§ 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
the last day of the previous calendar quarter, as set forth in Table 1 to §324.11.

(iii) **Maximum payout amount.** An FDIC-supervised institution’s maximum payout amount for the current calendar quarter is equal to the FDIC-supervised institution’s eligible retained income, multiplied by the applicable maximum payout ratio, as set forth in Table 1 to §324.11.

(iv) **Private sector credit exposure.** Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, an MDB, a PSE, or a GSE.

3) **Calculation of capital conservation buffer.** (i) An FDIC-supervised institution’s capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter based on the FDIC-supervised institution’s most recent Call Report:

(A) The FDIC-supervised institution’s common equity tier 1 capital ratio minus the FDIC-supervised institution’s minimum common equity tier 1 capital ratio requirement under §324.10;

(B) The FDIC-supervised institution’s tier 1 capital ratio minus the FDIC-supervised institution’s minimum tier 1 capital ratio requirement under §324.10; and

(C) The FDIC-supervised institution’s total capital ratio minus the FDIC-supervised institution’s minimum total capital ratio requirement under §324.10;

or

(ii) Notwithstanding paragraphs (a)(3)(i)(A)–(C) of this section, if the FDIC-supervised institution’s common equity tier 1, tier 1 or total capital ratio is less than or equal to the FDIC-supervised institution’s minimum common equity tier 1, tier 1 or total capital ratio requirement under §324.10, respectively, the FDIC-supervised institution’s capital conservation buffer is zero.

4) **Limits on distributions and discretionary bonus payments.** (i) An FDIC-supervised institution shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum payout amount.

(ii) An FDIC-supervised institution with a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital buffer, in accordance with paragraph (b) of this section, is not subject to a maximum payout amount under this section.

(iii) **Negative eligible retained income.** Except as provided in paragraph (a)(4)(iv) of this section, an FDIC-supervised institution may not make distributions or discretionary bonus payments during the current calendar quarter if the FDIC-supervised institution’s:

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 2.5 percent as of the end of the previous calendar quarter.

(iv) **Prior approval.** Notwithstanding the limitations in paragraphs (a)(4)(i) through (iii) of this section, the FDIC may permit an FDIC-supervised institution to make a distribution or discretionary bonus payment upon a request of the FDIC-supervised institution, if the FDIC determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the FDIC-supervised institution. In making such a determination, the FDIC will consider the nature and extent of the request and the particular circumstances giving rise to the request.

### Table 1 to §324.11—Calculation of Maximum Payout Amount

<table>
<thead>
<tr>
<th>Capital conservation buffer</th>
<th>Maximum payout ratio (as a percentage of eligible retained income)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater than 2.5 percent plus 100 percent of the FDIC-supervised institution’s applicable countercyclical capital buffer amount.</td>
<td>No payout ratio limitation applies.</td>
</tr>
<tr>
<td>Capital conservation buffer</td>
<td>Maximum payout ratio (as a percentage of eligible retained income)</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Less than or equal to 2.5 percent plus 100 percent of the FDIC-supervised institution’s applicable countercyclical capital buffer amount, and greater than 1.875 percent plus 75 percent of the FDIC-supervised institution’s applicable countercyclical capital buffer amount.</td>
<td>60 percent.</td>
</tr>
<tr>
<td>Less than or equal to 1.875 percent plus 75 percent of the FDIC-supervised institution’s applicable countercyclical capital buffer amount, and greater than 1.25 percent plus 50 percent of the FDIC-supervised institution’s applicable countercyclical capital buffer amount.</td>
<td>40 percent.</td>
</tr>
<tr>
<td>Less than or equal to 1.25 percent plus 50 percent of the FDIC-supervised institution’s applicable countercyclical capital buffer amount, and greater than 0.625 percent plus 25 percent of the FDIC-supervised institution’s applicable countercyclical capital buffer amount.</td>
<td>20 percent.</td>
</tr>
<tr>
<td>Less than or equal to 0.625 percent plus 25 percent of the FDIC-supervised institution’s applicable countercyclical capital buffer amount.</td>
<td>0 percent.</td>
</tr>
</tbody>
</table>

(v) **Other limitations on distributions.** Additional limitations on distributions may apply to an FDIC-supervised institution under 12 CFR 303.241 and subpart H of this part.

(b) **Countercyclical capital buffer amount**—(1) **General.** An advanced approaches FDIC-supervised institution must calculate a countercyclical capital buffer amount in accordance with the following paragraphs for purposes of determining its maximum payout ratio under Table 1 to §324.11.

(i) **Extension of capital conservation buffer.** The countercyclical capital buffer amount is an extension of the capital conservation buffer as described in paragraph (a) of this section.

