§ 6.4 Capital measures and capital category definitions.

(a) Capital measures. For purposes of section 38 and this part, the relevant capital measures shall be:

(1) The total risk-based capital ratio;
(2) The Tier 1 risk-based capital ratio;
(3) The leverage ratio.

(b) Capital categories. For purposes of the provisions of section 38 and this part, a bank shall be deemed to be:

(1) Well capitalized if the bank:
   (i) Has a total risk-based capital ratio of 10.0 percent or greater; and
   (ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and
   (iii) Has a leverage ratio of 5.0 percent or greater; and
   (iv) Is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) Adequately capitalized if the bank:
   (i) Has a total risk-based capital ratio of 8.0 percent or greater; and
   (ii) Has a Tier 1 risk-based capital ratio of 4.0 percent or greater; and
   (iii) Has:
      (A) A leverage ratio of 4.0 percent or greater; or
      (B) A leverage ratio of 3.0 percent or greater if the bank is rated 1 in the most recent examination of the bank; and
   (iv) Does not meet the definition of a well capitalized bank.

(3) Undercapitalized if the bank:
   (i) Has a total risk-based capital ratio that is less than 8.0 percent; or
   (ii) Has a Tier 1 risk-based capital ratio that is less than 4.0 percent; or
   (iii) (A) Except as provided in paragraph (b)(3)(iii) (B) of this section, has a leverage ratio that is less than 4.0 percent; or
   (B) If the bank is rated 1 in the most recent examination of the bank, has a leverage ratio that is less than 3.0 percent.

(4) Significantly undercapitalized if the bank has:
   (i) A total risk-based capital ratio that is less than 6.0 percent; or
   (ii) A Tier 1 risk-based capital ratio that is less than 3.0 percent; or
   (iii) A leverage ratio that is less than 3.0 percent.

(5) Critically undercapitalized if the bank has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) Capital categories for insured federal branches. For purposes of the provisions of section 38 of the FDI Act and this part, an insured federal branch shall be deemed to be:

(1) Well capitalized if the insured federal branch:
   (i) Maintains the pledge of assets required under 12 CFR 347.210; and
   (ii) Maintains the eligible assets prescribed under 12 CFR 347.211 at 108 percent or more of the preceding quarter’s average book value of the insured branch’s third-party liabilities; and
§ 6.5 Capital restoration plans.

(a) Schedule for filing plan—(1) In general. A bank shall file a written capital restoration plan with the OCC within 45 days of the date that the bank receives notice or is deemed to have notice that the bank is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the OCC notifies the bank in writing that the plan is to be filed within a different period. An adequately capitalized bank that has been required pursuant to § 6.4 and subpart M of part 19 of this chapter to comply with supervisory actions as if the bank were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) Additional capital restoration plans. Notwithstanding paragraph (a)(1) of this section, a bank that has already submitted and is operating under a capital restoration plan approved under section 38 and subpart M of part 19 of this chapter to comply with supervisory actions as if the bank were undercapitalized is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution under § 6.4 and subpart M of part 19 of this chapter unless the OCC notifies the bank that it must submit a new or revised capital plan. A bank that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the OCC within 45 days of receiving such notice, unless the OCC notifies the bank in writing that the plan must be filed within a different period.