

the minimum leverage capital requirement may be included in the notice.

(2) Within 14 days of receipt of notification, the FDIC-supervised institution may file with the appropriate designated FDIC official(s) a written response, explaining why the directive should not be issued, seeking modification of its terms, or other appropriate relief. The FDIC-supervised institution's response shall include any information, mitigating circumstances, documentation, or other relevant evidence which supports its position, and may include a plan for attaining the minimum leverage capital requirement.

(3)(i) After considering the FDIC-supervised institution's response, the appropriate designated FDIC official(s) shall serve upon the FDIC-supervised institution a written determination addressing the FDIC-supervised institution's response and setting forth the FDIC's findings and conclusions in support of any decision to issue or not to issue a directive. The directive may be issued as originally proposed or in modified form. The directive may order the FDIC-supervised institution to:

(A) Achieve the minimum leverage capital requirement established by this regulation by a certain date;

(B) Submit for approval and adhere to a plan for achieving the minimum leverage capital requirement;

(C) Take other action as is necessary to achieve the minimum leverage capital requirement; or

(D) A combination of the above actions.

(ii) If a directive is to be issued, it may be served upon the FDIC-supervised institution along with the final determination.

(4) Any FDIC-supervised institution, upon a change in circumstances, may request the FDIC to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the minimum leverage capital requirement. The directive and plan continue in effect while such request is pending before the FDIC.

(5) All papers filed with the FDIC must be postmarked or received by the appropriate designated FDIC official(s) within the prescribed time limit for filing.

(6) Failure by the FDIC-supervised institution to file a written response to notification of intent to issue a directive within the specified time period shall constitute consent to the issuance of such directive.

(d) *Enforcement of a directive.* (1) Whenever an FDIC-supervised institution fails to follow the directive or to submit or adhere to its capital adequacy plan, the FDIC may seek enforcement of the directive in the appropriate United States district court, pursuant to 12 U.S.C. 3907(b)(2)(B)(ii), in the same manner and to the same extent as if the directive were a final cease-and-desist order. In addition to enforcement of the directive, the FDIC may seek assessment of civil money penalties for violation of the directive against any FDIC-supervised institution, any officer, director, employee, agent, or other person participating in the conduct of the affairs of the FDIC-supervised institution, pursuant to 12 U.S.C. 3909(d).

(2) The directive may be issued separately, in conjunction with, or in addition to, any other enforcement mechanisms available to the FDIC, including cease-and-desist orders, orders of correction, the approval or denial of applications, or any other actions authorized by law. In addition to addressing an FDIC-supervised institution's minimum leverage capital requirement, the capital directive may also address minimum risk-based capital requirements that are to be maintained and calculated in accordance with §324.10, and, for state savings associations, the minimum tangible capital requirements set for in §324.10.

§§ 324.6—324.9 [Reserved]

Subpart B—Capital Ratio Requirements and Buffers

§ 324.10 Minimum capital requirements.

(a) *Minimum capital requirements.* An FDIC-supervised institution must maintain the following minimum capital ratios:

(1) A common equity tier 1 capital ratio of 4.5 percent.

(2) A tier 1 capital ratio of 6 percent.

(3) A total capital ratio of 8 percent.

(4) A leverage ratio of 4 percent.

(5) For advanced approaches FDIC-supervised institutions, a supplementary leverage ratio of 3 percent.

(6) For state savings associations, a tangible capital ratio of 1.5 percent.

(b) *Standardized capital ratio calculations.* Other than as provided in paragraph (c) of this section:

(1) *Common equity tier 1 capital ratio.* An FDIC-supervised institution's common equity tier 1 capital ratio is the ratio of the FDIC-supervised institution's common equity tier 1 capital to standardized total risk-weighted assets;

(2) *Tier 1 capital ratio.* An FDIC-supervised institution's tier 1 capital ratio is the ratio of the FDIC-supervised institution's tier 1 capital to standardized total risk-weighted assets;

(3) *Total capital ratio.* An FDIC-supervised institution's total capital ratio is the ratio of the FDIC-supervised institution's total capital to standardized total risk-weighted assets; and

(4) *Leverage ratio.* An FDIC-supervised institution's leverage ratio is the ratio of the FDIC-supervised institution's tier 1 capital to the FDIC-supervised institution's average total consolidated assets as reported on the FDIC-supervised institution's Call Report minus amounts deducted from tier 1 capital under §§ 324.22(a), (c), and (d).

(5) *State savings association tangible capital ratio.* (i) Until January 1, 2015, a state savings association shall determine its tangible capital ratio in accordance with 12 CFR 390.468.

(ii) As of January 1, 2015, a state savings association's tangible capital ratio is the ratio of the state savings association's core capital (tier 1 capital) to total assets. For purposes of this paragraph, the term total assets shall have the meaning provided in § 324.401(g).