(ii) **Amount.** An advanced approaches FDIC-supervised institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the FDIC-supervised institution’s private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

(iii) **Weighting.** The weight assigned to a jurisdiction’s countercyclical capital buffer amount is calculated by dividing the total risk-weighted assets for the FDIC-supervised institution’s private sector credit exposures located in the jurisdiction by the total risk-weighted assets for all of the FDIC-supervised institution’s private sector credit exposures. The methodology an FDIC-supervised institution uses for determining risk-weighted assets for purposes of this paragraph (b) must be the methodology that determines its risk-based capital ratios under §324.10. Notwithstanding the previous sentence, the risk-weighted asset amount for a private sector credit exposure that is a covered position under subpart F of this part is its specific risk add-on as determined under §324.210 multiplied by 12.5.

(iv) **Location.** (A) Except as provided in paragraphs (b)(1)(iv)(B) and (b)(1)(iv)(C) of this section, the location of a private sector credit exposure is the national jurisdiction where the borrower is located (that is, where it is incorporated, chartered, or similarly established or, if the borrower is an individual, where the borrower resides).

(B) If, in accordance with subparts D or E of this part, the FDIC-supervised institution has assigned to a private sector credit exposure a risk weight associated with a protection provider on a guarantee or credit derivative, the location of the exposure is the national jurisdiction where the protection provider is located.

(C) The location of a securitization exposure is the location of the underlying exposures, or, if the underlying exposures are located in more than one national jurisdiction, the national jurisdiction where the underlying exposures with the largest aggregate unpaid principal balance are located. For purposes of this paragraph, the location of an underlying exposure shall be the location of the borrower, determined consistent with paragraph (b)(1)(iv)(A) of this section.

(2) **Countercyclical capital buffer amount for credit exposures in the United States**—(1) **Initial countercyclical capital buffer amount.**
buffer amount with respect to credit exposures in the United States. The initial countercyclical capital buffer amount in the United States is zero.

(ii) Adjustment of the countercyclical capital buffer amount. The FDIC will adjust the countercyclical capital buffer amount for credit exposures in the United States in accordance with applicable law.⁷

(iii) Range of countercyclical capital buffer amount. The FDIC will adjust the countercyclical capital buffer amount for credit exposures in the United States between zero percent and 2.5 percent of risk-weighted assets.

(iv) Adjustment determination. The FDIC will base its decision to adjust the countercyclical capital buffer amount under this section on a range of macroeconomic, financial, and supervisory information indicating an increase in systemic risk including, but not limited to, the ratio of credit to gross domestic product, a variety of asset prices, other factors indicative of relative credit and liquidity expansion or contraction, funding spreads, credit condition surveys, indices based on credit default swap spreads, options implied volatility, and measures of systemic risk.

(v) Effective date of adjusted countercyclical capital buffer amount—(A) Increase adjustment. A determination by the FDIC under paragraph (b)(2)(ii) of this section to increase the countercyclical capital buffer amount will be effective 12 months from the date of announcement, unless the FDIC establishes an earlier effective date and includes a statement articulating the reasons for the earlier effective date.

(B) Decrease adjustment. A determination by the FDIC to decrease the established countercyclical capital buffer amount under paragraph (b)(2)(ii) of this section will be effective on the day following announcement of the final determination or the earliest date permissible under applicable law or regulation, whichever is later.

(vi) Twelve month sunset. The countercyclical capital buffer amount will return to zero percent 12 months after the effective date that the adjusted countercyclical capital buffer amount is announced, unless the FDIC announces a decision to maintain the adjusted countercyclical capital buffer amount or adjust it again before the expiration of the 12-month period.

(3) Countercyclical capital buffer amount for foreign jurisdictions. The FDIC will adjust the countercyclical capital buffer amount for private sector credit exposures to reflect decisions made by foreign jurisdictions consistent with due process requirements described in paragraph (b)(2) of this section.

§§ 324.12—324.19 [Reserved]

Subpart C—Definition of Capital

§ 324.20 Capital components and eligibility criteria for regulatory capital instruments.

(a) Regulatory capital components. An FDIC-supervised institution’s regulatory capital components are:

(1) Common equity tier 1 capital;
(2) Additional tier 1 capital; and
(3) Tier 2 capital.

(b) Common equity tier 1 capital. Common equity tier 1 capital is the sum of the common equity tier 1 capital elements in this paragraph (b), minus regulatory adjustments and deductions in §324.22. The common equity tier 1 capital elements are:

(1) Any common stock instruments (plus any related surplus) issued by the FDIC-supervised institution, net of treasury stock, and any capital instruments issued by mutual banking organizations, that meet all the following criteria:

(i) The instrument is paid-in, issued directly by the FDIC-supervised institution, and represents the most subordinate claim in a receivership, insolvency, liquidation, or similar proceeding of the FDIC-supervised institution;

(ii) The holder of the instrument is entitled to a claim on the residual assets of the FDIC-supervised institution that is proportional with the holder’s share of the FDIC-supervised institution’s issued capital after all senior

⁷The FDIC expects that any adjustment will be based on a determination made jointly by the Board, OCC, and FDIC.