-2018 addresses the issuance of preferred stock. It states, in part, "No issue of preferred stock shall be valid until the par value of all stock so issued be paid in, and **no trust company shall be permitted to transact business unless it shall have at least $100,000 of common stock issued for value and outstanding as required by section 17-2004.**"

This statute conflicts with the provision within K.S.A. 17-2004 allowing for 80% of the capital to be paid in over a six month after the company has commenced business as well as conflicting with the proposed amendment to K.S.A. 17-2021.

We propose that K.S.A. 17-2004 and K.S.A. 17-2018 be amended as detailed on Exhibit A. The proposed amendments would eliminate the conflicting language which either exists or would exist if H.B. 2737 was approved in its present form. **Additionally, it is the intent of the Bank Commissioner to ask for an interim committee study of all statutes pertaining to trust companies in an attempt to ensure that the statutes contain the necessary clarity and appropriately address trust company activities.**

MDH:dsl

EXHIBIT A

17-2004. Capital stock; transfer; increase or decrease. ~~The capital stock of any such trust company shall not be less than one hundred thousand dollars nor more than one million dollars; and shall be divided into shares of one hundred dollars each. Twenty percent of the capital shall be paid in before such company shall commence business, and the remainder may be paid in such amounts and at such times as the board of directors may direct: Provided, That the entire authorized capital shall be fully paid within six months from the date such corporation shall commence business.~~ The common and preferred stock of any trust company hereafter created shall be divided into shares of five dollars ($5) each, or a multiple thereof, and all subscriptions thereto shall be paid in cash. The shares of stock of trust companies shall be deemed personal property, and shall be transferred on the books of the company in such manner as the bylaws may provide; but no transfer of stock shall be valid against the company so long as the registered holder thereof is indebted to the company in any manner, either as principal or surety, and no stock shall be transferred upon the books of the company while the registered holder is indebted to it, except by order of the board of directors.

~~The capital stock may be increased at any time to any amount not exceeding one million dolars, or may be redueed at any time to any amount not less than one hundred thousand dollars,~~ The capital stock of any trust company may be increased, or may be reduced to the minimum provided by law for a new trust company, by a resolution adopted by the stockholders at any regular meeting or at a special meeting called for that purpose: ~~in the manner provided in the bylaws of the company.~~ Provided, That stockholders representing two-thirds of the ~~entire capital~~ voting stock of the company shall vote for such resolution. Such increase or reduction of capital shall be certified to the secretary of state and to the bank commissioner; and where the capital is increased, the names and addresses of the persons subscribing for such increase, together with the amount subscribed by each, shall be included in such certificate. ~~Such increased capital may be paid in the same manner as the original capital.~~

17-2018. Preferred stock. It shall be lawful for any trust company now organized, or that may be hereafter organized, under and by virtue of the laws of the state of Kansas, with the approval of the bank commissioner and assent of holders of seventy-five percent of the stock of said corporation, upon not less than five days' notice given by registered mail pursuant to action taken by its board of directors, to issue preferred stock of one or more classes in such amount and with such par value as shall be approved by said bank commissioner, and make such amendments to its articles of incorporation as may be necessary for this purpose: Provided, in the case of a newly organized trust company which has not yet issued common stock, the requirement of notice to and vote of shareholders shall not apply. No issue of preferred stock shall be valid until the par value of all stock so issued shall be paid in, and no trust company shall be permitted to transact business ~~unless it shall have at least $100,000 of common stock issued for value and outstanding~~ until the total minimum capital as required by section 17-2004, has been paid in. Revised Statutes of Kansas, 1923. (L. 1933, ch. 54.)

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 9, 1988

TO: House Committee on Commercial and Financial Institutions

FROM: James S. Maag, Director of Research
Kansas Bankers Association

RE: SB 496 - Minimum capital requirements for banks

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of SB 496. The bill would bring our state statutes into conformity with federal guidelines relating to capital forbearance.

