chapter must be provided by the conservator of the institution.

[57 FR 46482, Oct. 9, 1992, as amended at 58 FR 48791, Sept. 20, 1993; 71 FR 76121, Dec. 20, 2006]

§ 627.2790 Final discharge and release of the conservator.

At such time as the conservator shall be relieved of its conservatorship duties, the conservator shall file a report on the conservator's activities with the Farm Credit Administration. The conservator shall thereupon be completely and finally released.

Subpart D—Voluntary Liquidation

SOURCE: 63 FR 5725, Feb. 4, 1998, unless otherwise noted.

§ 627.2795 Voluntary liquidation.

(a) A Farm Credit institution may voluntarily liquidate by a resolution of its board of directors, but only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board. Upon adoption of such resolution to liquidate, the Farm Credit institution shall submit the proposed voluntary liquidation plan to the Farm Credit Administration for preliminary approval. The Farm Credit Administration Board, in its discretion, may appoint a receiver as part of an approved liquidation plan. If a receiver is appointed for the Farm Credit institution as part of a voluntary liquidation, the receivership shall be conducted pursuant to subpart B of this part, except to the extent that an approved plan of liquidation provides otherwise.

(b) If the Farm Credit Administration Board gives preliminary approval to the liquidation plan, the board of directors of the Farm Credit institution shall submit the resolution to liquidate and the liquidation plan to the stockholders for approval.

(c) The resolution to liquidate and the liquidation plan shall be approved by the stockholders if agreed to by at least a majority of the voting stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting.

(d) The Farm Credit Administration Board will consider final approval of the liquidation plan after an affirmative stockholder vote on the resolution to liquidate.

(e) Any subsequent amendments, modifications, revisions, or adjustments to the liquidation plan shall require Farm Credit Administration Board approval.

(f) The Farm Credit Administration Board, in its discretion, reserves the right to terminate or modify the liquidation plan at any time.

§ 627.2797 Preservation of equity.

(a) Immediately upon the adoption of a resolution by its board of directors to voluntarily liquidate a Farm Credit institution, the capital stock, participation certificates, equity reserves, and allocated equities of the Farm Credit institution shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities. Such activities could resume if the stockholders of the Farm Credit institution disapprove the resolution to liquidate or the Farm Credit Administration Board disapproves the liquidation plan. In the event the resolution to liquidate is approved by the stockholders of the Farm Credit institution and the liquidation plan is approved by the Farm Credit Administration Board, the liquidation plan shall govern disposition of the equities of the Farm Credit institution, except that if the Farm Credit institution is placed in receivership, the provisions of § 627.2730(a) shall govern further disposition of the equities of the Farm Credit institution.

(b) Notwithstanding paragraph (a) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

PART 628—CAPITAL ADEQUACY OF SYSTEM INSTITUTIONS

Subpart A—General Provisions

Sec.

628.1 Purpose, applicability, and reservations of authority.
628.2 Definitions.
628.3 Operational requirements for certain exposures.
628.4–628.9 [Reserved]

Subpart B—Capital Ratio Requirements and Buffers

628.10 Minimum capital requirements.
628.11 Capital buffer amounts.
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.
628.21 Capital bylaw or board resolution to include equities in tier 1 and tier 2 capital.
628.22 Regulatory capital adjustments and deductions.
628.23 Limit on inclusion of third-party capital in total (tier 1 and tier 2) capital.
628.24–628.29 [Reserved]

Subpart D—Risk-Weighted Assets—Standardized Approach

628.30 Applicability.

RISK-WEIGHTED ASSETS FOR GENERAL CREDIT RISK

628.31 Mechanics for calculating risk-weighted assets for general credit risk.
628.32 General risk weights.
628.33 Off-balance sheet exposures.
628.34 OTC derivative contracts.
628.35 Cleared transactions.
628.36 Guarantees and credit derivatives: Substitution treatment.
628.37 Collateralized transactions.

RISK-WEIGHTED ASSETS FOR UNSETTLED TRANSACTIONS

628.38 Unsettled transactions.
628.39–628.40 [Reserved]

RISK-WEIGHTED ASSETS FOR SECURITIZATION EXPOSURES

628.41 Operational requirements for securitization exposures.
628.42 Risk-weighted assets for securitization exposures.
628.43 Simplified supervisory formula approach (SSFA) and the gross-up approach.
628.44 Securitization exposures to which the SSFA and gross-up approach do not apply.
628.45 Recognition of credit risk mitigants for securitization exposures.
628.46–628.50 [Reserved]

RISK-WEIGHTED ASSETS FOR EQUITY EXPOSURES

628.51 Introduction and exposure measurement.
628.52 Simple risk-weight approach (SRWA).
628.53 Equity exposures to investment funds.
628.54–628.60 [Reserved]

DISCLOSURES

628.61 Purpose and scope.
628.62 Disclosure requirements.
628.63 Disclosures.
628.64–628.99 [Reserved]

Subparts E–F [Reserved]

Subpart G—Transition Provisions

628.300 Transitions.
628.301 Initial compliance and reporting requirements.

AUTHORITY: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, 2279aa–10, 2279aa–12); 12 U.S.C. 2154 note; 15 U.S.C. 78o–7 note.

SOURCE: 81 FR 49779, July 28, 2016, unless otherwise noted.

Subpart A—General Provisions

§ 628.1 Purpose, applicability, and reservations of authority.

(a) *Purpose.* This part establishes minimum capital requirements and overall capital adequacy standards for System institutions. This part includes methodologies for calculating minimum capital requirements, public disclosure requirements related to the capital requirements, and transition provisions for the application of this part.

(b) *Limitation of authority.* Nothing in this part limits the authority of FCA to take action under other provisions of law, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law or regulation under part C of title V of the Farm Credit Act.

(c) *Applicability.* Subject to the requirements in paragraph (d) of this section:

(1) *Minimum capital requirements and overall capital adequacy standards.* Each System institution must calculate its minimum capital requirements and meet the overall capital adequacy standards in subpart B of this part.

(2) *Regulatory capital.* Each System institution must calculate its regulatory capital in accordance with subpart C of this part.

(3) *Risk-weighted assets.* (i) Each System institution must use the methodologies in subpart D of this part to calculate total risk-weighted assets.

(ii) [Reserved]

(4) *Disclosures.* (i) All System banks must make the public disclosures described in subpart D of this part.

(ii)–(iii) [Reserved]

(d) *Reservation of authority*—(1) *Additional capital in the aggregate.* FCA may require a System institution to hold an amount of regulatory capital greater than otherwise required under this part if FCA determines that the System institution's capital requirements under this part are not commensurate with the System institution's credit, market, operational, or other risks according to part 615, subparts L and M, of this chapter.

(2) *Regulatory capital elements.* (i) If FCA determines that a particular common equity tier 1 (CET1), additional tier 1 (AT1), or tier 2 capital element has characteristics or terms that diminish its permanence or its ability to absorb losses, or otherwise present safety and soundness concerns, FCA may require the System institution to exclude all or a portion of such element from CET1 capital, AT1 capital, or tier 2 capital, as appropriate.

(ii) Notwithstanding the criteria for regulatory capital instruments set forth in subpart C of this part, FCA may find that a capital element may be included in a System institution's CET1 capital, AT1 capital, or tier 2 capital on a permanent or temporary basis consistent with the loss absorption capacity of the element and in accordance with §628.20(e).

(3) *Risk-weighted asset amounts.* If FCA determines that the risk-weighted asset amount calculated under this part by the System institution for one or more exposures is not commensurate with the risks associated with those exposures, FCA may require the System institution to assign a different risk-weighted asset amount to the exposure(s) or to deduct the amount of the exposure(s) from its regulatory capital.

(4) *Total leverage.* If FCA determines that the leverage exposure amount, or the amount reflected in the System institution's reported average total consolidated assets, for a balance sheet exposure calculated by a System institution under §628.10 is inappropriate for the exposure(s) or the circumstances of the System institution, FCA may require the System institution to adjust this exposure amount in the numerator and the denominator for purposes of the leverage ratio calculations.

(5) [Reserved]

(6) *Other reservation of authority.* With respect to any deduction or limitation required under this part, FCA may require a different deduction or limitation, provided that such alternative deduction or limitation is commensurate with the System institution's risk and consistent with safety and soundness.

(e) *Notice and response procedures.* In making a determination under this section, FCA will apply notice and response procedures in the same manner as the notice and response procedures in §615.5352 of this chapter.

(f) [Reserved]

§ 628.2 Definitions.

As used in this part:

Additional tier 1 capital (AT1) is defined in §628.20(c).

Allocated equities means stock or surplus representing a patronage payment to a member-borrower that a System institution has retained for the benefit of its membership.[1] Allocated equities include qualified allocated equities and nonqualified allocated equities. Allocated equities are redeemable at the System institution board's discretion. Allocated equities contain no voting rights and are generally subordinated to borrower stock in receivership, insolvency, liquidation, or similar proceeding.

Allowances for loan losses (ALL) means valuation allowances that have been established through a charge against earnings to cover estimated credit

[1] System institutions as cooperatives are required to send borrowers a written notice of allocation specifying the amount of patronage payments retained as equity pursuant to the Internal Revenue Code section 1388.

losses on loans, lease financing receivables, or other extensions of credit as determined in accordance with generally accepted accounting principles (GAAP). For purposes of this part, ALL includes allowances that have been established through a charge against earnings to cover estimated credit losses associated with off-balance sheet credit exposures as determined in accordance with GAAP.

Bank holding company means a bank holding company as defined in section 2 of the Bank Holding Company Act.

Bank Holding Company Act means the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*).

Bankruptcy remote means, with respect to an entity or asset, that the entity or asset would be excluded from an insolvent entity's estate in receivership, insolvency, liquidation, or similar proceeding.

Borrower stock means the capital investment a borrower holds in a System institution in connection with a loan.

Call Report means reports of condition and performance, as described in subpart D of part 621 of this chapter.

Carrying value means, with respect to an asset, the value of the asset on the balance sheet of the System institution, determined in accordance with GAAP.

Central counterparty (CCP) means a counterparty (for example, a clearinghouse) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts.

CFTC means the U.S. Commodity Futures Trading Commission.

Clean-up call means a contractual provision that permits an originating System institution or servicer to call securitization exposures before their stated maturity or call date.

Cleared transaction means an exposure associated with an outstanding derivative contract or repo-style transaction that a System institution or clearing member has entered into with a central counterparty (that is, a transaction that a central counterparty has accepted).

(1) The following transactions are cleared transactions:

(i)–(ii) [Reserved]

(iii) A transaction between a clearing member client System institution and a clearing member where the clearing member acts as a financial intermediary on behalf of the clearing member client and enters into an offsetting transaction with a CCP, provided that the requirements set forth in § 628.3(a) are met; or

(iv) A transaction between a clearing member client System institution and a CCP where a clearing member guarantees the performance of the clearing member client System institution to the CCP and the transaction meets the requirements of § 628.3(a)(2) and (3).

(2) [Reserved]

Clearing member means a member of, or direct participant in, a CCP that is entitled to enter into transactions with the CCP.

Clearing member client means a party to a cleared transaction associated with a CCP in which a clearing member either acts as a financial intermediary with respect to the party or guarantees the performance of the party to the CCP.

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to a System institution for a single financial contract or for all financial contracts in a netting set and confers upon the System institution a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the System institution with a right to close-out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the System institution's exercise of rights under the agreement may be stayed or avoided:

(1) Under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to Government-sponsored enterprises (GSEs), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (1)(i) in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (1)(i) of this definition; or

(2) Other than to the extent necessary for the counterparty to comply with the requirements of part 47, subpart I of part 252, or part 382 of this title, as applicable.

Commitment means any legally binding arrangement that obligates a System institution to extend credit or to purchase assets.

Commodity derivative contract means a commodity-linked swap, purchased commodity-linked option, forward commodity-linked contract, or any other instrument linked to commodities that gives rise to similar counterparty credit risks.

Commodity Exchange Act means the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*).

Common cooperative equity issuance date means the date in which the holding period for purchased stock (excluding statutory minimum borrower stock and third-party stock) and allocated equities start:

(1) For allocated equities, the calendar quarter-ending in which:

(i) The System institution's Board of Directors has passed a resolution declaring a patronage refund; and

(ii) The System institution has completed the applicable accounting treatment by segregating the new allocated equities from its unallocated retained earnings.

(2) For purchased stock (excluding statutory minimum borrower stock and third-party stock), the calendar quarter-ending in which the stock is acquired by the holder and recognized on the institution's balance sheet.

Common cooperative equity or equities means common equities in the form of member-borrower stock, participation certificates, and allocated equities issued or allocated by a System institution to its current and former members.

Common equity tier 1 capital (CET1) is defined in § 628.20(b).

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, System institution, association, or similar organization.

Corporate exposure means an exposure to a company that is not:

(1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);

(2) An exposure to a GSE;

(3) A residential mortgage exposure;

(4)–(6) [Reserved]

(7) A cleared transaction;

(8) [Reserved]

(9) A securitization exposure;

(10) An equity exposure; or

(11) An unsettled transaction.

Country risk classification (CRC) with respect to a sovereign, means the most recent consensus CRC published by the Organization for Economic Cooperation and Development (OECD) as of December 31st of the prior calendar year that provides a view of the likelihood that the sovereign will service its external debt.

Credit derivative means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider) for a certain period of time.

Credit-enhancing interest-only strip (CEIO) means an on-balance sheet asset that, in form or in substance:

(1) Represents a contractual right to receive some or all of the interest and no more than a minimal amount of principal due on the underlying exposures of a securitization; and

(2) Exposes the holder of the CEIO to credit risk directly or indirectly associated with the underlying exposures that exceeds a pro rata share of the holder's claim on the underlying exposures, whether through subordination

provisions or other credit-enhancement techniques.

Credit-enhancing representations and warranties means representations and warranties that are made or assumed in connection with a transfer of underlying exposures (including loan servicing assets) and that obligate a System institution to protect another party from losses arising from the credit risk of the underlying exposures. Credit-enhancing representations and warranties include provisions to protect a party from losses resulting from the default or nonperformance of the counterparties of the underlying exposures or from an insufficiency in the value of the collateral backing the underlying exposures. Credit-enhancing representations and warranties do not include:

(1) Early default clauses and similar warranties that permit the return of, or premium refund clauses covering, 1–4 family residential first mortgage loans that qualify for a 50-percent risk weight for a period not to exceed 120 days from the date of transfer. These warranties may cover only those loans that were originated within 1 year of the date of transfer;

(2) Premium refund clauses that cover assets guaranteed, in whole or in part, by the U.S. Government, a U.S. Government agency or a Government-sponsored enterprise (GSE), provided the premium refund clauses are for a period not to exceed 120 days from the date of transfer; or

(3) Warranties that permit the return of underlying exposures in instances of misrepresentation, fraud, or incomplete documentation.

Credit risk mitigant means collateral, a credit derivative, or a guarantee.

Credit union means an insured credit union as defined under the Federal Credit Union Act (12 U.S.C. 1752 *et seq.*).

Current exposure means, with respect to a netting set, the larger of 0 or the fair value of a transaction or portfolio of transactions within the netting set that would be lost upon default of the counterparty, assuming no recovery on the value of the transactions. Current exposure is also called replacement cost.

Current exposure methodology means the method of calculating the exposure amount for over-the-counter derivative contracts in § 628.34(a).

Custodian means a company that has legal custody of collateral provided to a CCP.

Depository institution means a depository institution as defined in section 3 of the Federal Deposit Insurance Act.

Depository institution holding company means a bank holding company or savings and loan holding company.

Derivative contract means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or 5 business days.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203, 124 Stat. 1376).

Early amortization provision means a provision in the documentation governing a securitization that, when triggered, causes investors in the securitization exposures to be repaid before the original stated maturity of the securitization exposures, unless the provision:

(1) Is triggered solely by events not directly related to the performance of the underlying exposures or the originating System institution (such as material changes in tax laws or regulations); or

(2) Leaves investors fully exposed to future draws by borrowers on the underlying exposures even after the provision is triggered.

Effective notional amount means, for an eligible guarantee or eligible credit derivative, the lesser of the contractual notional amount of the credit risk mitigant and the exposure amount of the hedged exposure, multiplied by the percentage coverage of the credit risk mitigant.

Eligible clean-up call means a clean-up call that:

(1) Is exercisable solely at the discretion of the originating System institution or servicer;

(2) Is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization; and

(3)(i) For a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding; or

(ii) For a synthetic securitization, is only exercisable when 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding.

Eligible credit derivative means a credit derivative in the form of a credit default swap, n^{th}-to-default swap, total return swap, or any other form of credit derivative approved by the FCA, provided that:

(1) The contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap or n^{th}-to-default swap, the contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Receivership, insolvency, liquidation, conservatorship or inability of the reference exposure issuer to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(4) The terms and conditions dictating the manner in which the contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provide that any required consent to transfer may not be unreasonably withheld;

(7) If the credit derivative is a credit default swap or n^{th}-to-default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event; and

(8) If the credit derivative is a total return swap and the System institution records net payments received on the swap as net income, the System institution records offsetting deterioration in the value of the hedged exposure (either through reductions in fair value or by an addition to reserves).