(c) *Advanced approaches capital ratio calculations.* An advanced approaches FDIC-supervised institution that has completed the parallel run process and received notification from the FDIC pursuant to § 324.121(d) must determine its regulatory capital ratios as described in this paragraph (c).

(1) *Common equity tier 1 capital ratio.* The FDIC-supervised institution's com-

mon equity tier 1 capital ratio is the lower of:

(i) The ratio of the FDIC-supervised institution's common equity tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the FDIC-supervised institution's common equity tier 1 capital to advanced approaches total risk-weighted assets.

(2) *Tier 1 capital ratio.* The FDIC-supervised institution's tier 1 capital ratio is the lower of:

(i) The ratio of the FDIC-supervised institution's tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the FDIC-supervised institution's tier 1 capital to advanced approaches total risk-weighted assets.

(3) *Total capital ratio.* The FDIC-supervised institution's total capital ratio is the lower of:

(i) The ratio of the FDIC-supervised institution's total capital to standardized total risk-weighted assets; and

(ii) The ratio of the FDIC-supervised institution's advanced-approaches-adjusted total capital to advanced approaches total risk-weighted assets. An FDIC-supervised institution's advanced-approaches-adjusted total capital is the FDIC-supervised institution's total capital after being adjusted as follows:

(A) An advanced approaches FDIC-supervised institution must deduct from its total capital any allowance for loan and lease losses included in its tier 2 capital in accordance with § 324.20(d)(3); and

(B) An advanced approaches FDIC-supervised institution must add to its total capital any eligible credit reserves that exceed the FDIC-supervised institution's total expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of the FDIC-supervised institution's credit risk-weighted assets.

(4) *Supplementary leverage ratio.* An advanced approaches FDIC-supervised institution's supplementary leverage ratio is the simple arithmetic mean of the ratio of its tier 1 capital to total leverage exposure calculated as of the last day of each month in the reporting quarter.

(5) *State savings association tangible capital ratio.* (i) Until January 1, 2014, a

state savings association shall determine its tangible capital ratio in accordance with 12 CFR 390.468.

(ii) As of January 1, 2014, a state savings association's tangible capital ratio is the ratio of the state savings association's core capital (tier 1 capital) to total assets. For purposes of this paragraph, the term total assets shall have the meaning provided in 12 CFR 324.401(g).

(d) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, An FDIC-supervised institution must maintain capital commensurate with the level and nature of all risks to which the FDIC-supervised institution is exposed.

(2) An FDIC-supervised institution must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

(3) *Insured depository institutions with less than the minimum leverage capital requirement.* (i) An insured depository institution making an application to the FDIC operating with less than the minimum leverage capital requirement does not have adequate capital and therefore has inadequate financial resources.

(ii) Any insured depository institution operating with an inadequate capital structure, and therefore inadequate financial resources, will not receive approval for an application requiring the FDIC to consider the adequacy of its capital structure or its financial resources.

(iii) In any merger, acquisition, or other type of business combination where the FDIC must give its approval, where it is required to consider the adequacy of the financial resources of the existing and proposed institutions, and where the resulting entity is either insured by the FDIC or not otherwise federally insured, approval will not be granted when the resulting entity does not meet the minimum leverage capital requirement.

(iv) Exceptions. Notwithstanding the provisions of paragraphs (d)(3)(i), (ii) and (iii) of this section:

(A) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it

is required to consider the adequacy of capital if it finds that such approval must be taken to prevent the closing of a depository institution or to facilitate the acquisition of a closed depository institution, or, when severe financial conditions exist which threaten the stability of an insured depository institution or of a significant number of depository institutions insured by the FDIC or of insured depository institutions possessing significant financial resources, if such action is taken to lessen the risk to the FDIC posed by an insured depository institution under such threat of instability.

(B) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital or the financial resources of the insured depository institution where it finds that the applicant has committed to and is in compliance with a reasonable plan to meet its minimum leverage capital requirements within a reasonable period of time.

§ 324.11 Capital conservation buffer and countercyclical capital buffer amount.

(a) *Capital conservation buffer.* (1) *Composition of the capital conservation buffer.* The capital conservation buffer is composed solely of common equity tier 1 capital.

(2) *Definitions.* For purposes of this section, the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of an FDIC-supervised institution is the FDIC-supervised institution's net income for the four calendar quarters preceding the current calendar quarter, based on the FDIC-supervised institution's quarterly Call Reports, net of any distributions and associated tax effects not already reflected in net income.

(ii) *Maximum payout ratio.* The maximum payout ratio is the percentage of eligible retained income that an FDIC-supervised institution can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is based on the FDIC-supervised institution's capital conservation buffer, calculated as of