have notice of, its capital category pursuant to paragraph (b) of this section. 

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

(1) A Consolidated Report of Condition and Income (Call Report) is required to be filed with the OCC;

(2) A final report of examination is delivered to the bank; or

(3) Written notice is provided by the OCC to the bank of its capital category for purposes of section 38 of the FDI Act and this part or that the bank's capital category has changed as provided in paragraph (c) of this section or §6.1 of this subpart and subpart M of part 19 of this chapter.

(c) Adjustments to reported capital levels and capital category—(1) Notice of adjustment by bank. A bank shall provide the OCC with written notice that an adjustment to the bank'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 bank to be placed in a lower capital category from the category assigned to the bank for purposes of section 38 and this part on the basis of the bank's most recent Call Report or report of examination.

(2) Determination to change capital category. After receiving notice pursuant to paragraph (c)(1) of this section, the OCC shall determine whether to change the capital category of the bank and shall notify the bank of the OCC's determination.

§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 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:
§ 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.

(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 this subpart is not required to submit an additional capital restoration plan solely by virtue of the reclassification.

(b) Reclassification based on supervisory criteria other than capital. The OCC may reclassify a well capitalized bank as adequately capitalized and may require an adequately capitalized or an undercapitalized bank to comply with certain mandatory or discretionary supervisory actions as if the bank were in the next lower capital category (except that the OCC may not reclassify a significantly undercapitalized bank as critically undercapitalized) (each of these actions are herein-after referred to generally as reclassifications) in the following circumstances:

(1) Unsafe or unsound condition. The OCC has determined, after notice and opportunity for hearing pursuant to subpart M of part 19 of this chapter, that the bank is in unsafe or unsound condition; or

(2) Unsafe or unsound practice. The OCC has determined, after notice and opportunity for hearing pursuant to subpart M of part 19 of this chapter, that in the most recent examination of the bank, the bank received, and has not corrected a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.