Eligible guarantee means a guarantee from an eligible guarantor that:

(1) Is written;

(2) Is either:

(i) Unconditional; or

(ii) A contingent obligation of the U.S. Government or its agencies, the enforceability of which is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, meeting servicing requirements);

(3) Covers all or a pro rata portion of all contractual payments of the obligated party on the reference exposure;

(4) Gives the beneficiary a direct claim against the protection provider;

(5) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(6) Except for a guarantee by a sovereign, is legally enforceable against

the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(7) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligated party on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment; and

(8) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure.

Eligible guarantor means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

Eligible margin loan means:

(1) An extension of credit where:

(i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold;

(ii) The collateral is marked-to-fair value daily, and the transaction is subject to daily margin maintenance requirements; and

(iii) The extension of credit is conducted under an agreement that provides the System institution the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case:

(A) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(*1*) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[2] or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (1)(iii)(A)(*1*) in order to facilitate the orderly resolution of the defaulting counterparty; or

(*2*) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (1)(iii)(A)(*1*) of this definition; and

(B) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, subpart I of part 252, or part 382 of this title, as applicable.

(2) In order to recognize an exposure as an eligible margin loan for purposes of this subpart, a System institution must comply with the requirements of § 628.3(b) with respect to that exposure.

Eligible servicer cash advance facility means a servicer cash advance facility in which:

[2] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute "securities contracts" under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231).

(1) The servicer is entitled to full reimbursement of advances, except that a servicer may be obligated to make non-reimbursable advances for a particular underlying exposure if any such advance is contractually limited to an insignificant amount of the outstanding principal balance of that exposure;

(2) The servicer's right to reimbursement is senior in right of payment to all other claims on the cash flows from the underlying exposures of the securitization; and

(3) The servicer has no legal obligation to, and does not make advances to the securitization if the servicer concludes the advances are unlikely to be repaid.

Equity derivative contract means an equity-linked swap, purchased equity-linked option, forward equity-linked contract, or any other instrument linked to equities that gives rise to similar counterparty credit risks.

Equity exposure means:

(1) A security or instrument (whether voting or non-voting) that represents a direct or an indirect ownership interest in, and is a residual claim on, the assets and income of a company, unless:

(i) The issuing company is consolidated with the System institution under GAAP;

(ii) The System institution is required to deduct the ownership interest from tier 1 or tier 2 capital under this part;

(iii) The ownership interest incorporates a payment or other similar obligation on the part of the issuing company (such as an obligation to make periodic payments); or

(iv) The ownership interest is a securitization exposure;

(2) A security or instrument that is mandatorily convertible into a security or instrument described in paragraph (1) of this definition;

(3) An option or warrant that is exercisable for a security or instrument described in paragraph (1) of this definition; or

(4) Any other security or instrument (other than a securitization exposure) to the extent the return on the security or instrument is based on the performance of a security or instrument described in paragraph (1) of this definition.

ERISA means the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1001 *et seq.*).

Exchange rate derivative contract means a cross-currency interest rate swap, forward foreign-exchange contract, currency option purchased, or any other instrument linked to exchange rates that gives rise to similar counterparty credit risks.

Exposure means an amount at risk.

Exposure amount means:

(1) For the on-balance sheet component of an exposure (other than an available-for-sale or held-to-maturity security; an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the System institution determines the exposure amount under §628.37; a cleared transaction; or a securitization exposure), the System institution's carrying value of the exposure.

(2) For a security (that is not a securitization exposure, equity exposure, or preferred stock classified as an equity security under GAAP) classified as available-for-sale or held-to-maturity, the System institution's carrying value (including net accrued but unpaid interest and fees) for the exposure less any net unrealized gains on the exposure and plus any net unrealized losses on the exposure.

(3) For available-for-sale preferred stock classified as an equity security under GAAP, the System institution's carrying value of the exposure less any net unrealized gains on the exposure that are reflected in such carrying value but excluded from the System institution's regulatory capital components.

(4) For the off-balance sheet component of an exposure (other than an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the System institution calculates the exposure amount under §628.37; a cleared transaction; or a securitization exposure), the notional amount of the off-balance sheet component multiplied by the appropriate credit conversion factor (CCF) in §628.33.

(5) For an exposure that is an OTC derivative contract, the exposure amount determined under § 628.34.

(6) For an exposure that is a cleared transaction, the exposure amount determined under § 628.35.

(7) For an exposure that is an eligible margin loan or repo-style transaction for which the bank calculates the exposure amount as provided in § 628.37, the exposure amount determined under § 628.37.

(8) For an exposure that is a securitization exposure, the exposure amount determined under § 628.42.

Farm Credit Act means the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*).

Federal Deposit Insurance Act means the Federal Deposit Insurance Act (12 U.S.C. 1813).

Federal Deposit Insurance Corporation Improvement Act means the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401).

Financial collateral means collateral:

(1) In the form of:

(i) Cash on deposit at a depository institution or Federal Reserve Bank (including cash held for the System institution by a third-party custodian or trustee);

(ii) Gold bullion;

(iii) Long-term debt securities that are not resecuritization exposures and that are investment grade;

(iv) Short-term debt instruments that are not resecuritization exposures and that are investment grade;

(v) Equity securities that are publicly traded;

(vi) Convertible bonds that are publicly traded; or

(vii) Money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and

(2) In which the System institution has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit at a depository institution or Federal Reserve Bank and notwithstanding the prior security interest of any custodial agent).

First-lien residential mortgage exposure means a residential mortgage exposure secured by a first lien.

Foreign bank means a foreign bank as defined in § 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2) (other than a depository institution).

Forward agreement means a legally binding contractual obligation to purchase assets with certain drawdown at a specified future date, not including commitments to make residential mortgage loans or forward foreign exchange contracts.

GAAP means generally accepted accounting principles as used in the United States.

Gain-on-sale means an increase in the equity capital of a System institution (as reported on the Call Report) resulting from a traditional securitization (other than an increase in equity capital resulting from the System institution's receipt of cash in connection with the securitization or reporting of a mortgage servicing asset on the Call Report).

General obligation means a bond or similar obligation that is backed by the full faith and credit of a public sector entity (PSE).

Government-sponsored enterprise (GSE) means an entity established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government.

Guarantee means a financial guarantee, letter of credit, insurance, or other similar financial instrument (other than a credit derivative) that allows one party (beneficiary) to transfer the credit risk of one or more specific exposures (reference exposure) to another party (protection provider).

Home country means the country where an entity is incorporated, chartered, or similarly established.

Insurance company means an insurance company as defined in section 201 of the Dodd-Frank Act (12 U.S.C. 5381).

Insurance underwriting company means an insurance company as defined in section 201 of the Dodd-Frank Act (12 U.S.C. 5381) that engages in insurance underwriting activities.

Insured depository institution means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act.

Interest rate derivative contract means a single-currency interest rate swap, basis swap, forward rate agreement, purchased interest rate option, when-issued securities, or any other instrument linked to interest rates that gives rise to similar counterparty credit risks.

International Lending Supervision Act means the International Lending Supervision Act of 1983 (12 U.S.C. 3907).

Investment fund means a company:

(1) Where all or substantially all of the assets of the company are financial assets; and

(2) That has no material liabilities.

Investment grade means that the entity to which the System institution is exposed through a loan or security, or the reference entity with respect to a credit derivative, has adequate capacity to meet financial commitments for the projected life of the asset or exposure. Such an entity or reference entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

Junior-lien residential mortgage exposure means a residential mortgage exposure that is not a first-lien residential mortgage exposure.

Member means a borrower or former borrower from a System institution that holds voting or nonvoting cooperative equities of the institution.

Money market fund means an investment fund that is subject to 17 CFR 270.2a–7 or any foreign equivalent thereof.

Mortgage servicing assets (MSAs) means the contractual rights owned by a System institution to service for a fee mortgage loans that are owned by others.

Multilateral development bank (MDB) means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. Government is a shareholder or contributing member or which the FCA determines poses comparable credit risk.

National Bank Act means the National Bank Act (12 U.S.C. 24).

Netting set means a group of transactions with a single counterparty that are subject to a qualifying master netting agreement or a qualifying cross-product master netting agreement. For purposes of calculating risk-based capital requirements using the internal models methodology in subpart E of this part, this term does not cover a transaction:

(1) That is not subject to such a master netting agreement; or

(2) Where the System institution has identified specific wrong-way risk.

Nonqualified allocated equities mean a patronage payment to a member-borrower in the form of stock or surplus that a System institution retains as equity for the benefit of the membership. A System institution does not deduct this patronage payment from its current taxable income according to the Internal Revenue Code sections 1382(b) and 1383. Nonqualified allocated equities also include allocated surplus in a tax-exempt institution or subsidiary. When a System institution revolves a nonqualified allocation, the System institution deducts the allocation from its taxable income, if any, and the borrower generally recognizes the tax liability, if any, as ordinary income. System institutions pay two types of nonqualified allocated equities through written notices of allocation to the borrowers:

(1) Those subject to revolvement; and

(2) Those not subject to revolvement. The second type for GAAP purposes is generally considered an equivalent of unallocated surplus and consolidated with unallocated surplus on externally prepared shareholder reports.

N^{th}-to-default credit derivative means a credit derivative that provides credit protection only for the nth-defaulting reference exposure in a group of reference exposures.

Operating entity means a company established to conduct business with clients with the intention of earning a profit in its own right and that generally produces goods or provides services beyond the business of investing, reinvesting, holding, or trading in financial assets. All System banks, associations, and service corporations, and all unincorporated business entities, are operating entities.

Original maturity with respect to an off-balance sheet commitment means the length of time between the date a commitment is issued and:

(1) For a commitment that is not subject to extension or renewal, the stated expiration date of the commitment; or

(2) For a commitment that is subject to extension or renewal, the earliest date on which the System institution can, at its option, unconditionally cancel the commitment.

Originating System institution, with respect to a securitization, means a System institution that:

(1) Directly or indirectly originated the underlying exposures included in the securitization; or

(2) [Reserved]

Other financing institution (OFI) means any entity referred to in section 1.7(b)(1)(B) of the Farm Credit Act.

Over-the-counter (OTC) derivative contract means a derivative contract that is not a cleared transaction.

Participation certificate means borrower stock held by a borrower or customer of a System institution that does not have voting rights.

Patronage payment means a cash declaration or equity allocation to member-borrowers that pursuant to Internal Revenue Code section 1381(a) is based on a System institution's net income and allocated to borrowers based on business conducted with the institution. Patronage payments may be paid as cash, allocated equity (stock or surplus), or a combination of cash and allocated equity.

Performance standby letter of credit (or performance bond) means an irrevocable obligation of a System institution to pay a third-party beneficiary when a customer (account party) fails to perform on any contractual nonfinancial or commercial obligation. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things; subcontractors' and suppliers' performance, labor; and materials contracts, and construction bids.

Protection amount (P) means, with respect to an exposure hedged by an eligible guarantee or eligible credit derivative, the effective notional amount of the guarantee or credit derivative, reduced to reflect any currency mismatch, maturity mismatch, or lack of restructuring coverage (as provided in §628.36).

Publicly traded means traded on:

(1) Any exchange registered with the Securities and Exchange Commission (SEC) as a national securities exchange under section 6 of the Securities Exchange Act; or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question.

Public sector entity (PSE) means a state, local authority, or other governmental subdivision below the sovereign level.

Qualified allocated equities means patronage allocated to a member-borrower, in the form of stock or surplus, that a System institution retains as equity for the benefit of the membership. A System institution can deduct this patronage from its current taxable income provided that the borrower has agreed to include the patronage in its taxable income. A System institution must pay at least 20 percent of a qualified patronage payment in cash to borrowers. A System institution must provide the borrowers with a qualified written notice of allocation when they allocate qualified patronage payments pursuant to Internal Revenue Code section 1381(b) and 1388(c). A System institution revolves qualified allocated equities according to a board-approved plan.

Qualifying central counterparty (QCCP) means a central counterparty that:

(1)(i) Is a designated financial market utility (FMU), as defined in section 803 of the Dodd-Frank Act;

(ii) If not located in the United States, is regulated and supervised in a manner equivalent to a designated FMU; or

(iii) Meets the following standards:

(A) The central counterparty requires all parties to contracts cleared by the counterparty to be fully collateralized on a daily basis;

(B) The System institution demonstrates to the satisfaction of the FCA that the central counterparty:

(*1*) Is in sound financial condition;

(*2*) Is subject to supervision by the Board, the CFTC, or the Securities Exchange Commission (SEC), or, if the central counterparty is not located in the United States, is subject to effective oversight by a national supervisory authority in its home country; and

(*3*) Meets or exceeds the risk-management standards for central counterparties set forth in regulations established by the Board, the CFTC, or the SEC under title VII or title VIII of the Dodd-Frank Act; or if the central counterparty is not located in the United States, meets or exceeds similar risk-management standards established under the law of its home country that are consistent with international standards for central counterparty risk management as established by the relevant standard setting body of the Bank of International Settlements; and

(2)(i) Provides the System institution with the central counterparty's hypothetical capital requirement or the information necessary to calculate such hypothetical capital requirement, and other information the System institution is required to obtain under § 628.35(d)(3);

(ii) Makes available to the FCA and the CCP's regulator the information described in paragraph (2)(i) of this definition; and

(iii) Has not otherwise been determined by the FCA to not be a QCCP due to its financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns that are inconsistent with the risk weight assigned to qualifying central counterparties under § 628.35.

(3) A QCCP that fails to meet the requirements of a QCCP in the future may still be treated as a QCCP under the conditions specified in § 628.3(f).

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the System institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, subpart I of part 252, or part 382 of this title, as applicable;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting

counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this subpart, a System institution must comply with the requirements of § 628.3(d) with respect to that agreement.

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the System institution acts as agent for a customer and indemnifies the customer against loss, provided that:

(1) The transaction is based solely on liquid and readily marketable securities, cash, or gold;

(2) The transaction is marked-to-fair value daily and subject to daily margin maintenance requirements;

(3)(i) The transaction is a ''securities contract'' or ''repurchase agreement'' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act, or a netting contract between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve's Regulation EE (12 CFR part 231); or

(ii) If the transaction does not meet the criteria set forth in paragraph (3)(i) of this definition, then either:

(A) The transaction is executed under an agreement that provides the System institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

(*1*) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(*i*) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (3)(ii)(A)(*1*)(*i*) in order to facilitate the orderly resolution of the defaulting counterparty;

(*ii*) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (3)(ii)(A)(*1*)(*i*) of this definition; and

(*2*) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of part 47, subpart I of part 252, or part 382 of this title, as applicable; or

(B) The transaction is:

(*1*) Either overnight or unconditionally cancelable at any time by the System institution; and

(*2*) Executed under an agreement that provides the System institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of counterparty default; and

(4) In order to recognize an exposure as a repo-style transaction for purposes of this subpart, a System institution must comply with the requirements of § 628.3(e) with respect to that exposure.

Resecuritization means a securitization which has more than one underlying exposure and in which one or more of the underlying exposures is a securitization exposure.

Resecuritization exposure means:

(1) An on- or off-balance sheet exposure to a resecuritization; or

(2) An exposure that directly or indirectly references a resecuritization exposure.

Residential mortgage exposure means an exposure (other than a securitization exposure or equity exposure) that is:

(1) An exposure that is primarily secured by a first or subsequent lien on

one-to-four family residential property, provided that the dwelling (including attached components such as garages, porches, and decks) represents at least 50 percent of the total appraised value of the collateral secured by the first or subsequent lien; or

(2) [Reserved]

Revenue obligation means a bond or similar obligation that is an obligation of a PSE, but which the PSE is committed to repay with revenues from the specific project financed rather than general tax funds.

Savings and loan holding company means a savings and loan holding company as defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

Securities and Exchange Commission (SEC) means the U.S. Securities and Exchange Commission.

Securities Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78).

Securitization exposure means:

(1) An on-balance sheet or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a traditional securitization or synthetic securitization (including a resecuritization); or

(2) An exposure that directly or indirectly references a securitization exposure described in paragraph (1) of this definition.

Securitization special purpose entity (securitization SPE) means a corporation, trust, or other entity organized for the specific purpose of holding underlying exposures of a securitization, the activities of which are limited to those appropriate to accomplish this purpose, and the structure of which is intended to isolate the underlying exposures held by the entity from the credit risk of the seller of the underlying exposures to the entity.

Servicer cash advance facility means a facility under which the servicer of the underlying exposures of a securitization may advance cash to ensure an uninterrupted flow of payments to investors in the securitization, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the underlying exposures.

Small Business Act means the Small Business Act (15 U.S.C. 632).

Small Business Investment Act means the Small Business Investment Act of 1958 (15 U.S.C. 682).

Sovereign means a central government (including the U.S. Government) or an agency, department, ministry, or central bank of a central government.

Sovereign default means noncompliance by a sovereign with its external debt service obligations or the inability or unwillingness of a sovereign government to service an existing loan according to its original terms, as evidenced by failure to pay principal and interest timely and fully, arrearages, or restructuring.

