

asset base as reported on the institution's Call Report, calculated in accordance with the regulations in part 615, subpart H, of this chapter.

(d) [Reserved]

(e) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, a System institution must maintain capital commensurate with the level and nature of all risks to which the System institution is exposed. FCA may evaluate a System institution's capital adequacy and require the institution to maintain higher minimum regulatory capital ratios using the factors listed in § 615.5350 of this chapter.

(2) A System 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 under § 615.5200 of this chapter.

§ 628.11 Capital buffer amounts.

(a) *Capital conservation buffer and leverage buffer*—(1) *Composition of the capital conservation buffer and leverage buffer.* (i) The capital conservation buffer for the CET1 capital ratio, tier 1 capital ratio, and total capital ratio is composed solely of CET1 capital.

(ii) The leverage buffer for the tier 1 leverage ratio is composed solely of tier 1 capital.

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

(i) *Eligible retained income.* The eligible retained income of a System institution is the System institution's net income for the 4 calendar quarters preceding the current calendar quarter, based on the System institution's quarterly Call Reports, net of any capital 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 a System institution can pay out in the form of capital distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is based on the System institution's capital conservation buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 628.11.

(iii) *Maximum payout amount.* A System institution's maximum payout amount for the current calendar quarter is equal to the System institution's eligible retained income, multiplied by the applicable maximum payout ratio, as set forth in Table 1 to § 628.11.

(iv) [Reserved]

(v) *Maximum leverage payout ratio.* The maximum leverage payout ratio is the percentage of eligible retained income that a System institution can pay out in the form of capital distributions and discretionary bonus payments during the current quarter. The maximum leverage payout ratio is based on the System institution's leverage buffer, calculated as of the last day of the previous quarter, as set forth in Table 2 to § 628.11.

(vi) *Maximum leverage payout amount.* A System institution's maximum leverage payout amount for the current calendar quarter is equal to the System institution's eligible retained income, multiplied by the applicable maximum leverage payout ratio, as set forth in Table 2 of § 628.11.

(vii) *Capital distribution* means:

(A) A reduction of tier 1 capital through the repurchase, redemption, or revolvement of a tier 1 capital instrument or by other means, except when a System institution, within the same quarter when the repurchase is announced, fully replaces a tier 1 capital instrument it has repurchased, redeemed, or revolved by issuing a purchased capital instrument that meets the eligibility criteria for:

(1) A CET1 capital instrument if the instrument being repurchased, redeemed, or revolved was part of the System institution's CET1 capital; or

(2) A CET1 or AT1 capital instrument if the instrument being repurchased, redeemed, or revolved was part of the System institution's tier 1 capital;

(B) A reduction of tier 2 capital through the repurchase, redemption prior to maturity, or revolvement of a tier 2 capital instrument or by other means, except when a System institution, within the same quarter when the repurchase, redemption, or revolvement is announced, fully replaces a tier 2 capital instrument it has repurchased, redeemed, or revolved by issuing a purchased capital instrument

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that meets the eligibility criteria for a tier 1 or tier 2 capital instrument;

(C) A dividend declaration or payment on any tier 1 capital instrument;

(D) A dividend declaration or interest payment on any capital instrument other than a tier 1 capital instrument if the System institution has full discretion to permanently or temporarily suspend such payments without triggering an event of default;

(E) A cash patronage declaration or payment;

(F) A patronage declaration in the form of allocated equities that did not qualify as tier 1 or tier 2 capital; or

(G) Any similar transaction that the FCA determines to be in substance a distribution of capital.

(viii) *Discretionary bonus payment* means a payment made to a senior officer of a System institution, where:

(A) The System institution retains discretion as to whether to make, and the amount of, the payment until the payment is awarded to the senior officer;

(B) The amount paid is determined by the System institution without prior promise to, or agreement with, the senior officer; and

(C) The senior officer has no contractual right, whether express or implied, to the bonus payment.

(ix) *Senior officer* means the Chief Executive Officer, the Chief Operations Officer, the Chief Financial Officer, the Chief Credit Officer, and the General Counsel, or persons in similar positions; and any other person responsible for a major policy-making function.