Committee members will recall that during the closing days of the 1986 legislative session, SB 555 was passed which brought state law into conformity with FDIC guidelines on capital forbearance for agricultural and energy lenders. The FDIC guidelines became effective on March 27, 1986, and SB 555 was published in the Kansas Register on May 22, 1986.

Subsequently, the FDIC modified their guidelines on July 13, 1987, by eliminating the provision that banks could not qualify for forbearance unless they had a minimum of 4% capital to assets ratio. Those same modified guidelines also eliminated the provision that they could only apply to agricultural and energy banks. However, the 4% and ag/energy restrictions are still part of Kansas statutes thus creating a conflict for the State Banking Board in their consideration of recapitalization plans submitted by state-chartered banks. SB 496 would bring Kansas statutes into conformity with FDIC guidelines and allow the Board to take action on pending recapitalization plans.

Please find attached copies of SB 555 as passed by the 1986 Legislature and the original and revised FDIC guidelines on capital forbearance. Your favorable consideration of SB 496 would be greatly appreciated.

Office of Executive Vice President • 707 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444

Atch 2

CHAPTER 54 *

Senate Bill No. 555

AN ACT relating to banks and banking; concerning capital requirements for certain banks.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) The state bank commissioner, with the prior approval of the state banking board, may establish minimum capital requirements for a bank which vary from capital requirements otherwise prescribed in K.S.A. 9-901a, and amendments thereto, but which result in not less than a 4% capital to assets ratio, whenever the commissioner determines that economic conditions necessitate such action to provide greater operational flexibility to well-managed, economically sound banks. A bank wanting to establish a minimum capital requirement under this section shall: (1) Be an agricultural or oil and gas bank or both; and (2) submit to the bank commissioner a written plan for restoring capital to the minimums required by the state banking board in appropriate incremental amounts by no later than January 1, 1993. The establishment of capital requirements may be subject to such other conditions as the commissioner and board deem advisable. Such other conditions, including capital requirements, shall be established by special order which shall not be subject to the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated.

(b) As used in this section, "agricultural" or "oil and gas bank" means a bank whose agricultural and oil and gas loans in the aggregate are equal to, or greater than, 25% of the bank's total loans and leases, net of unearned income.

(c) The provisions of this section shall expire on January 1, 1993.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 8, 1986.

Published in the *Kansas Register* May 22, 1986.

their Reports of Income. The tax effect of this timing difference produces a deferred tax charge (debit).

This deferred charge may be netted against previously recorded or newly originated deferred tax credits. However, if the combined balances result in a net deferred tax charge, this net amount must be carefully evaluated as to realizability if it is to appear as an asset on the Report of Condition. The circumstances under which the Division of Bank Supervision will permit banks to carry net deferred tax charges as an asset on their Reports of Condition are discussed below.

Since it is difficult to predict when, or if, realization will occur, banks are permitted to carry net deferred tax charges (debits) on their Reports of Condition to the extent that such tax charges do not exceed taxes previously paid which are potentially available through the carryback of net operating losses (NOLs). This policy restricts the recognition of net deferred tax charges to the amount that could be recovered by way of an NOL carryback in the event that the underlying timing differences had fully reversed at the report date.

A bank which is a member of a consolidated group for tax purposes (e.g., certain bank subsidiaries of holding companies) should generally calculate its NOL carryback potential based upon the assumption that it is filing a separate return. However, if the NOL carryback potential of the consolidated group is less than that of the bank (e.g., where other subsidiaries have experienced prior net operating losses), then the bank should further limit its net deferred tax charges to an amount which it could reasonably expect to have refunded by its parent. Thus, membership in a consolidated group may not increase the net deferred tax charges a bank may carry on its Report of Condition, but may reduce them.

A reassessment of the net deferred tax charges should be made periodically (at least annually) in light of the expiration of NOL carryback amounts. Any amounts which fail to meet the above criteria should be charged off currently. Previously written down deferred tax charges may not be restored as assets on the Report of Condition following subsequent increases in the bank's NOL carryback potential.