Sovereign exposure means:

(1) A direct exposure to a sovereign; or

(2) An exposure directly and unconditionally backed by the full faith and credit of a sovereign.

Standardized total risk-weighted assets means:

(1) The sum of:

(i) Total risk-weighted assets for general credit risk as calculated under § 628.31;

(ii) Total risk-weighted assets for cleared transactions as calculated under § 628.35;

(iii) Total risk-weighted assets for unsettled transactions as calculated under § 628.38;

(iv) Total risk-weighted assets for securitization exposures as calculated under § 628.42;

(v) Total risk-weighted assets for equity exposures as calculated under §§ 628.52 and 628.53; minus

(vi) [Reserved]

(2) Any amount of the System institution's allowance for loan losses that is not included in tier 2 capital.

Subsidiary means, with respect to a company, a company controlled by that company.

Synthetic exposure means an exposure whose value is linked to the value of an investment in the System institution's own capital instrument.

Synthetic securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is retained or transferred to one or more third parties through the use of one or

more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual retail exposure);

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures; and

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities).

System bank means a Farm Credit Bank, an agricultural credit bank, and a bank for cooperatives.

System institution means a System bank, an association of the Farm Credit System, and their successors, and any other institution chartered by the Farm Credit Administration (FCA) that the FCA determines should be considered a System institution for the purposes of this subpart.

Tier 1 capital means the sum of common equity tier 1 capital and additional tier 1 capital.

Tier 2 capital is defined in § 628.20(d).

Total capital means the sum of tier 1 capital and tier 2 capital.

Traditional securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties other than through the use of credit derivatives or guarantees;

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures;

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities);

(5) The underlying exposures are not owned by an operating entity;

(6) The underlying exposures are not owned by a rural business investment company described in 7 U.S.C. 2009cc *et seq.;*

(7) [Reserved]

(8) The FCA may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures is not a traditional securitization based on the transaction's leverage, risk profile, or economic substance;

(9) The FCA may deem a transaction that meets the definition of a traditional securitization, notwithstanding paragraph (5), (6), or (7) of this definition, to be a traditional securitization based on the transaction's leverage, risk profile, or economic substance; and

(10) The transaction is not:

(i) An investment fund;

(ii) A collective investment fund (as defined in [12 CFR 9.18 (national bank) and 12 CFR 151.40 (Federal saving association) (OCC); 12 CFR 208.34 (Board)];

(iii) An employee benefit plan (as defined in paragraphs (3) and (32) of section 3 of ERISA), a ''governmental plan'' (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code, or any similar employee benefit plan established under the laws of a foreign jurisdiction;

(iv) A synthetic exposure to the capital of a System institution to the extent deducted from capital under § 628.22; or

(v) Registered with the SEC under the Investment Company Act of 1940 (15 U.S.C. 80a–1) or foreign equivalents thereof.

Tranche means all securitization exposures associated with a securitization that have the same seniority level.

Two-way market means a market where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within 1 day and settled at that price within a relatively short timeframe conforming to trade custom.

Unallocated retained earnings (URE) means accumulated net income that a System institution has not allocated to a member-borrower.

Unallocated retained earnings (URE) equivalents means nonqualified allocated equities, other than equities allocated to other System institutions, and paid-in capital resulting from a merger of System institutions or from a repurchase of third-party capital that a System institution:

(1) Designates as URE equivalents at the time of allocation (or on or before March 31, 2017, if allocated prior to January 1, 2017) and undertakes in its capitalization bylaws or a currently effective board of directors resolution not to change the designation without prior FCA approval; and

(2) Undertakes, in its capitalization bylaws or a currently effective board of directors resolution, not to exercise its discretion to revolve except upon dissolution or liquidation and not to offset against a loan in default except as required under final order of a court of competent jurisdiction or if required under §615.5290 of this chapter in connection with a restructuring under part 617 of this chapter.

Unconditionally cancelable means, with respect to a commitment that a System institution may, at any time, with or without cause, refuse to extend credit under the commitment (to the extent permitted under applicable law).

Underlying exposures means one or more exposures that have been securitized in a securitization transaction.

U.S. Government agency means an instrumentality of the U.S. Government whose obligations are fully guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

[81 FR 49779, July 28, 2016, as amended at 86 FR 54357, Oct. 1, 2021]

§ 628.3 Operational requirements for certain exposures.

For purposes of calculating risk-weighted assets under subpart D of this part:

(a) *Cleared transaction*. In order to recognize certain exposures as cleared transactions pursuant to paragraph (1)(ii), (iii), or (iv) of the definition of "cleared transaction" in §628.2, the exposures must meet all of the requirements set forth in this paragraph (a).

(1) The offsetting transaction must be identified by the CCP as a transaction for the clearing member client.

(2) The collateral supporting the transaction must be held in a manner that prevents the System institution from facing any loss due to an event of default, including from a liquidation, receivership, insolvency, or similar proceeding of either the clearing member or the clearing member's other clients. Omnibus accounts established under 17 CFR parts 190 and 300 satisfy the requirements of this paragraph (a).

(3) The System institution must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from a default or receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the arrangements of paragraph (a)(2) of this section to be legal, valid, binding and enforceable under the law of the relevant jurisdictions.

(4) The offsetting transaction with a clearing member must be transferable under the transaction documents and applicable laws in the relevant jurisdiction(s) to another clearing member should the clearing member default, become insolvent, or enter receivership, insolvency, liquidation, or similar proceedings.

(b) *Eligible margin loan*. In order to recognize an exposure as an eligible margin loan as defined in §628.2, a System institution must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (1)(iii) of the definition of "eligible margin loan" in §628.2; and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(c) [Reserved]

(d) *Qualifying master netting agreement.* In order to recognize an agreement as a qualifying master netting agreement as defined in § 628.2, a System institution must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of the definition of "qualifying master netting agreement" in § 628.2; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of "qualifying master netting agreement" in § 628.2.

(e) *Repo-style transaction.* In order to recognize an exposure as a repo-style transaction as defined in § 628.2, a System institution must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (3) of the definition of "repo-style transaction" in § 628.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(f) *Failure of a QCCP to satisfy the rule's requirements.* If a System institution determines that a CCP ceases to be a QCCP due to the failure of the CCP to satisfy one or more of the requirements set forth in paragraph (2)(i) through (iii) of the definition of a "QCCP" in § 628.2, the System institution may continue to treat the CCP as a QCCP for up to 3 months following the determination. If the CCP fails to remedy the relevant deficiency within 3 months after the initial determination, or the CCP fails to satisfy the requirements set forth in paragraph (2)(i) through (iii) of the definition of a QCCP continuously for a 3-month period after remedying the relevant deficiency, a System institution may not treat the CCP as a QCCP for the purposes of this part until after the System institution has determined that the CCP has satisfied the requirements in paragraph (2)(i) through (iii) of the definition of a QCCP for 3 continuous months.

§§ 628.4–628.9 [Reserved]

Subpart B—Capital Ratio Requirements and Buffers

§ 628.10 Minimum capital requirements.

(a) *Computation of regulatory capital ratios.* A System institution's regulatory capital ratios are determined on the basis of the financial statements of the institution prepared in accordance with GAAP using average daily balances for the most recent 3 months.

(b) *Minimum capital requirements.* A System institution must maintain the following minimum capital ratios:

(1) A common equity tier 1 (CET1) 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 tier 1 leverage ratio of 4 percent, of which at least 1.5 percent must be composed of URE and URE equivalents.

(5) [Reserved]

(6) A permanent capital ratio of 7 percent.

(c) *Capital ratio calculations.* A System institution's regulatory capital ratios are as follows:

(1) *CET1 capital ratio.* A System institution's CET1 capital ratio is the ratio of the System institution's CET1 capital to total risk-weighted assets;

(2) *Tier 1 capital ratio.* A System institution's tier 1 capital ratio is the ratio of the System institution's tier 1 capital to total risk-weighted assets;

(3) *Total capital ratio.* A System institution's total capital ratio is the ratio of the System institution's total (tier 1 and tier 2) capital to total risk-weighted assets; and

(4) *Tier 1 leverage ratio.* (i) A System institution's leverage ratio is the ratio of the institution's tier 1 capital to the

institution's average total consolidated assets as reported on the institution's Call Report net of deductions and adjustments from tier 1 capital under §§ 628.22(a), (b), and (c) and 628.23.

(ii) To calculate the measure of URE and URE equivalents described in paragraph (b)(4) of this section, a System institution must adjust URE and URE equivalents to reflect all the deductions and adjustments required under § 628.22(a), (b), and (c), and must use the denominator of the tier 1 leverage ratio.

(5) *Permanent capital ratio.* A System institution's permanent capital ratio is the ratio of the institution's permanent capital to its total risk-adjusted 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.

[81 FR 49779, July 28, 2016, as amended at 86 FR 54358, Oct. 1, 2021]

§ 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 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 institution'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 paid-in, issued directly by the System institution, and represents the most subordinated claim 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 after all senior 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 revolvement 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;

(v) Any cash dividend payments on the instrument are paid out of the System institution's net income or unallocated retained earnings, and are not subject to a limit imposed by the contractual terms governing the instrument;

(vi) The System institution has full discretion at all times to refrain from paying any dividends without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of any other restrictions on the System institution;

(vii) Dividend payments and other distributions related to the instrument may be paid only after all legal and contractual obligations of the System institution have been satisfied, including payments due on more senior claims;

(viii) The holders of the instrument bear losses as they occur before any losses are borne by holders of preferred stock claims on the System institution and holders of any other claims with priority over common cooperative equity instruments in a receivership, insolvency, liquidation, or similar proceeding;

(ix) The instrument is classified as equity under GAAP;

(x) The System institution, or an entity that the System institution controls, did not purchase or directly or indirectly fund the purchase of the instrument, except that where there is an obligation for a member of the institution to hold an instrument in order to receive a loan or service from the System institution, an amount of that loan equal to no more than $1,000 of the borrower stock requirement under section 4.3A of the Act will not be considered as a direct or indirect funding where:

(A) The purpose of the loan is not the purchase of capital instruments of the System institution providing the loan; and

(B) The purchase or acquisition of one or more member equities of the institution is necessary in order for the beneficiary of the loan to become a member of the System institution;

(xi) The instrument is not secured, not covered by a guarantee of the System institution, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(xii) The instrument is issued in accordance with applicable laws and regulations and with the institution's capitalization bylaws;

(xiii) The instrument is reported on the System institution's regulatory financial statements separately from other capital instruments; and

(xiv) The System institution's capitalization bylaws, or a resolution adopted by its board of directors under §628.21, provides that the institution:

(A) Establishes a minimum redemption or revolvement period of 7 years for equities included in CET1; and

(B) Shall not redeem, revolve, cancel, or remove any equities included in CET1 without prior approval of the FCA under paragraph (f) of this section, except that the statutory borrower stock described in paragraph (b)(1)(x) of this section, not to exceed $1,000, may be redeemed without a minimum period outstanding after issuance and without the prior approval of the FCA, as long as after the redemption, the System institution continues to comply with all minimum regulatory capital requirements.

(2) Unallocated retained earnings.

(3) Paid-in capital resulting from a merger of System institutions or repurchase of third-party capital.

(4)–(5) [Reserved]

(c) *AT1 capital*. AT1 capital is the sum of additional tier 1 capital elements and related surplus, minus the regulatory adjustments and deductions in §§ 628.22 and 628.23. AT1 capital elements are:

(1) Instruments and related surplus, other than common cooperative equities, that meet the following criteria:

(i) The instrument is issued and paid-in;

(ii) The instrument is subordinated to general creditors and subordinated debt holders of the System institution in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument is not secured, not covered by a guarantee of the System institution and not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iv) The instrument has no maturity date and does not contain a dividend step-up or any other term or feature that creates an incentive to redeem;

(v) If callable by its terms, the instrument may be called by the System institution only after a minimum of 5 years following issuance, except that the terms of the instrument may allow it to be called earlier than 5 years upon the occurrence of a regulatory event that precludes the instrument from being included in AT1 capital, or a tax event. In addition:

(A) The System institution must receive prior approval from FCA to exercise a call option on the instrument.

(B) The System institution does not create at issuance of the instrument, through any action or communication, an expectation that the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the System institution must either replace the instrument to be called with an equal amount of instruments that meet the criteria under paragraph (b) of this section or this paragraph (c),[3] or demonstrate to the satisfaction of FCA that following redemption, the System institution will continue to hold capital commensurate with its risk;

(vi) Redemption or repurchase of the instrument requires prior approval from FCA;

(vii) The System institution has full discretion at all times to cancel dividends or other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of other restrictions on the System institution except in relation to any distributions to holders of common cooperative equity instruments or other instruments that are pari passu with the instrument;

(viii) Any distributions on the instrument are paid out of the System institution's net income, unallocated retained earnings, or surplus related to other AT1 capital instruments;

(ix) The instrument does not have a credit-sensitive feature, such as a dividend rate that is reset periodically based in whole or in part on the System institution's credit quality, but may have a dividend rate that is adjusted periodically independent of the System institution's credit quality, in relation to general market interest rates or similar adjustments;

(x) The paid-in amount is classified as equity under GAAP;

(xi) The System institution did not purchase or directly or indirectly fund the purchase of the instrument;

(xii) The instrument does not have any features that would limit or discourage additional issuance of capital by the System institution, such as provisions that require the System institution to compensate holders of the instrument if a new instrument is issued at a lower price during a specified timeframe; and

(xiii) [Reserved]

(xiv) The System institution's capitalization bylaws, or a resolution adopted by its board of directors under § 628.21, provides that the institution:

(A) Establishes a minimum redemption or no-call period of 5 years for equities included in additional tier 1; and

(B) Shall not redeem, revolve, cancel, or remove any equities included in additional tier 1 capital without prior approval of the FCA under paragraph (f) of this section.

(2)–(3) [Reserved]

[3] Replacement can be concurrent with redemption of existing AT1 capital instruments.

(4) Notwithstanding the criteria for AT1 capital instruments referenced in paragraph (c)(1) of this section:

(i) [Reserved]

(ii) An instrument with terms that provide that the instrument may be called earlier than 5 years upon the occurrence of a rating agency event does not violate the criterion in paragraph (c)(1)(v) of this section provided that the instrument was issued and included in a System institution's core surplus capital prior to January 1, 2017, and that such instrument satisfies all other criteria under this §628.20(c).

(d) *Tier 2 Capital.* Tier 2 capital is the sum of tier 2 capital elements and any related surplus minus regulatory adjustments and deductions in §§628.22 and 628.23. Tier 2 capital elements are:

(1) Instruments (plus related surplus) that meet the following criteria:

(i) The instrument is issued and paid-in;

(ii) The instrument is subordinated to general creditors of the System institution;

(iii) The instrument is not secured, not covered by a guarantee of the System institution and not subject to any other arrangement that legally or economically enhances the seniority of the instrument in relation to more senior claims;

(iv) The instrument has a minimum original maturity of at least 5 years. At the beginning of each of the last 5 years of the life of the instrument, the amount that is eligible to be included in tier 2 capital is reduced by 20 percent of the original amount of the instrument (net of redemptions) and is excluded from regulatory capital when the remaining maturity is less than 1 year. In addition, the instrument must not have any terms or features that require, or create significant incentives for, the System institution to redeem the instrument prior to maturity;[4]

(v) The instrument, by its terms, may be called by the System institution only after a minimum of 5 years following issuance, except that the terms of the instrument may allow it to be called sooner upon the occurrence of an event that would preclude the instrument from being included in tier 2 capital, or a tax event. In addition:

(A) The System institution must receive the prior approval of FCA to exercise a call option on the instrument.

(B) The System institution does not create at issuance, through action or communication, an expectation the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the System institution must either: replace any amount called with an equivalent amount of an instrument that meets the criteria for regulatory capital under this section;[5] or demonstrate to the satisfaction of FCA that following redemption, the System institution would continue to hold an amount of capital that is commensurate with its risk;

(vi) The holder of the instrument must have no contractual right to accelerate payment of principal, dividends, or interest on the instrument, except in the event of a receivership, insolvency, liquidation, or similar proceeding of the System institution;

(vii) The instrument has no credit-sensitive feature, such as a dividend or interest rate that is reset periodically based in whole or in part on the System institution's credit standing, but may have a dividend rate that is adjusted periodically independent of the System institution's credit standing, in relation to general market interest rates or similar adjustments;

(viii) The System institution has not purchased and has not directly or indirectly funded the purchase of the instrument, except that where common cooperative equity instruments are held by a member of the institution in connection with a loan, and the institution funds the acquisition of such instruments, that loan shall not be considered as a direct or indirect funding where:

(A) The purpose of the loan is not the purchase of capital instruments of the System institution providing the loan;

[4] An instrument that by its terms automatically converts into a tier 1 capital instrument prior to five years after issuance complies with the five-year maturity requirement of this criterion.

[5] A System institution may replace tier 2 capital instruments concurrent with the redemption of existing tier 2 capital instruments.

(B) The purchase or acquisition of one or more capital instruments of the institution is necessary in order for the beneficiary of the loan to become a member of the System institution; and

(C) The capital instruments are in excess of $1,000.