(3) *Calculation of capital conservation buffer and leverage buffer.* (i) A System institution's capital conservation buffer is equal to the lowest of paragraphs (a)(3)(i)(A), (B), and (C) of this section, and the leverage buffer is equal to paragraph (a)(3)(i)(D) of this section, calculated as of the last day of the previous calendar quarter based on the System institution's most recent Call Report:

(A) The System institution's CET1 capital ratio minus the System institution's minimum CET1 capital ratio requirement under § 628.10;

(B) The System institution's tier 1 capital ratio minus the System institu-

tion's minimum tier 1 capital ratio requirement under § 628.10;

(C) The System institution's total capital ratio minus the System institution's minimum total capital ratio requirement under § 628.10; and

(D) The System institution's tier 1 leverage ratio minus the System institution's minimum tier 1 leverage ratio requirement under § 628.10.

(ii) Notwithstanding paragraphs (a)(3)(i)(A) through (D) of this section, if the System institution's CET1 capital ratio, tier 1 capital ratio, total capital ratio or tier 1 leverage ratio is less than or equal to the System institution's minimum CET1 capital ratio, tier 1 capital ratio, total capital ratio or tier 1 leverage ratio requirement under § 628.10, respectively, the System institution's capital conservation buffer or leverage buffer is zero.

(4) *Limits on capital distributions and discretionary bonus payments.* (i) A System institution must not make capital distributions or discretionary bonus payments or create an obligation to make such capital distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum payout amount or, as applicable, the maximum leverage payout amount.

(ii) A System institution that has a capital conservation buffer that is greater than 2.5 percent and a leverage buffer that is greater than 1.0 percent is not subject to a maximum payout amount or maximum leverage payout amount under this section.

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

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 2.5 percent, or the leverage buffer was less than 1.0 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, FCA may permit a System institution to make a capital distribution or discretionary

bonus payment upon a request of the System institution, if FCA determines that the capital distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the System institution. In making such a determination, FCA will consider the nature and extent of the request and the particular circumstances giving rise to the request.

TABLE 1 TO § 628.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
>2.500 percent	No limitation.
≤2.500 percent, and >1.875 percent	60 percent.
≤1.875 percent, and >1.250 percent	40 percent.
≤1.250 percent, and >0.625 percent	20 percent.
≤0.625 percent	0 percent.

TABLE 2 TO § 628.11—CALCULATION OF MAXIMUM LEVERAGE PAYOUT AMOUNT

Leverage buffer	Maximum leverage payout ratio (as a percentage of eligible retained income)
>1.00 percent	No limitation.
≤1.00 percent, and >0.75 percent	60 percent.
≤0.75 percent, and >0.50 percent	40 percent.
≤0.50 percent, and >0.25 percent	20 percent.
≤0.25 percent	0 percent.

(v) *Other limitations on capital distributions.* Additional limitations on capital distributions may apply to a System institution under subpart C of this part and under part 615, subparts L and M, of this chapter.

(vi) A System institution is subject to the lower of the maximum payout amount as determined under paragraph (a)(2)(iii) of this section and the maximum leverage payout amount as determined under paragraph (a)(2)(vi) of this section.

(b) [Reserved]

§§ 628.12–628.19 [Reserved]

Subpart C—Definition of Capital

§ 628.20 Capital components and eligibility criteria for tier 1 and tier 2 capital instruments.

(a) *Regulatory capital components.* A System institution’s regulatory capital components are:

- (1) CET1 capital;
- (2) AT1 capital; and
- (3) Tier 2 capital.

(b) *CET1 capital.* CET1 capital is the sum of the CET1 capital elements in paragraph (b) of this section, minus regulatory adjustments and deductions in § 628.22. The CET1 capital elements are:

(1) Any common cooperative equity instrument issued by a System institution that meets all of the following criteria:

(i) The instrument is issued directly by the System institution and represents a claim subordinated to general creditors, subordinated debt holders, and preferred stock holders in a receivership, insolvency, liquidation, or similar proceeding of the System institution;

(ii) The holder of the instrument is entitled to a claim on the residual assets of the System institution, the claim will be paid only after all creditors, subordinated debt holders, and preferred stock claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument has no maturity date, can be redeemed only at the discretion of the System institution and with the prior approval of FCA, and does not contain any term or feature that creates an incentive to redeem;

(iv) The System institution did not create, through any action or communication, an expectation that it will buy back, cancel, redeem, or revolve the instrument, and the instrument does not include any term or feature that might give rise to such an expectation, except that the establishment of a revolving period of 7 years or more, or the practice of redeeming or revolving the instrument no less than 7 years after issuance or allocation, will not be considered to create such an expectation;