The following example is provided to illustrate the application of the policy:

Assume that at end of year 19X5 a bank has a $200,000 net deferred tax charge on its Report of Condition and that it has paid $300,000 of taxes over the past ten years that would be available for NOL carryback. In this instance it would be appropriate for the bank to continue to carry the $200,000 net deferred tax charge as an asset. This results because the amount of the NOL carryback exceeds the net deferred tax charge amount.

Now, assume that in year 19X6 the bank's net deferred tax charge remains the same, i.e., there were no originating or reversing timing differences, but the bank experiences a loss of tax purposes which reduces its NOL carryback potential to $160,000. The amount ($40,000) by which the deferred tax charge exceeds the NOL carryback potential would now be required to be writeen off. This would be reflected as a $40,000 increase in the applicable income taxes for 19X6 and net income would be reduced by a like amount.

This policy for net deferred tax charges should be distinguished from the treatment of the tax benefits of a loss carryforward, which normally cannot be recorded as an asset in the year of the operating loss because the effect of the loss carryforward generally may not be recognized until future periods when the tax benefits are realized. Please refer to the Glossary entry for ——"Income Taxes" in the Instructions for the preparation of the Reports of Condition and Income for further information.

This policy shall be effective immediately. Any bank that currently has a net deferred tax charge (debit) on its Report of Condition shall determine whether it is appropriate to continue to carry this asset in light of the preceding guidance. Net deferred tax charges which are disallowed by this policy shall be charged off by December 31, 1985.

Any questions regarding the accounting for net deferred tax charges may be directed to the FDIC, Division of Bank Supervision, 550 17th Street, N.W., Washington, D.C. 20429 or the appropriate FDIC Regional Office.

Capital Forbearance—Energy and Agricultural Lenders

[¶ 5627] FDIC Policy

Federal Deposit Insurance Corporation. BL-12-86. March 27, 1986.

[*FDIC Letter*]

TO: CHIEF EXECUTIVE OFFICERS OF INSURED STATE NONMEMBER BANKS

SUBJECT: Statement of Policy on Principles of Capital Forbearance for Banks with Concentrations in Agriculture and Oil and Gas

The FDIC recognizes the severe economic problems currently being experienced by the agricultural and oil and gas sectors of the economy. It is further recognized that these problems resulted in severe financial stress on a number of financial institutions principally engaged in serving these sectors. In light of these circumstances, the FDIC, in cooperation with the other federal bank regulatory agencies, has developed and endorsed a policy of capital forbearance in order to provide greater operational flexibility to well-managed, economically sound banks with concentrations in agricultural or oil and gas. The purpose of this statement is to provide an explanation of the FDIC's program for implementing the policy of capital forbearance.

This statement is issued with the understanding that the Congress is also considering legislation on the subject. Modification of this policy may be necessary to accommodate final Congressional action.

The capital forbearance program will be effective immediately and terminate on January 1, 1993. Forbearance means the FDIC will not take administrative action to enforce normal capital standards (as established in 12 CFR Part 325) against banks whose primary capital ratio declines to no less than four percent between now and December 31, 1987, provided the participating banks meet the following qualifications and conditions.

1. The bank must meet the definition of an agricultural/oil and gas bank. An agricutural/oil and gas bank is one whose agricultural and oil and gas loans in the aggregate are equal to, or greater than, 25 percent of the bank's total loans and leases, net of unearned income. Agricultural loans are defined as loans secured by farmland and loans to finance agricultural production and other loans to farmers from Schedule C on the bank's Call Report of Condition. A list of the kinds of loans qualifying as oil and gas loans for purposes of this statement is attached as Attachment A.

2. The weakened capital position of the bank must be largely the result of external problems in the agricultural and/or oil and gas sectors of the economy and not due in significant mismanagement, excessive operating expenses, excessive dividends or actions taken solely for the purpose of qualifying for capital forbearance.