(ix) [Reserved]

(x) Redemption of the instrument prior to maturity or repurchase is at the discretion of the System institution and requires the prior approval of the FCA;

(xi) The System institution's capitalization bylaws, or a resolution adopted by its board of directors under § 628.21, provides that the institution:

(A) Establishes a minimum call, redemption or revolvement period of 5 years for equities included in tier 2 capital; and

(B) Shall not call, redeem, revolve, cancel, or remove any equities included in tier 2 capital without prior approval of the FCA under paragraph (f) of this section.

(2) [Reserved]

(3) ALL up to 1.25 percent of the System institution's total risk-weighted assets not including any amount of the ALL.

(4)–(6) [Reserved]

(e) *FCA approval of a capital element.* (1) A System institution must receive FCA prior approval to include a capital element (as listed in this section) in its CET1 capital, AT1 capital, or tier 2 capital unless the element is equivalent, in terms of capital quality and ability to absorb losses with respect to all material terms, to a regulatory capital element FCA determined may be included in regulatory capital pursuant to paragraph (e)(3) of this section.

(i)–(ii) [Reserved]

(2) [Reserved]

(3) After determining that a regulatory capital element may be included in a System institution's CET1 capital, AT1 capital, or tier 2 capital, FCA will make its decision publicly available.

(f) *FCA prior approval of capital redemptions and dividends included in tier 1 and tier 2 capital.* (1) Subject to the provisions of paragraphs (f)(5) and (6) of this section, a System institution must obtain the prior approval of the FCA before paying cash dividend payments, cash patronage payments, or redeeming equities included in tier 1 or tier 2 capital, other than term equities redeemed on their maturity date.

(2) At least 30 days prior to the intended action, the System institution must submit a request for approval to the FCA. The FCA's 30-day review period begins on the date on which the FCA receives the request.

(3) The request is deemed to be granted if the FCA does not notify the System institution to the contrary before the end of the 30-day review period.

(4)(i) A System institution may request advance approval to cover several anticipated cash dividend or patronage payments, or equity redemptions, provided that the institution projects sufficient current net income during those periods to support the amount of the cash dividend or patronage payments and equity redemptions. In determining whether to grant advance approval, the FCA will consider:

(A) The reasonableness of the institution's request, including its historical and projected cash dividend and patronage payments and equity redemptions;

(B) The institution's historical trends and current projections for capital growth through earnings retention;

(C) The overall condition of the institution, with particular emphasis on current and projected capital adequacy as described in § 628.10(e); and

(D) Any other information that the FCA deems pertinent to reviewing the institution's request.

(ii) After considering these standards, the FCA may grant advance prior approval of an institution's request to pay cash dividends and patronage or to redeem or revolve equity. Notwithstanding any such approval, an institution may not declare a dividend or patronage payment or redeem or revolve equities if, after such declaration, redemption, or revolvement, the institution would not meet its regulatory capital requirements set forth in this part and part 615 of this chapter.

(5) Subject to any capital distribution restrictions specified in § 628.11, a System institution is deemed to have FCA prior approval for revolvements

and redemptions of common cooperative equities, for cash dividend payments on all equities, and for cash patronage payments on all cooperative equities, provided that:

(i) For redemptions or revolvements of common cooperative equities included in CET1 capital or tier 2 capital, other than as provided in paragraph (f)(6) of this section, the institution issued or allocated such equities at least 7 years ago for CET1 capital and at least 5 years ago for tier 2 capital;

(ii) After such cash payments have been declared and defined by resolution of the board, the dollar amount of the System institution's CET1 capital at quarter-end equals or exceeds the dollar amount of CET1 capital on the same quarter-end in the previous calendar year; and

(iii) The System institution continues to comply with all regulatory capital requirements and supervisory or enforcement actions.

(6) The following equities are eligible to be redeemed or revolved under paragraph (f)(5)(i) of this section in less than the applicable minimum required holding period (7 years for CET1 inclusion and 5 years for tier 2 inclusion), provided that the requirements of paragraphs (f)(5)(ii) and (iii) of this section are met:

(i) Equities mandated to be redeemed or retired by a final order of a court of competent jurisdiction;

(ii) Equities held by the estate of a deceased former borrower; and

(iii) Equities that the institution is required to cancel under § 615.5290 of this chapter in connection with a restructuring under part 617 of this chapter.

[81 FR 49779, July 28, 2016, as amended at 86 FR 54359, Oct. 1, 2021]

§ 628.21 Capital bylaw or board resolution to include equities in tier 1 and tier 2 capital.

In order to include otherwise eligible purchased and allocated equities in tier 1 capital and tier 2 capital, the System institution must adopt a capitalization bylaw, or its board of directors must adopt a binding resolution, which resolution must be acknowledged by the board on an annual basis in the capital adequacy plan described in § 615.5200, in which the institution undertakes the following, as applicable:

(a) The institution shall obtain prior FCA approval under § 628.20(f) before:

(1) Redeeming or revolving the equities included in common equity tier 1 (CET1) capital;

(2) Redeeming or calling the equities included in additional tier 1 capital; and

(3) Redeeming, revolving, or calling instruments included in tier 2 capital other than limited life preferred stock or subordinated debt on the maturity date.

(b) The equities shall have a minimum redemption or revolvement period as follows:

(1) 7 years for equities included in CET1 capital, except that the statutory borrower stock described in § 628.20(b)(1)(x) may be redeemed without a minimum holding period and that equities designated as unallocated retained earnings (URE) equivalents cannot be revolved without submitting a written request to the FCA for prior approval;

(2) a minimum no-call, repurchase, or redemption period of 5 years for additional tier 1 capital; and

(3) a minimum no-call, repurchase, redemption, or revolvement period of 5 years for tier 2 capital.

(c) The institution shall submit to FCA a written request for prior approval before:

(1) Redesignating URE equivalents as equities that the institution may exercise its discretion to redeem other than upon dissolution or liquidation;

(2) Removing equities or other instruments from CET1, additional tier 1, or tier 2 capital other than through repurchase, cancellation, redemption or revolvement; and

(3) Redesignating equities included in one component of regulatory capital (CET1 capital, additional tier 1 capital, or tier 2 capital) for inclusion in another component of regulatory capital.

(d) The institution shall not exercise its discretion to revolve URE equivalents except upon dissolution or liquidation and shall not offset URE equivalents against a loan in default except as required under final order of a court of competent jurisdiction or if required under § 615.5290 in connection with a restructuring under part 617 of this chapter.

(e) The minimum redemption and revolvement period (holding period) for purchased and allocated equities starts on the common cooperative equity issuance date, as defined in § 628.2.

[86 FR 54359, Oct. 1, 2021]

§ 628.22 Regulatory capital adjustments and deductions.

(a) *Regulatory capital deductions from CET1 capital.* A System institution must deduct from the sum of its CET1 capital elements the items set forth in this paragraph (a):

(1) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section;

(2) Intangible assets, other than mortgage servicing assets (MSAs), net of associated DTLs in accordance with paragraph (e) of this section;

(3) Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards net of any related valuation allowances and net of DTLs in accordance with paragraph (e) of this section;

(4) Any gain-on-sale in connection with a securitization exposure;

(5) Any defined benefit pension fund net asset, net of any associated DTL in accordance with paragraph (e) of this section, except that, with FCA prior approval, this deduction is not required for any defined benefit pension fund net asset to the extent the institution has unrestricted and unfettered access to the assets in that fund;

(6) The System institution's allocated equity investment in another System institution or service corporation; and

(7) [Reserved]

(8) If, without the required prior FCA approval, the System institution redeems or revolves purchased or allocated equities included in its CET1 capital that have been outstanding for less than 7 years, the FCA may take appropriate supervisory or enforcement actions against the institution, which may include requiring the institution to deduct a portion of its purchased and allocated equities from CET1 capital.

(b) *Regulatory adjustments to CET1 capital.* (1) Any accrual of a patronage or dividend payable or receivable recognized in the financial statements prior to a related board declaration or resolution must be reversed to or from unallocated retained earnings for purposes of calculating CET1 capital.

(2) [Reserved]

(c) *Deductions from regulatory capital.*[6] (1) [Reserved]

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to purchased equity investments in another System institution (as described in paragraph (c)(5) of this section). Under the corresponding deduction approach, a System institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the System institution itself. If the System institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i)–(iii) [Reserved]

(3)–(4) [Reserved]

(5) *Purchased equity investments in another System institution.* System institutions must deduct all purchased equity investments in another System institution, service corporation, or the Funding Corporation by applying the corresponding deduction approach. The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. With prior written approval of FCA, for the period stipulated by FCA, a System institution is not required to deduct an investment in the capital of another institution in distress if such investment is made to provide financial support to the System institution as determined by FCA.

(d) [Reserved]

(e) *Netting of DTLs against assets subject to deduction.* (1) The netting of DTLs against assets that are subject to

[6] The System institution must calculate amounts deducted under paragraphs (c) through (f) of this section and § 628.23 after it calculates the amount of ALL includable in tier 2 capital under § 628.20(d)(3).

deduction under this section is required, if the following conditions are met:

(i) The DTL is associated with the asset; and

(ii) The DTL would be extinguished if the associated asset becomes impaired or is derecognized under GAAP.

(2) A DTL may only be netted against a single asset.

(3)–(4) [Reserved]

(5) A System institution must net DTLs against assets subject to deduction under this section in a consistent manner from reporting period to reporting period.

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if a System institution does not have a sufficient amount of a specific component of capital to effect the required deduction after completing the deductions required under paragraph (c) of this section, the System institution must deduct the shortfall from the next higher (that is, more subordinated) component of regulatory capital.

(g) *Treatment of assets that are deducted.* A System institution must exclude from total risk-weighted assets any item deducted from regulatory capital under paragraphs (a) and (c) of this section.

(h) [Reserved]

[81 FR 49779, July 28, 2016, as amended at 86 FR 54360, Oct. 1, 2021]

§ 628.23 Limit on inclusion of third-party capital in total (tier 1 and tier 2) capital.

The combined amount of third-party capital instruments that a System institution may include in total (tier 1 and tier 2) capital is equal to the greater of the following:

(a) The then existing limit, if any; or

(b) The lesser of:

(1) Forty percent of total capital, calculated by taking two thirds of the average of the previous 4 quarters of total capital reported on the institution's Call Report filed with the FCA, less any amounts of third-party capital reported in total capital; or

(2) The average of the previous 4 quarters of CET1 capital reported on its Call Report filed with the FCA.

(c) *Treatment of assets that are deducted.* A System institution must exclude from total risk-weighted assets any item deducted from regulatory capital under this section.

§§ 628.24–628.29 [Reserved]

Subpart D—Risk-Weighted Assets—Standardized Approach

§ 628.30 Applicability.

(a) This subpart sets forth methodologies for determining risk-weighted assets for purposes of the generally applicable risk-based capital requirements for all System institutions.

(b) [Reserved]

RISK-WEIGHTED ASSETS FOR GENERAL CREDIT RISK

§ 628.31 Mechanics for calculating risk-weighted assets for general credit risk.

(a) *General risk-weighting requirements.* A System institution must apply risk weights to its exposures as follows:

(1) A System institution must determine the exposure amount of each on-balance sheet exposure, each OTC derivative contract, and each off-balance sheet commitment, trade and transaction-related contingency, guarantee, repo-style transaction, financial standby letter of credit, forward agreement, or other similar transaction that is not:

(i) An unsettled transaction subject to § 628.38;

(ii) A cleared transaction subject to § 628.35;

(iii) [Reserved]

(iv) A securitization exposure subject to §§ 628.41 through 628.45; or

(v) An equity exposure (other than an equity OTC derivative contract) subject to §§ 628.51 through 628.53.

(2) The System institution must multiply each exposure amount by the risk weight appropriate to the exposure based on the exposure type or counterparty, eligible guarantor, or financial collateral to determine the risk-weighted asset amount for each exposure.

(b) Total risk-weighted assets for general credit risk equals the sum of the risk-weighted asset amounts calculated under this section.

§ 628.32 General risk weights.

(a) *Sovereign exposures*—(1) *Exposures to the U.S. Government.* (i) Notwithstanding any other requirement in this subpart, a System institution must assign a 0-percent risk weight to:

(A) An exposure to the U.S. Government, its central bank, or a U.S. Government agency; and

(B) The portion of an exposure that is directly and unconditionally guaranteed by the U.S. Government, its central bank, or a U.S. Government agency. This includes a deposit or other exposure, or the portion of a deposit or other exposure that is insured or otherwise unconditionally guaranteed by the Federal Deposit Insurance Corporation or National Credit Union Administration.

(ii) A System institution must assign a 20-percent risk weight to the portion of an exposure that is conditionally guaranteed by the U.S. Government, its central bank, or a U.S. Government agency. This includes an exposure, or the portion of an exposure, that is conditionally guaranteed by the Federal Deposit Insurance Corporation or National Credit Union Administration.

(2) *Other sovereign exposures.* In accordance with Table 1 to § 628.32, a System institution must assign a risk weight to a sovereign exposure based on the Country Risk Classification (CRC) applicable to the sovereign or the sovereign's Organization for Economic Cooperation and Development (OECD) membership status if there is no CRC applicable to the sovereign.

TABLE 1 TO § 628.32—RISK WEIGHTS FOR SOVEREIGN EXPOSURES

	Risk weight (in percent)
CRC:	
0–1	0
2	20
3	50
4–6	100
7	150
OECD Member with no CRC	0
Non-OECD Member with no CRC	100
Sovereign Default	150

(3) *Certain sovereign exposures.* Notwithstanding paragraph (a)(2) of this section, a System institution may assign to a sovereign exposure a risk weight that is lower than the applicable risk weight in table 1 to § 628.32 if:

(i) The exposure is denominated in the sovereign's currency;

(ii) The System institution has at least an equivalent amount of liabilities in that currency; and

(iii) The risk weight is not lower than the risk weight that the sovereign allows banking organizations under its jurisdiction to assign to the same exposures to the sovereign.

(4) *Exposures to a non-OECD member sovereign with no CRC.* Except as provided in paragraphs (a)(3), (5), and (6) of this section, a System institution must assign a 100-percent risk weight to a sovereign exposure if the sovereign does not have a CRC.

(5) *Exposures to an OECD member sovereign with no CRC.* Except as provided in paragraph (a)(6) of this section, a System institution must assign a 0-percent risk weight to an exposure to a sovereign that is a member of the OECD if the sovereign does not have a CRC.

(6) *Sovereign default.* A System institution must assign a 150-percent risk weight to a sovereign exposure immediately upon determining that an event of sovereign default has occurred, or if an event of sovereign default has occurred during the previous 5 years.

(b) *Certain supranational entities and multilateral development banks (MDBs).* A System institution must assign a 0-percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, or an MDB.

(c) *Exposures to Government-sponsored enterprises (GSEs).* (1) A System institution must assign a 20-percent risk weight to an exposure to a GSE other than an equity exposure or preferred stock.

(2) A System institution must assign a 100-percent risk weight to preferred stock issued by a non-System GSE.

(3) Purchased equity investments (including preferred stock investments) in other System institutions do not receive a risk weight, because they are

deducted from capital in accordance with § 628.22.

(d) *Exposures to depository institutions, foreign banks, and credit unions*—(1) *Exposures to U.S. depository institutions and credit unions.* A System institution must assign a 20-percent risk weight to an exposure to a depository institution or credit union that is organized under the laws of the United States or any state thereof, except as otherwise provided in this paragraph (d). This risk weight applies to an exposure a System bank has to another financing institution (OFI) that is a depository institution or credit union organized under the laws of the United States or any state thereof or is owned and controlled by such an entity that guarantees the exposure. If the OFI exposure does not satisfy these requirements, it must be assigned a risk weight as a corporate exposure pursuant to paragraph (f)(1)(ii) or (f)(2) of this section.

(2) *Exposures to foreign banks.* (i) Except as otherwise provided under paragraph (d)(2)(iv) of this section, a System institution must assign a risk weight to an exposure to a foreign bank, in accordance with table 2 to § 628.32, based on the CRC rating that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

TABLE 2 TO § 628.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS

	Risk weight (in percent)
CRC:	
0–1	20
2	50
3	100
4–7	150
OECD Member with No CRC	20
Non-OECD with No CRC	100
Sovereign Default	150

(ii) A System institution must assign a 20-percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) A System institution must assign a 100-percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of 3 months or less, which may be assigned a 20-percent risk weight.

(iv) A System institution must assign a 150-percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous 5 years.

(3) [Reserved]

(e) *Exposures to public sector entities (PSEs)*—(1) *Exposures to U.S. PSEs.* (i) A System institution must assign a 20-percent risk weight to a general obligation exposure to a PSE that is organized under the laws of the United States or any state or political subdivision thereof.

(ii) A System institution must assign a 50-percent risk weight to a revenue obligation exposure to a PSE that is organized under the laws of the United States or any state or political subdivision thereof.

