deducted in calculating core capital are deducted.

(g) **Tier 1 capital** means the amount of core capital as defined in part 567 of this chapter.

(h) **Tier 1 risk-based capital ratio** means the ratio of Tier 1 capital to risk-weighted assets, as calculated in accordance with part 567 of this chapter.

(i) **Total assets**, for purposes of §565.4(b)(5), means adjusted total assets as calculated in accordance with part 567 of this chapter, minus intangible assets as provided in the definition of tangible equity.

(j) **Total risk-based capital ratio** means the ratio of total capital to risk-weighted assets, as calculated in accordance with part 567 of this chapter.


§565.4 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; and
3. The leverage ratio.

(b) **Capital categories.** For purposes of section 38 and this part, a savings association shall be deemed to be:

1. **Well capitalized** if the savings association:
   1. Has a total risk-based capital ratio of 10.0 percent or greater; and
   2. Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and
   3. Has a leverage ratio of 5.0 percent or greater; and
   4. Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by OTS under section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), the Home Owners’ Loan Act (12 U.S.C. 1461(u)(6)(A)(ii)), 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 savings association:
   1. Has a total risk-based capital ratio of 8.0 percent or greater; and
   2. Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and
   3. Has a leverage ratio of 5.0 percent or greater; and
   4. Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by OTS under section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), the Home Owners’ Loan Act (12 U.S.C. 1461(u)(6)(A)(ii)), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(c) **Adjustments to reported capital levels and category**—(1) **Notice of adjustment by savings association.** A savings association shall provide the OTS with written notice that an adjustment to the savings association’s capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the savings association to be placed in a lower capital category from the category assigned to the savings association for purposes of section 38 and this part on the basis of the savings association’s most recent TFR or report of examination.

(2) **Determination by the OTS to change capital category.** After receiving notice pursuant to paragraph (c)(1) of this section, the OTS shall determine whether to change the capital category of the savings association and shall notify the savings association of the OTS’s determination.

§565.3 Notice of capital category.

(a) **Effective date of determination of capital category.** A savings association shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this part as of the date the savings association is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) **Notice of capital category.** A savings association shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

1. A Thrift Financial Report (TFR) is required to be filed with the OTS;
2. A final report of examination is delivered to the savings association; or
3. Written notice is provided by the OTS to the savings association of its capital category for purposes of section 38 of the FDI Act and this part or that the savings association’s capital category has changed as provided in paragraph (c) of this section or §565.4(c).

(c) **Adjustments to reported capital levels and category**—(1) **Notice of adjustment by savings association.** A savings association shall provide the OTS with written notice that an adjustment to the savings association’s capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the savings association to be placed in a lower capital category from the category assigned to the savings association for purposes of section 38 and this part on the basis of the savings association’s most recent TFR or report of examination.

(2) **Determination by the OTS to change capital category.** After receiving notice pursuant to paragraph (c)(1) of this section, the OTS shall determine whether to change the capital category of the savings association and shall notify the savings association of the OTS’s determination.
§ 565.5 Capital restoration plans.

(a) Schedule for filing plan—(1) General. A savings association shall file a written capital restoration plan with the appropriate Regional Office within 45 days of the date that the savings association receives notice or is deemed to have notice that the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the OTS notifies the savings association in writing that the plan is to be filed within a different period. An adequately capitalized savings association that has been required pursuant to §565.4(c) to comply with supervisory actions as if the savings association 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 savings association that has already submitted and is operating under a capital restoration plan approved under section 38 and this part 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 §565.4(c) unless the OTS notifies the savings association that it must submit a new or revised capital

Copies are available at the address specified in §516.39 of this chapter.