3. The bank must submit to the FDIC a plan for restoring capital to the required minimums in appropriate incremental amounts by not later than January 1, 1993. This plan should specifically address dividend levels; compensation to directors, executive officers or individuals having a controlling interest; and payments for services or products furnished by affiliated companies.

4. The bank must agree to file an annual progress report with the FDIC regarding its capital plan. Depending on an individual bank's progress, more frequent reports and/or a modified plan may be required. Moreover, any contemplated actions that would represent a material variance from the capital plan must be submitted to the FDIC for review.

Banks seeking to participate in this program must provide written notification, which will include the required evidence of eligibility and plans, to the Regional Office of the FDIC. Participation in the program will be granted unless, within 60 days of receipt of the application, the FDIC notifies the applicant bank that its request has been denied or informs the bank that additional information is needed.

Upon request of the bank and at the discretion of the FDIC, capital forbearance could be extended to banks with primary capital ratios as low as three percent in special circumstances, if bank plans indicate that an increase to four percent will occur within a relatively short period of time (generally 12 months or less), and the bank will otherwise meet the qualifications and conditions. For banks in this situation, a positive written response from the FDIC is required for participation in the program.

Existing administrative actions against banks remain in effect, including those provisions addressing capital. However, banks which believe they meet the program's qualifications for capital forbearance may request a modification of the action from the FDIC. These requests will be considered on a case-by-case basis in light of the policy on capital forbearance.

There may be banks which do not meet the above definition of an agricultural/oil and gas bank, but nevertheless believe they are suffering capital pressures caused by problems in these economic sectors. The FDIC will consider extending their capital forbearance policy to these banks on a case-by-case basis upon written request and explanation submitted to the appropriate Regional Office.

The FDIC reserves the right to terminate participation in the program for banks engaged in unsafe and unsound or other objectionable practices, or if it becomes apparent that the bank is unable to comply with its plan, or a modification thereto, which would accomplish the necessary increase to capital.

In some banks, capital levels as low as three to four percent of assets could cause difficulties in abiding by legal lending limits. The FDIC recognizes this problem but has no regulations addressing lending limits. Such problems, to the extent they occur in state-chartered nonmember banks, will have to be addressed through conventional loan participations or modification of state laws or regulations. In this regard, the Office of the Comptroller of the Currency is developing means to provide relief from the general lending limits for national banks engaged in agricultural or oil and gas lending.

Capital forbearance is one part of a joint statement of policy toward agricultural lenders by the three federal bank regulatory agencies recently submitted to Congress. A copy of this statement is attached [¶ 2016]. Conditions in the oil and gas sectors of the economy and the banks that serve them are similar. The FDIC believes it appropriate to extend this policy to encompass oil and gas activity as well as agriculture. Among other things, the joint statement addresses changes in the Call Report treatment of restructured loans and an affirmation of the use of Financial Accounting Standards Board Statement Number 15 (FASB 15) on accounting for such loans. FASB 15 is not a new accounting opinion and immediate guidance in this area should be available from accounting professionals.

L. William Seidman

Chairman

Attachments

Distribution: Insured State Nonmember Banks (Commercial and Mutual)

Attachment A

Definitions of Oil and Gas Loans

The types of loans listed below will be considered oil and gas loans for the purposes of qualifying for capital forbearance. These loan categories are taken from the special energy Call Report used by the Office of the Comptroller of the Currency. SIC stands for Standard and Industry Codes.

A. Loans to the major intergrated oil companies;

B. Loans to companies primarily engaged in operating oil and gas field properties (SIC 1311) (production);

C. Loans to companies primarily engaged in contract drilling (SIC 1381);

D. Loans to companies primarily engaged in performing exploration services on a contract basis (SIC 1382);

E. Loans to companies primarily engaged in performing oil and gas field services (SIC 1389);

F. Loans to petroleum refiners (SIC 2911);

G. Loans to manufacturers and lessors of oil field machinery and equipment (SIC 3533, 7394);

H. Loans to companies primarily engaged in pipeline transportion of petroleum (SIC 4612, 4613);

I. Loans to companies primarily engaged in natural gas transmission or distribution (SIC 4922, 4923, 4924);

J. Loans to companies primarily engaged in investing in oil and gas royalties or leases (SIC 6792);

K. Loans to others engaged in oil and gas related activities.

[¶ 5627A] Revised FDIC Capital Forbearance Policy Guidelines

Federal Deposit Insurance Corporation. July 7, 1987. 52 *Federal Register* 26182, July 13, 1987. Amended guidelines in full text. See ¶ 87,003 for FDIC notice.