(2) *Exposures to foreign PSEs.* (i) Except as provided in paragraphs (e)(1) and (3) of this section, a System institution must assign a risk weight to a general obligation exposure to a foreign PSE, in accordance with Table 3 to § 628.32, based on the CRC that corresponds to the PSE's home country or the OECD membership status of the PSE's home country if there is no CRC applicable to the PSE's home country.

(ii) Except as provided in paragraphs (e)(1) and (3) of this section, a System institution must assign a risk weight to a revenue obligation exposure to a foreign PSE, in accordance with Table 4 to § 628.32, based on the CRC that corresponds to the PSE's home country; or the OECD membership status of the PSE's home country if there is no CRC applicable to the PSE's home country.

(3) A System institution may assign a lower risk weight than would otherwise apply under tables 3 and 4 to § 628.32 to an exposure to a foreign PSE if:

(i) The PSE's home country supervisor allows banks under its jurisdiction to assign a lower risk weight to such exposures; and

(ii) The risk weight is not lower than the risk weight that corresponds to the PSE's home country in accordance with table 1 to § 628.32.

TABLE 3 TO § 628.32—RISK WEIGHTS FOR NON-U.S. PSE GENERAL OBLIGATIONS

	Risk weight (in percent)
CRC:	
0–1	20
2	50
3	100
4–7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

TABLE 4 TO § 628.32—RISK WEIGHTS FOR NON-U.S. PSE REVENUE OBLIGATIONS

	Risk weight (in percent)
CRC:	
0–1	50
2–3	100
4–7	150
OECD Member with No CRC	50
Non-OECD Member with No CRC	100
Sovereign Default	150

(4) *Exposures to PSEs from an OECD member sovereign with no CRC.* (i) A System institution must assign a 20-percent risk weight to a general obligation exposure to a PSE whose home country is a OECD member sovereign with no CRC.

(ii) A System institution must assign a 50-percent risk weight to a revenue obligation exposure to a PSE whose country is an OECD member sovereign with no CRC.

(5) *Exposures to PSEs whose home country is not an OECD member sovereign with no CRC.* A System institution must assign a 100-percent risk weight to an exposure to a PSE whose home country is not a member of the OECD and does not have a CRC.

(6) A System institution must assign a 150-percent risk weight to a PSE exposure immediately upon determining that an event of sovereign default has occurred in a PSE's home country or if an event of sovereign default has occurred in the PSE's home country during the previous 5 years.

(f) *Corporate exposures*—(1) *100-percent risk weight.* Except as provided in paragraph (f)(2) of this section, a System institution must assign a 100-percent risk weight to all its corporate exposures. Assets assigned a risk weight under this provision include:

(i) Borrower loans such as agricultural loans and consumer loans, regardless of the corporate form of the borrower, unless those loans qualify for different risk weights under other provisions of this subpart D;

(ii) System bank exposures to OFIs that do not satisfy the requirements for a 20-percent risk weight pursuant to paragraph (d)(1) of this section or a 50-percent risk weight pursuant to paragraph (f)(2) of this section; and

(iii) Premises, fixed assets, and other real estate owned.

(2) *50-percent risk weight.* Unless the OFI satisfies the requirements for a 20-percent risk weight pursuant to paragraph (d)(1) of this section, a System institution must assign a 50-percent risk weight to an exposure to an OFI that satisfies at least one of the following requirements:

(i) The OFI is investment grade or is owned and controlled by an investment grade entity that guarantees the exposure; or

(ii) The OFI meets capital, risk identification and control, and operational standards similar to the OFIs identified in paragraph (d)(1) of this section.

(g) *Residential mortgage exposures.* (1) A System institution must assign a 50-percent risk weight to a first-lien residential mortgage exposure that:

(i) Is secured by a property that is either owner-occupied or rented;

(ii) Is made in accordance with prudent underwriting standards suitable for residential property, including standards relating to the loan amount as a percent of the appraised value of the property;

(iii) Is not 90 days or more past due or carried in nonaccrual status; and

(iv) Is not restructured or modified.

(2) A System institution must assign a 100-percent risk weight to a first-lien residential mortgage exposure that does not meet the criteria in paragraph (g)(1) of this section, and to junior-lien residential mortgage exposures.

(3) For the purpose of this paragraph (g), if a System institution holds the first-lien and junior-lien(s) residential mortgage exposures, and no other party holds an intervening lien, the System institution must combine the exposures and treat them as a single first-lien residential mortgage exposure.

(4) A loan modified or restructured solely pursuant to the U.S. Treasury's Home Affordable Mortgage Program is not modified or restructured for purposes of this section.

(h)–(j) [Reserved]

(k) *Past due and nonaccrual exposures.* Except for a sovereign exposure or a residential mortgage exposure, a System institution must determine a risk weight for an exposure that is 90 days or more past due or in nonaccrual status according to the requirements set forth in this paragraph (k).

(1) A System institution must assign a 150-percent risk weight to the portion of the exposure that is not guaranteed or that is not secured by financial collateral.

(2) A System institution may assign a risk weight to the guaranteed portion of a past due or nonaccrual exposure based on the risk weight that applies under § 628.36 if the guarantee or credit derivative meets the requirements of that section.

(3) A System institution may assign a risk weight to the portion of a past due or nonaccrual exposure that is collateralized by financial collateral based on the risk weight that applies under § 628.37 if the financial collateral meets the requirements of that section.

(l) *Other assets.* (1) A System institution must assign a 0-percent risk weight to cash owned and held in all offices of the System institution or in transit; to gold bullion held in the System institution's own vaults or held in a depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange (FX), and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade.

(2) A System institution must assign a 20-percent risk weight to cash items in the process of collection.

(3) A System institution must assign a 100-percent risk weight to deferred tax assets (DTAs) arising from temporary differences in relation to net operating loss carrybacks.

(4) A System institution must assign a 100-percent risk weight to all MSAs.

(5) A System institution must assign a 100-percent risk weight to all assets that are not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to § 628.22.

(6) [Reserved]

[81 FR 49779, July 28, 2016, as amended at 86 FR 54360, Oct. 1, 2021]

§ 628.33 Off-balance sheet exposures.

(a) *General.* (1) A System institution must calculate the exposure amount of an off-balance sheet exposure using the credit conversion factors (CCFs) in paragraph (b) of this section.

(2) Where a System institution commits to provide a commitment, the System institution may apply the lower of the two applicable CCFs.

(3) Where a System institution provides a commitment structured as a syndication or participation, the System institution is only required to calculate the exposure amount for its pro rata share of the commitment.

(4) Where a System institution provides a commitment, enters into a repurchase agreement, or provides a credit enhancing representation and warranty, and such commitment, repurchase agreement, or credit-enhancing representation and warranty is not a securitization exposure, the exposure amount shall be no greater than the maximum contractual amount of the commitment, repurchase agreement, or credit-enhancing representation and warranty, as applicable.

(5) The exposure amount of a System bank's commitment to an association

or OFI is the difference between the association's or OFI's maximum credit limit with the System bank (as established by the general financing agreement or promissory note, as required by § 614.4125(d) of this chapter), and the amount the association or OFI has borrowed from the System bank.

(b) *Credit conversion factors*—(1) *Zero-percent (0%) CCF*. A System institution must apply a 0-percent CCF to a commitment that is unconditionally cancelable by the System institution.

(2) *Twenty-percent (20%) CCF*. A System institution must apply a 20-percent CCF to the amount of:

(i) Commitments, other than a System bank's commitment to an association or OFI, with an original maturity of 14 months or less that are not unconditionally cancelable by the System institution.

(ii) Self-liquidating, trade-related contingent items that arise from the movement of goods, with an original maturity of 14 months or less.

(iii) A System bank's commitment to an association or OFI that is not unconditionally cancelable by the System bank, regardless of maturity.

(3) *Fifty-percent (50%) CCF*. A System institution must apply a 50-percent CCF to the amount of:

(i) Commitments, other than a System bank's commitment to an association or OFI, with an original maturity of more than 14 months that are not unconditionally cancelable by the System institution.

(ii) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit.

(4) *One hundred-percent (100%) CCF*. A System institution must apply a 100-percent CCF to the following off-balance sheet items and other similar transactions:

(i) Guarantees;

(ii) Repurchase agreements (the off-balance sheet component of which equals the sum of the current fair values of all positions the System institution has sold subject to repurchase);

(iii) Credit-enhancing representations and warranties that are not securitization exposures;

(iv) Off-balance sheet securities lending transactions (the off-balance sheet component of which equals the sum of the current fair values of all positions the System institution has lent under the transaction);

(v) Off-balance sheet securities borrowing transactions (the off-balance sheet component of which equals the sum of the current fair values of all non-cash positions the System institution has posted as collateral under the transaction);

(vi) Financial standby letters of credit; and

(vii) Forward agreements.

§ 628.34 OTC derivative contracts.

(a) *Exposure amount*—(1) *Single OTC derivative contract*. Except as modified by paragraph (b) of this section, the exposure amount for a single OTC derivative contract that is not subject to a qualifying master netting agreement is equal to the sum of the System institution's current credit exposure and potential future credit exposure (PFE) on the OTC derivative contract.

(i) *Current credit exposure*. The current credit exposure for a single OTC derivative contract is the greater of the mark-to-fair value of the OTC derivative contract or 0.

(ii) *PFE*. (A) The PFE for a single OTC derivative contract, including an OTC derivative contract with a negative mark-to-fair value, is calculated by multiplying the notional principal amount of the OTC derivative contract by the appropriate conversion factor in Table 1 to § 628.34.

(B) For purposes of calculating either the PFE under this paragraph or the gross PFE under paragraph (a)(2) of this section for exchange rate contracts and other similar contracts in which the notional principal amount is equivalent to the cash flows, notional principal amount is the net receipts to each party falling due on each value date in each currency.

(C) For an OTC derivative contract that does not fall within one of the specified categories in Table 1 to § 628.34, the PFE must be calculated using the appropriate "other" conversion factor.

(D) A System institution must use an OTC derivative contract's effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the OTC derivative contract) rather than the apparent or stated notional principal amount in calculating PFE.

(E) The PFE of the protection provider of a credit derivative is capped at the net present value of the amount of unpaid premiums.

TABLE 1 TO § 628.34—CONVERSION FACTOR MATRIX FOR DERIVATIVE CONTRACTS [1]

Remaining maturity [2]	Interest rate	Foreign exchange rate and gold	Credit (investment grade reference asset) [3]	Credit (non-investment-grade reference asset)	Equity	Precious metals (except gold)	Other
One (1) year or less	0.00	0.01	0.05	0.10	0.06	0.07	0.10
Greater than one (1) year and less than or equal to five (5) years	0.005	0.05	0.05	0.10	0.08	0.07	0.12
Greater than five (5) years	0.015	0.075	0.05	0.10	0.10	0.08	0.15

[1] For a derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

[2] For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the fair value of the contract is 0, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than 1 year that meets these criteria, the minimum conversion factor is 0.005.

[3] A System institution must use the column labeled "Credit (investment-grade reference asset)" for a credit derivative whose reference asset is an outstanding unsecured long-term debt security without credit enhancement that is investment grade. A System institution must use the column labeled "Credit (non-investment-grade reference asset)" for all other credit derivatives.

(2) *Multiple OTC derivative contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (b) of this section, the exposure amount for multiple OTC derivative contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of the PFE amounts for all OTC derivative contracts subject to the qualifying master netting agreement.

(i) *Net current credit exposure.* The net current credit exposure is the greater of the net sum of all positive and negative mark-to-fair values of the individual OTC derivative contracts subject to the qualifying master netting agreement or 0.

(ii) *Adjusted sum of the PFE amounts.* The adjusted sum of the PFE amounts, Anet, is calculated as:

$$A_{net} = (0.4 \times A_{gross}) + (0.6 \times NGR \times A_{gross})$$

Where:

A_{gross} = the gross PFE (that is, the sum of the PFE amounts (as determined under paragraph (a)(1)(ii) of this section for each individual derivative contract subject to the qualifying master netting agreement); and

Net-to-gross Ratio (NGR) = the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (a)(1)(i) of this section) of all individual derivative contracts subject to the qualifying master netting agreement.

(b) *Recognition of credit risk mitigation of collateralized OTC derivative contracts.* (1) A System institution may recognize the credit risk mitigation benefits of financial collateral that secures an OTC derivative contract or multiple OTC derivative contracts subject to a qualifying master netting agreement (netting set) by using the simple approach in § 628.37(b).

(2) Alternatively, if the financial collateral securing a contract or netting set described in paragraph (b)(1) of this section is marked-to-fair value on a daily basis and subject to a daily margin maintenance requirement, a System institution may recognize the credit risk mitigation benefits of financial collateral that secures the contract or netting set by using the collateral haircut approach in § 628.37(c).

(c) *Counterparty credit risk for OTC credit derivatives*—(1) *Protection purchasers.* A System institution that purchases an OTC credit derivative that is recognized under § 628.36 as a credit risk mitigant is not required to compute a separate counterparty credit risk capital requirement under § 628.32 provided that the System institution does so consistently for all such credit derivatives. The System institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A System institution that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The System institution is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under § 628.32, provided that this treatment is applied consistently for all such OTC credit derivatives. The System institution must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of paragraph (c)(2) of this section apply to all relevant counterparties for risk-based capital purposes.

(d) *Counterparty credit risk for OTC equity derivatives.* (1) A System institution must treat an OTC equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the OTC equity derivative contract under §§ 628.51 through 628.53.

(2) [Reserved]

(3) If the System institution risk weights the contract under the Simple Risk-Weight Approach (SRWA) in § 628.52, the System institution may choose not to hold risk-based capital against the counterparty credit risk of the OTC equity derivative contract, as

long as it does so for all such contracts. Where the OTC equity derivative contracts are subject to a qualifying master netting agreement, a System institution using the SRWA must either include all or exclude all of the contracts from any measure used to determine counterparty credit risk exposure.

(e) [Reserved]

§ 628.35 Cleared transactions.

(a) *General requirements*—(1) *Clearing member clients.* A System institution that is a clearing member client must use the methodologies described in paragraph (b) of this section to calculate risk-weighted assets for a cleared transaction.

(2) [Reserved]

(b) *Clearing member client System institutions*—(1) *Risk-weighted assets for cleared transactions.* (i) To determine the risk-weighted asset amount for a cleared transaction, a System institution that is a clearing member client must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(2) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(3) of this section.

(ii) A clearing member client System institution's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all its cleared transactions.

(2) *Trade exposure amount.* (i) For a cleared transaction that is either a derivative contract or netting set of derivative contracts, the trade exposure amount equals:

(A) The exposure amount for the derivative contract or netting set of derivative contracts, calculated using the current exposure method (CEM) for OTC derivative contracts under § 628.34; plus

(B) The fair value of the collateral posted by the clearing member client System institution and held by the central counterparty (CCP), clearing member, or custodian in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction, the trade exposure amount equals:

(A) The exposure amount for the repo-style transaction calculated using the collateral haircut methodology under § 628.37(c); plus

(B) The fair value of the collateral posted by the clearing member client System institution and held by the CCP or a clearing member in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weights.* (i) For a cleared transaction with a qualifying CCP (QCCP), a clearing member client System institution must apply a risk weight of:

(A) Two (2) percent if the collateral posted by the System institution to the QCCP or clearing member is subject to an arrangement that prevents any losses to the clearing member client System institution due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member client System institution has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from default or from liquidation, insolvency, or receivership proceeding) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions; or

(B) Four (4) percent if the requirements of paragraph (b)(3)(i)(A) of this section are not met.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client System institution must apply the risk weight appropriate for the CCP according to § 628.32.

(4) *Collateral.* (i) Notwithstanding any other requirements in this section, collateral posted by a clearing member client System institution that is held by a custodian (in its capacity as custodian) in a manner that is bankruptcy remote from the CCP, the custodian, clearing member and other clearing member clients of the clearing member, is not subject to a capital requirement under this section.

(ii) A clearing member client System institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under § 628.32.

(c)–(d) [Reserved]

§ 628.36 Guarantees and credit derivatives: Substitution treatment.

(a) *Scope*—(1) *General.* A System institution may recognize the credit risk mitigation benefits of an eligible guarantee or eligible credit derivative by substituting the risk weight associated with the protection provider for the risk weight assigned to an exposure, as provided under this section.

(2) This section applies to exposures for which:

(i) Credit risk is fully covered by an eligible guarantee or eligible credit derivative; or

(ii) Credit risk is covered on a pro rata basis (that is, on a basis in which the System institution and the protection provider share losses proportionately) by an eligible guarantee or eligible credit derivative.

(3) Exposures on which there is a tranching of credit risk (reflecting at least two different levels of seniority) generally are securitization exposures subject to §§ 628.41 through 628.45.

(4) If multiple eligible guarantees or eligible credit derivatives cover a single exposure described in this section, a System institution may treat the hedged exposure as multiple separate exposures each covered by a single eligible guarantee or eligible credit derivative and may calculate a separate risk-weighted asset amount for each separate exposure as described in paragraph (c) of this section.

(5) If a single eligible guarantee or eligible credit derivative covers multiple hedged exposures described in paragraph (a)(2) of this section, a System institution must treat each hedged exposure as covered by a separate eligible guarantee or eligible credit derivative and must calculate a separate risk-weighted asset amount for each exposure as described in paragraph (c) of this section.

(b) *Rules of recognition.* (1) A System institution may only recognize the credit risk mitigation benefits of eligible guarantees and eligible credit derivatives.

(2) A System institution may only recognize the credit risk mitigation benefits of an eligible credit derivative to hedge an exposure that is different from the credit derivative's reference exposure used for determining the derivative's cash settlement value, deliverable obligation, or occurrence of a credit event if:

(i) The reference exposure ranks *pari passu* with, or is subordinated to, the hedged exposure; and

(ii) The reference exposure and the hedged exposure are to the same legal entity, and legally enforceable cross-default or cross-acceleration clauses are in place to ensure payments under the credit derivative are triggered when the obligated party of the hedged exposure fails to pay under the terms of the hedged exposure.

(c) *Substitution approach*—(1) *Full coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, a System institution may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under § 628.32 for the risk weight assigned to the exposure.

(2) *Partial coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in §§ 628.36(a) and 628.37(b) and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the System institution must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The System institution may calculate the risk-weighted asset amount for the protected exposure under § 628.32, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The System institution must calculate the risk-weighted asset amount for the unprotected exposure under § 628.32, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraph (d), (e), or (f) of this section.

(d) *Maturity mismatch adjustment.* (1) A System institution that recognizes an eligible guarantee or eligible credit derivative in determining the risk-weighted asset amount for a hedged exposure must adjust the effective notional amount of the credit risk mitigant to reflect any maturity mismatch between the hedged exposure and the credit risk mitigant.

(2) A maturity mismatch occurs when the residual maturity of a credit risk mitigant is less than that of the hedged exposure(s).

(3) The residual maturity of a hedged exposure is the longest possible remaining time before the obligated party of the hedged exposure is scheduled to fulfill its obligation on the hedged exposure. If a credit risk mitigant has embedded options that may reduce its term, the System institution (protection purchaser) must use the shortest possible residual maturity for the credit risk mitigant. If a call is at the discretion of the protection provider, the residual maturity of the credit risk mitigant is at the first call date. If the call is at the discretion of the System institution (protection purchaser), but the terms of the arrangement at origination of the credit risk mitigant contain a positive incentive for the System institution to call the transaction before contractual maturity, the remaining time to the first call date is the residual maturity of the credit risk mitigant.

(4) A credit risk mitigant with a maturity mismatch may be recognized only if its original maturity is greater than or equal to 1 year and its residual maturity is greater than 3 months.

(5) When a maturity mismatch exists, the System institution must apply the following adjustment to reduce the effective notional amount of the credit risk mitigant:

$$P_m = E \ x \ [(t-0.25)/(T-0.25)]$$

Where:

P_m = effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;

E = effective notional amount of the credit risk mitigant;

t = the lesser of T or the residual maturity of the credit risk mitigant, expressed in years; and

T = the lesser of 5 or the residual maturity of the hedged exposure, expressed in years.

(e) *Adjustment for credit derivatives without restructuring as a credit event.* If a System institution recognizes an eligible credit derivative that does not include as a credit event a restructuring of the hedged exposure involving forgiveness or postponement of principal, interest, or fees that results in a credit loss event (that is, a charge-off, specific provision, or other similar debit to the profit and loss account), the System institution must apply the following adjustment to reduce the effective notional amount of the credit derivative:

$$P_r = P_m \text{ x } 0.60$$

Where:

P_r = effective notional amount of the credit risk mitigant, adjusted for lack of restructuring event (and maturity mismatch, if applicable); and

P_m = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch, if applicable).

(f) *Currency mismatch adjustment.* (1) If a System institution recognizes an eligible guarantee or eligible credit derivative that is denominated in a currency different from that in which the hedged exposure is denominated, the System institution must apply the following formula to the effective notional amount of the guarantee or credit derivative:

$$P_c = P_r \text{ x } (1 - H_{fx})$$

Where:

P_c = effective notional amount of the credit risk mitigant, adjusted for currency mismatch (and maturity mismatch and lack of restructuring event, if applicable);

P_r = effective notional amount of the credit risk mitigant (adjusted for maturity mismatch and lack of restructuring event, if applicable); and

H_{fx} = haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

(2) A System institution must set H_{fx} equal to 8 percent.

(3) A System institution must adjust H_{fx} calculated in paragraph (f)(2) of this section upward if the System institution revalues the guarantee or credit derivative less frequently than once every 10 business days using the following square root of time formula:

$$H_{FX}=8\%\sqrt{\frac{T_M}{10}},$$

Where T_M equals the greater of 10 or the number of days between revaluation.

§ 628.37 Collateralized transactions.

(a) *General.* (1) To recognize the risk-mitigating effects of financial collateral, a System institution may use:

(i) The simple approach in paragraph (b) of this section for any exposure.

(ii) The collateral haircut approach in paragraph (c) of this section for repo-style transactions, eligible margin loans, collateralized derivative contracts, and single-product netting sets of such transactions.

(2) A System institution may use any approach described in this section that is valid for a particular type of exposure or transaction; however, it must use the same approach for similar exposures or transactions.

(b) *The simple approach*—(1) *General requirements.* (i) A System institution may recognize the credit risk mitigation benefits of financial collateral that secures any exposure.

(ii) To qualify for the simple approach, the financial collateral must meet the following requirements:

(A) The collateral must be subject to a collateral agreement for at least the life of the exposure;

(B) The collateral must be revalued at least every 6 months; and

(C) The collateral (other than gold) and the exposure must be denominated in the same currency.

(2) *Risk-weight substitution.* (i) A System institution may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under § 628.32. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the System institution has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

(ii) A System institution must apply a risk weight to the unsecured portion of the exposure based on the risk weight assigned to the exposure under this subpart.

(3) *Exceptions to the 20-percent risk-weight floor and other requirements.* Notwithstanding paragraph (b)(2)(i) of this section:

(i) A System institution may assign a 0-percent risk weight to an exposure to an OTC derivative contract that is marked-to-fair on a daily basis and subject to a daily margin maintenance requirement, to the extent the contract is collateralized by cash on deposit.

(ii) A System institution may assign a 10-percent risk weight to an exposure to an OTC derivative contract that is marked-to-fair value daily and subject to a daily margin maintenance requirement, to the extent that the contract is collateralized by an exposure to a sovereign that qualifies for a 0-percent risk weight under § 628.32.

(iii) A System institution may assign a 0-percent risk weight to the collateralized portion of an exposure where:

(A) The financial collateral is cash on deposit; or

(B) The financial collateral is an exposure to a sovereign that qualifies for a 0-percent risk weight under § 628.32, and the System institution has discounted the fair value of the collateral by 20 percent.

(c) *Collateral haircut approach*—(1) *General*. A System institution may recognize the credit risk mitigation benefits of financial collateral that secures an eligible margin loan, repo-style transaction, collateralized derivative contract, or single-product netting set of such transactions by using the standard supervisory haircuts in paragraph (c)(3) of this section.

(2) *Exposure amount equation*. A System institution must determine the exposure amount for an eligible margin loan, repo-style transaction, collateralized derivative contract, or a single-product netting set of such transactions by setting the exposure amount equal to max:

$$\{0, [(\mathbf{\Sigma}E—\mathbf{\Sigma}C) + \mathbf{\Sigma}(E_s \ x \ H_s) + \mathbf{\Sigma}(E_{fx} \ x \ H_{fx})]\}$$

Where:

ΣE = for eligible margin loans and repo-style transactions and netting sets thereof, the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the System institution has lent, sold subject to repurchase, or posted as collateral to the counterparty under the transaction (or netting set)); and

ΣE = for collateralized derivative contracts and netting sets thereof, the exposure amount of the OTC derivative contract (or netting set) calculated under § 628.34(c) or (d).

ΣC = the value of the collateral (the sum of the current fair values of all instruments, gold and cash the System institution has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction (or netting set));

E_s = the absolute value of the net position in a given instrument or in gold (where the net position in the instrument or gold equals the sum of the current fair values of the instrument or gold the System institution has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of that same instrument or gold the System institution has borrowed, purchased subject to resale, or taken as collateral from the counterparty);

H_s = the fair value price volatility haircut appropriate to the instrument or gold referenced in Es;

E_{fx} = the absolute value of the net position of instruments and cash in a currency that is different from the settlement currency (where the net position in a given currency equals the sum of the current fair values of any instruments or cash in the currency the System institution has lent, sold subject to repurchase, or posted as collateral to the counterparty minus the sum of the current fair values of any instruments or cash in the currency the System institution has borrowed, purchased subject to resale, or taken as collateral from the counterparty); and

H_{fx} = the haircut appropriate to the mismatch between the currency referenced in E_{fx} and the settlement currency.

(3) *Standard supervisory haircuts*. (i) A System institution must use the haircuts for fair value price volatility (Hs) provided in Table 1 to § 628.37, as adjusted in certain circumstances in accordance with the requirements of paragraphs (c)(3)(iii) and (iv) of this section:

TABLE 1 TO § 628.37—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUT [1]

Residual maturity	Haircut (in percent) assigned based on						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § 628.32 [2]			Non-sovereign issuers risk weight under § 628.32			
	Zero	20% or −50%	100%	20%	50%	100%	
Less than or equal to 1 year	0.5	1.0	15.0	1.0	2.0	25.0	4.0%
Great than 1 years and less than and equal to 5 years	2.0	3.0	15.0	4.0	6.0	25.0	12.0%
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	25.0	24.0%
Main index equities (including convertible bonds) and gold	15.0%						
Other publically traded equities (including convertible bonds)	25.0%						
Mutual funds	Highest haircut applicable to any security in which the fund can invest						
Cash collateral	0%						

[1] The market price volatility haircut in Table 1 to § 628.37 are based on 10-day holding period.
[2] Includes a foreign PSE that receives a 0-percent risk weight.

(ii) For currency mismatches, a System institution must use a haircut for foreign exchange rate volatility (H_{fx}) of 8 percent, as adjusted in certain circumstances under paragraphs (c)(3)(iii) and (iv) of this section.

(iii) For repo-style transactions, a System institution may multiply the standard supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section by the square root of ½ (which equals 0.707107).

(iv) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, a System institution must adjust the supervisory haircuts provided in paragraphs (c)(3)(i) and (ii) of this section upward on the basis of a holding period of 20 business days for the following quarter except in the calculation of the exposure amount for purposes of §628.35. If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, a System institution must adjust the supervisory haircuts upward on the basis of a holding period of 20 business days. If over the 2 previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the System institution must adjust the supervisory haircuts upward for that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set. A System institution must adjust the standard supervisory haircuts upward using the following formula:

$$H_A = H_S \sqrt{\frac{T_M}{T_S}}$$

Where:

T_M = a holding period of longer than 10 business days for eligible margin loans and derivative contracts or longer than 5 business days for repo-style transactions;

H_S = the standard supervisory haircut; and

T_S = 10 business days for eligible margin loans and derivative contracts or 5 business days for repo-style transactions.

(v) If the instrument a System institution has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral in §628.2, the System institution must use a 25-percent haircut for fair value price volatility (H_S).

(4) [Reserved]

RISK-WEIGHTED ASSETS FOR UNSETTLED TRANSACTIONS

§ 628.38 Unsettled transactions.

(a) *Definitions.* For purposes of this section:

(1) Delivery-versus-payment (DvP) transaction means a securities or commodities transaction in which the buyer is obligated to make payment only if the seller has made delivery of the securities or commodities and the seller is obligated to deliver the securities or commodities only if the buyer has made payment.

(2) Payment-versus-payment (PvP) transaction means a foreign exchange transaction in which each counterparty is obligated to make a final transfer of one or more currencies only if the other counterparty has made a final transfer of one or more currencies.

(3) A transaction has a normal settlement period if the contractual settlement period for the transaction is equal to or less than the fair value standard for the instrument underlying the transaction and equal to or less than 5 business days.

(4) Positive current exposure of a System institution for a transaction is the difference between the transaction value at the agreed settlement price and the current fair value price of the transaction, if the difference results in a credit exposure of the System institution to the counterparty.

(b) *Scope.* This section applies to all transactions involving securities, foreign exchange instruments, and commodities that have a risk of delayed settlement or delivery. This section does not apply to:

(1) Cleared transactions that are marked-to-fair value daily and subject to daily receipt and payment of variation margin;

(2) Repo-style transactions, including unsettled repo-style transactions;

(3) One-way cash payments on OTC derivative contracts; or

(4) Transactions with a contractual settlement period that is longer than the normal settlement period (which are treated as OTC derivative contracts as provided in § 628.34).

(c) *System-wide failures*. In the case of a system-wide failure of a settlement, clearing system or central counterparty, the FCA may waive risk-based capital requirements for unsettled and failed transactions until the situation is rectified.

(d) *Delivery-versus-payment (DvP) and payment-versus-payment (PvP) transactions*. A System institution must hold risk-based capital against any DvP or PvP transaction with a normal settlement period if the System institution's counterparty has not made delivery or payment within 5 business days after the settlement date. The System institution must determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the System institution by the appropriate risk weight in Table 1 to § 628.38.

TABLE 1 TO § 628.38—RISK WEIGHTS FOR UNSETTLED DVP AND PVP TRANSACTIONS

Number of business days after contractual settlement date	Risk weight to be applied to positive current exposure (in percent)
From 5 to 15	100.0
From 16 to 30	625.0
From 31 to 45	937.5
46 or more	1,250.0

(e) *Non-DvP/non-PvP (non-delivery-versus-payment/non-payment-versus-payment) transactions*. (1) A System institution must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the System institution has delivered cash, securities, commodities, or currencies to its counterparty but has not received its corresponding deliverables by the end of the same business day. The System institution must continue to hold risk-based capital against the transaction until the System institution has received its corresponding deliverables.

(2) From the business day after the System institution has made its delivery until 5 business days after the counterparty delivery is due, the System institution must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the System institution as an exposure to the counterparty and using the applicable counterparty risk weight under § 628.32.

(3) If the System institution has not received its deliverables by the 5th business day after counterparty delivery was due, the System institution must assign a 1,250-percent risk weight to the current fair value of the deliverables owed to the System institution.

(f) *Total risk-weighted assets for unsettled transactions*. Total risk-weighted assets for unsettled transactions is the sum of the risk-weighted asset amounts of all DvP, PvP, and non-DvP/non-PvP transactions.

§§ 628.39–628.40 [Reserved]

RISK-WEIGHTED ASSETS FOR SECURITIZATION EXPOSURES

§ 628.41 Operational requirements for securitization exposures.

(a) *Operational criteria for traditional securitizations*. A System institution that transfers exposures it has originated or purchased to a third party in connection with a traditional securitization may exclude the exposures from the calculation of its risk-weighted assets only if each condition in this section is satisfied. A System institution that meets these conditions must hold risk-based capital against any credit risk it retains in connection with the securitization. A System institution that fails to meet these conditions must hold risk-based capital against the transferred exposures as if they had not been securitized and must deduct from CET1 capital, pursuant to

§ 628.22, any after-tax gain-on-sale resulting from the transaction. The conditions are:

(1) The exposures are not reported on the System institution's consolidated balance sheet under GAAP;

(2) The System institution has transferred to one or more third parties credit risk associated with the underlying exposures;

(3) Any clean-up calls relating to the securitization are eligible clean-up calls; and

(4) The securitization does not:

(i) Include one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contain an early amortization provision.

(b) *Operational criteria for synthetic securitizations*. For synthetic securitizations, a System institution may recognize for risk-based capital purposes the use of a credit risk mitigant to hedge underlying exposures only if each condition in this paragraph is satisfied. A System institution that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the synthetic securitization. A System institution that fails to meet these conditions or chooses not to recognize the credit risk mitigant for purposes of this section must instead hold risk-based capital against the underlying exposures as if they had not been synthetically securitized. The conditions are:

(1) The credit risk mitigant is:

(i) Financial collateral;

(ii) A guarantee that meets all criteria set forth in the definition of "eligible guarantee" in § 628.2, except for the criteria in paragraph (3) of that definition; or

(iii) A credit derivative that meets all criteria as set forth in the definition of "eligible credit derivative" in § 628.2, except for the criteria in paragraph (3) of the definition of "eligible guarantee" in § 628.2.

(2) The System institution transfers credit risk associated with the underlying exposures to one or more third parties, and the terms and conditions in the credit risk mitigants employed do not include provisions that:

(i) Allow for the termination of the credit protection due to deterioration in the credit quality of the underlying exposures;

(ii) Require the System institution to alter or replace the underlying exposures to improve the credit quality of the pool of underlying exposures;

(iii) Increase the System institution's cost of credit protection in response to deterioration in the credit quality of the underlying exposures;

(iv) Increase the yield payable to parties other than the System institution in response to a deterioration in the credit quality of the underlying exposures; or

(v) Provide for increases in a retained first loss position or credit enhancement provided by the System institution after the inception of the securitization;

(3) The System institution obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions; and

(4) Any clean-up calls relating to the securitization are eligible clean-up calls.