Guidelines for Implementing a Policy of Capital Forbearance

The FDIC recognizes that banks serving an inadequately diversified economic sector of the economy may suffer financial difficulties if that economic sector experiences a severe, unexpected and protracted downturn. Such banks may not be able to raise needed capital because of the temporary unattractiveness of the institution and/or their market area. These conditions may exist even though bank management followed prudent banking practices and had a successful performance record prior to the economic downturn. In light of these circumstances, the FDIC has modified its guidelines for capital forbearance to provide greater operational flexibility to well-managed, solvent and viable banks with concentrations in weak economic sectors.

The revised capital forbearance guidelines are effective immediately. Banks may request capital forbearance at any time through December 31, 1989, and must have restored their capital to normal levels on or before January 1, 1995. Forbearance means the FDIC will not issue a capital directive (12 CFR 325.6) to enforce normal capital standards (as established in 12 CFR Part 325), nor will the FDIC take formal administrative action under section 8(b) of the FDI Act (12 U.S.C. 1818(b)) to enforce these capital standards or to obtain other corrective actions relating to capital adequacy, provided bank management does not engage in abusive, unsafe or unsound practices and the bank meets, initially and on a continuing basis, the following qualifications and conditions:

1. The bank's weakened capital is largely the result of external problems in the economy beyond bank management's control and not due to self-dealing, excessive operating expenses, excessive dividends, actions taken solely for the purpose of qualifying for capital forbearance, or other instances of significant mismanagement or ownership abuse.

2. The bank provides a plan acceptable to the FDIC for restoring capital, by not later than January 1, 1995, to the normal capital standards (12 CFR Part 325). This plan should specifically address dividend levels; compensation to directors, executive officers or individuals who have a controlling interest; and payments for services or products furnished by affiliated companies. The plan should provide for realistic improvement in the bank's primary capital ratio, over the course of the forbearance period, from earnings, capital injections, asset shrinkage, or a combination thereof. An acceptable plan would normally include a discussion of the economic problems in the community and estimated balance sheets and income statements for the next two to five years. The use of outside consultants in preparing plans is not required or expected and FDIC Regional Office staffs are prepared to discuss the plans with bank management during the preparation stage. (Samples of previous successful requests are available from the Regional Offices.)

3. The FDIC is satisfied that bank management is competent and willing to address the bank's problems and successfully implement the plan to restore adequate capital.

4. The bank will file an annual progress report with the FDIC regarding its capital plan. Depending on an individual bank's progress, more frequent reports and/or a modified plan may be required.

Banks seeking to participate in this program should make a written request to the Regional Office of the FDIC. The request should reflect a need for forbearance, and include a capital improvement plan. Capital forbearance will be granted unless, within 60 days of receipt of the request, the FDIC notifies the bank that its request has been denied or informs the bank that additional information is needed.

Existing administrative actions against banks remain in effect, including provisions addressing capital. However, banks that believe they meet the qualifications for capital forbearance may request a modification or termination of the action.

The FDIC reserves the right to terminate capital forbearance for banks engaged in unsafe and unsound or other objectionable practices, or if it becomes apparent that the bank is unable to comply with its capital plan, or a modification thereto.

In some banks, low capital levels could cause difficulties in abiding by legal lending limits. The FDIC recognizes this problem but has no regulations addressing lending limits. Such problems, to the extent they occur in state-chartered nonmember banks, will have to be addressed through conventional loan participation or modification of state laws or regulations.