(c) *Due diligence requirements*. (1) Except for exposures that are deducted from CET1 capital (pursuant to § 628.22) and exposures subject to § 628.42(h), if a System institution is unable to demonstrate to the satisfaction of the FCA a comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure, the System institution must assign the securitization exposure a risk weight of 1,250 percent. The System institution's analysis must be commensurate with the complexity of the securitization exposure and the materiality of the exposure in relation to its capital.

(2) A System institution must demonstrate its comprehensive understanding of a securitization exposure under paragraph (c)(1) of this section for each securitization exposure by:

(i) Conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure, and documenting such analysis within

3 business days after acquiring the exposure, considering:

(A) Structural features of the securitization that would materially impact the performance of the exposure, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, fair value triggers, the performance of organizations that service the exposure, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average loan-to-value (LTV) ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the securitization, for example, bid-ask spread, most recent sales price and historic price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(D) For resecuritization exposures, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures; and

(ii) On an on-going basis (no less frequently than quarterly), evaluating, reviewing, and updating as appropriate the analysis required under paragraph (c)(1) of this section for each securitization exposure.

§ 628.42 Risk-weighted assets for securitization exposures.

(a) *Securitization risk weight approaches*. Except as provided in this section or in § 628.41:

(1) A System institution must deduct from CET1 capital any after-tax gain-on-sale resulting from a securitization (as provided in § 628.22) and must apply a 1,250-percent risk weight to the portion of a credit-enhancing interest-only strip (CEIO) that does not constitute after-tax gain-on-sale.

(2) If a securitization exposure does not require deduction under paragraph (a)(1) of this section, a System institution may assign a risk weight to the securitization exposure using the simplified supervisory formula approach (SSFA) in accordance with § 628.43(a) through (d) and subject to the limitation under paragraph (e) of this section. Alternatively, a System institution may assign a risk weight to the purchased securitization exposure using the gross-up approach in accordance with § 628.43(e), provided however, that such System institution must apply either the SSFA or the gross-up approach consistently across all of its securitization exposures, except as provided in paragraphs (a)(1), (3), and (4) of this section.

(3) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and the System institution cannot or chooses not to apply the SSFA or the gross-up approach to the exposure, the System institution must assign a risk weight to the exposure as described in § 628.44.

(4) If a securitization exposure is a derivative contract (other than protection provided by a System institution in the form of a credit derivative) that has a first priority claim on the cash flows from the underlying exposures (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments), a System institution may choose to set the risk-weighted asset amount of the exposure equal to the amount of the exposure as determined in paragraph (c) of this section.

(b) *Total risk-weighted assets for securitization exposures*. A System institution's total risk-weighted assets for securitization exposures equals the sum of the risk-weighted asset amount for securitization exposures that the System institution risk weights under paragraph (a)(1) of this section, § 628.41(c), and § 628.43, § 628.44, or § 628.45, except as provided in paragraphs (e) through (j) of this section, as applicable.

(c) *Exposure amount of a securitization exposure*. (1) [Reserved]

(2) *On-balance sheet securitization exposures (available-for-sale or held-to-maturity securities)*. The exposure amount of an on-balance sheet securitization exposure that is an available-for-sale or held-to-maturity security is the

System institution's carrying value (including net accrued but unpaid interest and fees), less any net unrealized gains on the exposure and plus any net unrealized losses on the exposure.

(3) *Off-balance sheet securitization exposures.* (i) Except as provided in paragraph (j) of this section, the exposure amount of an off-balance sheet securitization that is not a repo-style transaction, an eligible margin loan, a cleared transaction (other than a credit derivative), or an OTC derivative contract (other than a credit derivative) is the notional amount of the exposure.

(ii)–(iii) [Reserved]

(4) *Repo-style transactions, eligible margin loans, and derivative contracts.* The exposure amount of a securitization exposure that is a repo-style transaction, an eligible margin loan, or a derivative contract (other than a credit derivative) is the exposure amount of the transaction as calculated under § 628.34 or § 628.37 as applicable.

(d) *Overlapping exposures.* If a System institution has multiple securitization exposures that provide duplicative coverage to the underlying exposures of a securitization, the System institution is not required to hold duplicative risk-based capital against the overlapping position. Instead, the System institution may apply to the overlapping position the applicable risk-based capital treatment that results in the highest risk-based capital requirement.

(e) *Implicit support.* If a System institution provides support to a securitization in excess of the System institution's contractual obligation to provide credit support to the securitization (implicit support):

(1) The System institution must include in risk-weighted assets all of the underlying exposures associated with the securitization as if the exposures had not been securitized and must deduct from CET1 capital (pursuant to § 628.22) any after-tax gain-on-sale resulting from the securitization; and

(2) The System institution must disclose publicly:

(i) That it has provided implicit support to the securitization; and

(ii) The risk-based capital impact to the System institution of providing such implicit support.

(f) *Undrawn portion of an eligible servicer cash advance facility.* (1) Notwithstanding any other provision of this subpart, a System institution that is a servicer under an eligible servicer cash advance facility is not required to hold risk-based capital against potential future cash advance payments that it may be required to provide under the contract governing the facility.

(2) For a System institution that acts as a servicer, the exposure amount for a servicer cash advance facility that is not an eligible cash advance facility is equal to the amount of all potential future cash payments that the System institution may be contractually required to provide during the subsequent 12-month period under the governing facility.

(g) *Interest-only mortgage-backed securities.* Regardless of any other provisions of this subpart, the risk weight for a non-credit-enhancing interest-only mortgage-backed security may not be less than 100 percent.

(h) *Small-business loans and leases on personal property transferred with retained contractual exposure.* (1) Regardless of any other provisions of this subpart, a System institution that has transferred small-business loans and leases on personal property (small-business obligations) must include in risk-weighted assets only its contractual exposure to the small-business obligations if all the following conditions are met:

(i) The transaction must be treated as a sale under GAAP.

(ii) The System institution establishes and maintains, pursuant to GAAP, a non-capital reserve sufficient to meet the System institution's reasonably estimated liability under the contractual obligation.

(iii) The small business obligations are to businesses that meet the criteria for a small-business concern established by the Small Business Administration under section 3(a) of the Small Business Act.

(iv) [Reserved]

(2) The total outstanding amount of contractual exposure retained by a System institution on transfers of small-business obligations receiving

the capital treatment specified in paragraph (h)(1) of this section cannot exceed 15 percent of the System institution's total capital.

(3) If a System institution exceeds the 15-percent capital limitation provided in paragraph (h)(2) of this section, the capital treatment under paragraph (h)(1) of this section will continue to apply to any transfers of small-business obligations with retained contractual exposure that occurred during the time that the System institution did not exceed the capital limit.

(4) [Reserved]

(i)–(ii) [Reserved]

(i) *N^th-to-default credit derivatives*—(1) *Protection provider*. A System institution must assign a risk weight to an nth-to-default credit derivative in accordance with FCA guidance.

(2)–(3) [Reserved]

(4) *Protection purchaser*—(i) *First-to-default credit derivatives*. A System institution that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative that meets the rules of recognition of § 628.36(b) must determine its risk-based capital requirement for the underlying exposures as if the System institution synthetically securitized the underlying exposure with the smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures. A System institution must calculate a risk-based capital requirement for counterparty credit risk according to § 628.34 for a first-to-default credit derivative that does not meet the rules of recognition of § 628.36(b).

(ii) *Second-or-subsequent-to-default credit derivatives*. (A) A System institution that obtains credit protection on a group of underlying exposures through a nth-to-default credit derivative that meets the rules of recognition of § 628.36(b) (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if:

(*1*) The System institution also has obtained credit protection on the same underlying exposures in the form of first-through-(n-1)-to-default credit derivatives; or

(*2*) If n-1 of the underlying exposures have already defaulted.

(B) If a System institution satisfies the requirements of paragraph (i)(4)(ii)(A) of this section, the System institution must determine its risk-based capital requirement for the underlying exposures as if the System institution had only synthetically securitized the underlying exposure with the nth smallest risk-weighted asset amount and had obtained no credit risk mitigant on the underlying exposures.

(C) A System institution must calculate a risk-based capital requirement for counterparty credit risk according to § 628.34 for a nth-to-default credit derivative that does not meet the rules of recognition of § 628.36(b).

(j) *Guarantees and credit derivatives other than nth-to-default credit derivatives*—(1) *Protection provider*. For a guarantee or credit derivative (other than an nth-to-default credit derivative) provided by a System institution that covers the full amount or a pro rata share of a securitization exposure's principal and interest, the System institution must risk weight the guarantee or credit derivative in accordance with FCA guidance.

(2) *Protection purchaser*. (i) A System institution that purchases a guarantee or OTC credit derivative (other than an nth-to-default credit derivative) that is recognized under § 628.45 as a credit risk mitigant (including via collateral recognized under § 628.37) is not required to compute a separate credit risk capital requirement under § 628.31, in accordance with § 628.34(c).

(ii) If a System institution cannot, or chooses not to, recognize a purchased credit derivative as a credit risk mitigant under § 628.45, the System institution must determine the exposure amount of the credit derivative under § 628.34.

(A) If the System institution purchases credit protection from a counterparty that is not a securitization special purpose entity (SPE), the System institution must determine the risk weight for the exposure according to general risk weights under § 628.32.

(B) If the System institution purchases the credit protection from a counterparty that is a securitization SPE, the System institution must determine the risk weight for the exposure according to this section, including paragraph (a)(4) of this section for a credit derivative that has a first priority claim on the cash flows from the underlying exposures of the securitization SPE (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments).

§ 628.43 Simplified supervisory formula approach (SSFA) and the gross-up approach.

(a) *General requirements for the SSFA.* To use the SSFA to determine the risk weight for a securitization exposure, a System institution must have data that enables it to assign accurately the parameters described in paragraph (b) of this section. Data used to assign the parameters described in paragraph (b) of this section must be the most currently available data; if the contract governing the underlying exposures of the securitization require payment on a monthly or quarterly basis, the data used to assign the parameters described in paragraph (b) of this section must be no more than 91 calendar days old. A System institution that does not have the appropriate data to assign the parameters described in paragraph (b) of this section must assign a risk weight of 1,250 percent to the exposure.

(b) *SSFA parameters.* To calculate the risk weight for a securitization exposure using the SSFA, a System institution must have accurate information on the following five inputs to the SSFA calculation:

(1) K_G is the weighted-average (with unpaid principal used as the weight for each exposure) total capital requirement of the underlying exposures calculated using this subpart. K_G is expressed as a decimal value between 0 and 1 (that is, an average risk weight of 100 percent represents a value of K_G equal to .08).

(2) Parameter W is expressed as a decimal value between 0 and 1. Parameter W is the ratio of the sum of the dollar amounts of any underlying exposures within the securitized pool that meet any of the criteria as set forth in paragraphs (b)(2)(i) through (vi) of this section to the balance, measured in dollars, of underlying exposures:

(i) Ninety (90) days or more past due;

(ii) Subject to a bankruptcy or insolvency proceeding;

(iii) In the process of foreclosure;

(iv) Held as real estate owned;

(v) Has contractually deferred interest payments for 90 days or more, other than principal or interest payments deferred on:

(A) Federally guaranteed student loans, in accordance with the terms of those guarantee programs; or

(B) Consumer loans, including non-federally guaranteed student loans, provided that such payments are deferred pursuant to provisions included in the contract at the time funds are disbursed that provide for periods(s) of deferral that are not initiated based on changes in the creditworthiness of the borrower; or

(vi) Is in default.

(3) Parameter A is the attachment point for the exposure, which represents the threshold at which credit losses will first be allocated to the exposure. Except as provided in § 628.42(i) for nth-to-default credit derivatives, parameter A equals the ratio of the current dollar amount of underlying exposures that are subordinated to the exposure of the System institution to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to the System institution's securitization exposure may be included in the calculation of parameter A to the extent that cash is present in the account. Parameter A is expressed as a decimal value between 0 and 1.

(4) Parameter D is the detachment point for the exposure, which represents the threshold at which credit losses of principal allocated to the exposure would result in a total loss of principal. Except as provided in § 628.42(i) for nth-to-default credit derivatives, parameter D equals parameter A plus the ratio of the current dollar amount of the securitization exposures that are *pari passu* with the exposure (that is, have equal seniority with respect to credit risk) to the current

dollar amount of the underlying exposures. Parameter *D* is expressed as a decimal value between 0 and 1.

(5) A supervisory calibration parameter, *p*, is equal to 0.5 for securitization exposures that are not resecuritization exposures and equal to 1.5 for resecuritization exposures.

(c) *Mechanics of the SSFA.* K_G and *W* are used to calculate K_A, the augmented value of K_G, which reflects the observed credit quality of the underlying pool of exposures. K_A is defined in paragraph (d) of this section. The values of parameters *A* and *D*, relative to K_A determine the risk weight assigned to a securitization exposure as described in paragraph (d) of this section. The risk weight assigned to a securitization exposure, or portion of a securitization exposure, as appropriate, is the larger of the risk weight determined in accordance with this paragraph (d) of this section and a risk weight of 20 percent.

(1) When the detachment point, parameter *D*, for a securitization exposure is less than or equal to K_A, the exposure must be assigned a risk weight of 1,250 percent.

(2) When the attachment point, parameter *A*, for a securitization exposure is greater than or equal to K_A, the System institution must calculate the risk weight in accordance with paragraph (d) of this section.

(3) When *A* is less than K_A and *D* is greater than K_A, the risk weight is a weighted average of 1,250 percent and 1,250 percent times K_{SSFA} calculated in accordance with paragraph (d) of this section. For the purpose of this weighted-average calculation:

(i) The weight assigned to 1,250 percent equals:

$$\frac{K_A - A}{D - A}$$

(ii) The weight assigned to 1,250 percent times K_{SSFA} equals:

$$\frac{D - K_A}{D - A}$$

(iii) The risk weight will be set equal to:

$$RW = \left[\left(\frac{K_A - A}{D - A}\right) \times 1{,}250 \text{ percent}\right] + \left[\left(\frac{D - K_A}{D - A}\right) \times 1{,}250 \text{ percent} \times K_{SSFA}\right]$$

(d) *SSFA equation.* (1) The System institution must define the following parameters:

$K_A = (1 - W) \times K_G + (0.5 \times W)$

(2) Then the System institution must calculate K_{SSFA} according to the following equation:

$$K_{SSFA} = \frac{e^{au} - e^{al}}{a(u - l)}$$

Where:

$$a = -\frac{1}{p \times K_A},$$

$$u = D - K_A,$$

$$l = \max(A - K_A, 0), \text{ and}$$

$$e = 2.71828, \text{ the base of the natural logarithm}$$

(3) The risk weight for the exposure (expressed as a percent) is equal to $K_{SSFA} \times 1{,}250$.

(e) *Gross-up approach*—(1) *Applicability*. A System institution may apply the gross-up approach set forth in this section instead of the SSFA to determine the risk weight of its securitization exposures, provided that it applies the gross-up approach to all of its securitization exposures, except as otherwise provided for certain securitization exposures in §§ 628.44 and 628.45.

(2) To use the gross-up approach, a System institution must calculate the following four inputs:

(i) Pro rata share A, which is the par value of the System institution's securitization exposure X as a percent of the par value of the tranche in which the securitization exposure resides Y:

$$A = \frac{X}{Y} \text{ expressed as a percent}$$

(ii) Enhanced amount B, which is the value of tranches that are more senior to the tranche in which the System institution's securitization resides;

(iii) Exposure amount (carrying value) C of the System institution's securitization exposure calculated under § 628.42(c); and

(iv) Risk weight (RW), which is the weighted-average risk weight of underlying exposures in the securitization pool as calculated under this subpart. For example, RW for an asset-backed security with underlying car loans would be 100 percent.

(3) *Credit equivalent amount (CEA)*. The CEA of a securitization exposure under this section equals the sum of:

(i) The exposure amount C of the System institution's securitization exposure; plus

(ii) The pro rata share A multiplied by the enhanced amount B, each calculated in accordance with paragraph (e)(2) of this section:

$$CEA = C + (A \times B)$$

(4) *Risk-weighted assets (RWA)*. To calculate RWA for a securitization exposure under the gross-up approach, a System institution must apply the RW calculated under paragraph (e)(2) of this section to the CEA calculated in paragraph (e)(3) of this section:

$$RWA = RW \times CEA$$

(f) *Limitations*. Notwithstanding any other provision of this section, a System institution must assign a risk weight of not less than 20 percent to a securitization exposure.

[81 FR 49779, July 28, 2016, as amended at 86 FR 54360, Oct. 1, 2021]

§ 628.44 Securitization exposures to which the SSFA and gross-up approach do not apply.

(a) *General requirement*. A System institution must assign a 1,250-percent risk weight to all securitization exposures to which the System institution does not apply the SSFA or the gross up approach under § 628.43.

(b) [Reserved]

§ 628.45 Recognition of credit risk mitigants for securitization exposures.

(a) *General.* (1) An originating System institution that has obtained a credit risk mitigant to hedge its exposure to a synthetic or traditional securitization that satisfies the operational criteria provided in § 628.41 may recognize the credit risk mitigant under § 628.36 or § 628.37, but only as provided in this section.

(2) An investing System institution that has obtained a credit risk mitigant to hedge a securitization exposure may recognize the credit risk mitigant under § 628.36 or § 628.37, but only as provided in this section.

(b) *Mismatches.* A System institution must make any applicable adjustment to the protection amount of an eligible guarantee or credit derivative as required in § 628.36(d), (e), and (f) for any hedged securitization exposure. In the context of a synthetic securitization, when an eligible guarantee or eligible credit derivative covers multiple hedged exposures that have different residual maturities, the System institution must use the longest residual maturity of any of the hedged exposures as the residual maturity of all hedged exposures.

§§ 628.46–628.50 [Reserved]

RISK-WEIGHTED ASSETS FOR EQUITY EXPOSURES

§ 628.51 Introduction and exposure measurement.

(a) *General.* (1) To calculate its risk-weighted asset amounts for equity exposures that are not equity exposures to an investment fund, a System institution must use the Simple Risk-Weight Approach (SRWA) provided in § 628.52. A System institution must use the look-through approaches provided in § 628.53 to calculate its risk-weighted asset amounts for equity exposures to investment funds. Equity investments (including preferred stock investments) in other System institutions, service corporations, and the Funding Corporation do not receive a risk weight, because they are deducted from capital in accordance with § 628.22.

(2)–(3) [Reserved]

(b) *Adjusted carrying value.* For purposes of §§ 628.51 through 628.53, the adjusted carrying value of an equity exposure is:

(1) For the on-balance sheet component of an equity exposure (other than an equity exposure that is classified as available-for-sale), the System institution's carrying value of the exposure;

(2) For the on-balance sheet component of an equity exposure that is classified as available-for-sale, the System institution's carrying value of the exposure less any net unrealized gains on the exposure that are reflected in such carrying value but excluded from the System institution's regulatory capital components;

(3) For the off-balance sheet component of an equity exposure that is not an equity commitment, the effective notional principal amount of the exposure, the size of which is equivalent to a hypothetical on-balance sheet position in the underlying equity instrument that would evidence the same change in fair value (measured in dollars) given a small change in the price of the underlying equity instrument, minus the adjusted carrying value of the on-balance sheet component of the exposure as calculated in paragraph (b)(1) of this section; and

(4) For a commitment to acquire an equity exposure (an equity commitment), the effective notional principal amount of the exposure is multiplied by the following conversion factors (CFs):

(i) Conditional equity commitments with an original maturity of 14 months or less receive a CF of 20 percent.

(ii) Conditional equity commitments with an original maturity of over 14 months receive a CF of 50 percent.

(iii) Unconditional equity commitments receive a CF of 100 percent.

§ 628.52 Simple risk-weight approach (SRWA).

(a) *General.* Under the SRWA, a System institution's total risk-weighted assets for equity exposures equals the sum of the risk-weighted asset amounts for each of the System institution's individual equity exposures (other than equity exposures to an investment fund) as determined under this section and the risk-weighted asset amounts for each of the System institution's individual equity exposures to an investment fund as determined under § 628.53.

(b) *SRWA computation for individual equity exposures*. A System institution must determine the risk-weighted asset amount for an individual equity exposure (other than an equity exposure to an investment fund) by multiplying the adjusted carrying value of the equity exposure or the effective portion and ineffective portion of a hedge pair (as defined in paragraph (c) of this section) by the lowest applicable risk weight in this paragraph.

(1) *Zero-percent (0%) risk weight equity exposures*. An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, an MDB, and any other entity whose credit exposures receive a 0-percent risk weight under § 628.32 may be assigned a 0-percent risk weight.

(2) *Twenty-percent (20%) risk weight equity exposures*. An equity exposure to a PSE or the Federal Agricultural Mortgage Corporation (Farmer Mac) must be assigned a 20-percent risk weight.

(3) *One hundred-percent (100%) risk weight equity exposures*. The equity exposures set forth in this paragraph (b)(3) must be assigned a 100-percent risk weight:

(i) [Reserved]

(ii) *Effective portion of hedge pairs*. The effective portion of a hedge pair.

(iii) *Non-significant equity exposures*. Equity exposures, excluding exposures to an investment firm that would meet the definition of a traditional securitization in § 628.2 were it not for the application of paragraph (8) of that definition and has greater than immaterial leverage, to the extent that aggregate adjusted carrying value of the exposures does not exceed 10 percent of the System institution's total capital.

(A) Equity exposures subject to paragraph (b)(3)(iii) of this section include:

(*1*) Equity exposures to unconsolidated unincorporated business entities and equity exposures held through consolidated unincorporated business entities, as authorized by subpart J of part 611 of this chapter; and

(*2*) [Reserved]

(*3*) Equity exposures to an unconsolidated rural business investment company and equity exposures held through a consolidated rural business investment company described in 7 U.S.C. 2009cc *et seq*.

(B) To compute the aggregate adjusted carrying value of a System institution's equity exposures for purposes of this section, the System institution may exclude equity exposures described in paragraphs (b)(1) and (2) and (b)(3)(ii) of this section, the equity exposure in a hedge pair with the smaller adjusted carrying value, and a proportion of each equity exposure to an investment fund equal to the proportion of the assets of the investment fund that are not equity exposures or that meet the criterion of paragraph (b)(3)(i) of this section. If a System institution does not know the actual holdings of the investment fund, the System institution may calculate the proportion of the assets of the fund that are not equity exposures based on the terms of the prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. If the sum of the investment limits for all exposure classes within the fund exceeds 100 percent, the System institution must assume for purposes of this section that the investment fund invests to the maximum extent possible in equity exposures.

(C) When determining which of a System institution's equity exposures qualify for a 100-percent risk weight under this paragraph, a System institution first must include equity exposures to unconsolidated rural business investment companies or held through consolidated rural business investment companies described in 7 U.S.C. 2009cc *et seq.;* then must include equity exposures to unconsolidated unincorporated business entities and equity exposures held through consolidated unincorporated business entities, as authorized by subpart J of part 611 of this chapter; then must include publicly traded equity exposures (including those held indirectly through investment funds); and then must include non-publicly traded equity exposures (including those held indirectly through investment funds).

(4) *Other equity exposures.* The risk weight for any equity exposure that does not qualify for a risk weight under paragraph (b)(1), (2), (3), or (7) of this section will be determined by the FCA.

(5)–(6) [Reserved]

(7) *Six hundred-percent (600%) risk weight equity exposures.* An equity exposure to an investment firm must be assigned a 600-percent risk weight, provided that the investment firm:

(i) Would meet the definition of a traditional securitization in § 628.2 were it not for the application of paragraph (8) of that definition; and

(ii) Has greater than immaterial leverage.

(c) *Hedge transactions*—(1) *Hedge pair.* A hedge pair is two equity exposures that form an effective hedge so long as each equity exposure is publicly traded or has a return that is primarily based on a publicly traded equity exposure.

(2) *Effective hedge.* Two equity exposures form an effective hedge if the exposures either have the same remaining maturity or each has a remaining maturity of at least 3 months; the hedge relationship is formally documented in a prospective manner (that is, before the System institution acquires at least one of the equity exposures); the documentation specifies the measure of effectiveness (E) the System institution will use for the hedge relationship throughout the life of the transaction; and the hedge relationship has an E greater than or equal to 0.8. A System institution must measure E at least quarterly and must use one of three alternative measures of E as set forth in this paragraph (c):

(i) Under the dollar-offset method of measuring effectiveness, the System institution must determine the ratio of value change (RVC). The RVC is the ratio of the cumulative sum of the changes in value of one equity exposure to the cumulative sum of the changes in the value of the other equity exposure. If RVC is positive, the hedge is not effective and E equals 0. If RVC is negative and greater than or equal to −1 (that is, less than 0 and greater than or equal to −1), then E equals the absolute value of RVC. If RVC is negative and less than −1, then E equals 2 plus RVC.

(ii) Under the variability-reduction method of measuring effectiveness:

$$E = 1 - \frac{\sum_{t=1}^{T}\left(X_t - X_{t-1}\right)^2}{\sum_{t=1}^{T}\left(A_t - A_{t-1}\right)^2}$$

Where:

$X_t = A_t - B_t$;

A_t = the value at time t of one exposure in a hedge pair; and

Bt = the value at time t of the other exposure in a hedge pair.

(iii) Under the regression method of measuring effectiveness, E equals the coefficient of determination of a regression in which the change in value of one exposure in a hedge pair is the dependent variable and the change in value of the other exposure in a hedge pair is the independent variable. However, if the estimated regression coefficient is positive, then E equals 0.

(3) The effective portion of a hedge pair is E multiplied by the greater of the adjusted carrying values of the equity exposures forming a hedge pair.

(4) The ineffective portion of a hedge pair is (1–E) multiplied by the greater of the adjusted carrying values of the equity exposures forming a hedge pair.

[81 FR 49779, July 28, 2016, as amended at 86 FR 54360, Oct. 1, 2021]

§ 628.53 Equity exposures to investment funds.

(a) *Available approaches.* (1) A System institution must determine the risk-weighted asset amount of an equity exposure to an investment fund under the full look-through approach described in paragraph (b) of this section, the simple modified look-through approach described in paragraph (c) of this section, or the alterative modified look-through approach described paragraph (d) of this section, provided, however, that the minimum risk weight that may be assigned to an equity exposure under this section is 20 percent.

(2) [Reserved]

(3) If an equity exposure to an investment fund is part of a hedge pair and the System institution does not use the full look-through approach, the System institution must use the ineffective portion of the hedge pair as determined under §628.52(c) as the adjusted carrying value for the equity exposure to the investment fund. The risk-weighted asset amount of the effective portion of the hedge pair is equal to its adjusted carrying value.

(b) *Full look-through approach.* A System institution that is able to calculate a risk-weighted asset amount for its proportional ownership share of each exposure held by the investment fund (as calculated under this subpart as if the proportional ownership share of the adjusted carrying value of each exposure were held directly by the System institution) may set the risk-weighted asset amount of the System institution's exposure to the fund equal to the product of:

(1) The aggregate risk-weighted asset amounts of the exposures held by the fund as if they were held directly by the System institution; and

(2) The System institution's proportional ownership share of the fund.

(c) *Simple modified look-through approach.* Under the simple modified look-through approach, the risk-weighted asset amount for a System institution's equity exposure to an investment fund equals the adjusted carrying value of the equity exposure multiplied by the highest risk weight that applies to any exposure the fund is permitted to hold under the prospectus, partnership agreement, or similar agreement that defines the fund's permissible investments (excluding derivative contracts that are used for hedging rather than speculative purposes and that do not constitute a material portion of the fund's exposures).

(d) *Alternative modified look-through approach.* Under the alternative modified look-through approach, a System institution may assign the adjusted carrying value of an equity exposure to an investment fund on a pro rata basis to different risk weight categories under this subpart based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. The risk-weighted asset amount for the System institution's equity exposure to the investment fund equals the sum of each portion of the adjusted carrying value assigned to an exposure type multiplied by the applicable risk weight under this subpart. If the sum of the investment limits for all exposure types within the fund exceeds 100 percent, the System institution must assume that the fund invests to the maximum extent permitted under its investment limits in the exposure type with the highest applicable risk weight under this subpart and continues to make investments in order of the exposure type with the next highest applicable risk weight under this subpart until the maximum total investment level is reached. If more than one exposure type applies to an exposure, the System institution must use the highest applicable risk weight. A System institution may exclude derivative contracts held by the fund that are used for hedging rather than for speculative purposes and do not constitute a material portion of the fund's exposures.

§§ 628.54–628.60 [Reserved]

DISCLOSURES

§ 628.61 Purpose and scope.

Sections 628.62 and 628.63 establish public disclosure requirements for each System bank related to the capital requirements contained in this part.

§ 628.62 Disclosure requirements.

(a) A System bank must provide timely public disclosures each calendar quarter of the information in the applicable tables in §628.63. The System bank must make these disclosures in its quarterly and annual reports to shareholders required in part 620 of this chapter. The System bank need not make these disclosures in the format set out in the applicable tables or all in the same location in a report, as long as a summary table specifically indicating the location(s) of all such disclosures is provided. If a significant change occurs, such that the most recent reported amounts are no longer reflective of the System bank's capital adequacy and risk profile, then a brief discussion of this change and its likely impact must be disclosed as soon as practicable thereafter. This disclosure requirement may be satisfied by providing a notice under § 620.15 of this chapter. Qualitative disclosures that typically do not change each quarter (for example, a general summary of the System bank's risk management objectives and policies, reporting system, and definitions) may be disclosed annually after the end of the 4th calendar quarter, provided that any significant changes are disclosed in the interim.

(b) A System bank must have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over financial reporting, including the disclosures required by this subpart, and must ensure that appropriate review of the disclosures takes place. The chief executive officer, the chief financial officer, and a designated board member must attest that the disclosures meet the requirements of this subpart.

(c) If a System bank concludes that disclosure of specific proprietary or confidential commercial or financial information that it would otherwise be required to disclose under this section would compromise its position, then the System bank is not required to disclose that specific information pursuant to this section, but must disclose more general information about the subject matter of the requirement, together with the fact that, and the reason why, the specific items of information have not been disclosed.

§ 628.63 Disclosures.

(a) Except as provided in § 628.62, a System bank must make the disclosures described in Tables 1 through 10 of this section. The System bank must make these disclosures publicly available for each of the last 3 years (that is, 12 quarters) or such shorter period beginning on January 1, 2017.

(b) A System bank must publicly disclose each quarter the following:

(1) CET1 capital, tier 1 capital, and total capital ratios, including all the regulatory capital elements and all the regulatory adjustments and deductions needed to calculate the numerator of such ratios;

(2) Total risk-weighted assets, including the different regulatory adjustments and deductions needed to calculate total risk-weighted assets;

(3) [Reserved]

(4) A reconciliation of regulatory capital elements using month-end balances as they relate to its balance sheet in any applicable audited consolidated financial statements. The reconciliation must include a statement that compliance with the regulatory capital requirements outlined in subpart B of this part is determined using average daily balances for the most recent 3 months.

TABLE 1 TO § 628.63—SCOPE OF APPLICATION

Qualitative Disclosures	(a) The name of the top corporate entity in the group to which this subpart applies.[1] (b) A brief description of the differences in the basis for consolidating entities[2] for accounting and regulatory purposes, with a description of those entities: (1) That are fully consolidated; (2) That are deconsolidated and deducted from total capital;

TABLE 1 TO § 628.63—SCOPE OF APPLICATION—Continued

	(3) For which the total capital requirement is deducted; and (4) That are neither consolidated nor deducted (for example, where the investment in the entity is assigned a risk weight in accordance with this subpart). (c) Any restrictions, or other major impediments, on transfer of funds or total capital within the group.
Quantitative Disclosures	(d) [Reserved] (e) The aggregate amount by which actual total capital is less than the minimum total capital requirement in all subsidiaries, with total capital requirements and the name(s) of the subsidiaries with such deficiencies.

[1] The System bank is the top corporate entity.
[2] Entities include any subsidiaries authorized by the FCA, including operating subsidiaries, service corporations, and unincorporated business entities.

TABLE 2 TO § 628.63—CAPITAL STRUCTURE

Qualitative Disclosures	(a) Summary information on the terms and conditions of the main features of all regulatory capital instruments.
Quantitative Disclosures	(b) The amount of common equity tier 1 capital, with separate disclosure of: (1) Common cooperative equities a. Statutory minimum purchased borrower stock; b. Other required member purchased stock; c. Allocated equities (stock or surplus): 1. Qualified allocated equities subject to retirement; 2. Nonqualified allocated equities subject to retirement; 3. Nonqualified allocated equities not subject to retirement; (2) Unallocated retained earnings (URE); (3) Paid-in capital; and (4) Regulatory adjustments and deductions made to common equity tier 1 capital. (c) The amount of tier 1 capital, with separate disclosure of: (1) Additional tier 1 capital elements; and (2) Regulatory adjustments and deductions made to tier 1 capital. (d) The amount of total capital, with separate disclosure of: (1) Common cooperative equities not included in common equity tier 1 capital; (2) Tier 2 capital elements, including tier 2 capital instruments; and (3) Regulatory adjustments and deductions made to total capital, including deductions of third-party capital under § 628.23.

TABLE 3 TO § 628.63—CAPITAL ADEQUACY

Qualitative disclosures	(a) A summary discussion of the System bank's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b) Risk-weighted assets for: (1) Exposures to sovereign entities; (2) Exposures to certain supranational entities and MDBs; (3) Exposures to GSEs; (4) Exposures to depository institutions, foreign banks, and credit unions, including OFI exposures that are risk weighted as exposures to U.S. depository institutions and credit unions; (5) Exposures to PSEs; (6) Corporate exposures, including borrower loans (including agricultural and consumer loans) and OFI exposures that are not risk weighted as exposures to U.S. depository institutions and credit unions; (7) Residential mortgage exposures; (8) [Reserved] (9) Past due and nonaccrual exposures; (10) Exposures to other assets; (11) Cleared transactions; (12) Unsettled transactions; (13) Securitization exposures; and (14) Equity exposures. (c) [Reserved] (d) Common equity tier 1, tier 1 and total risk-based capital ratios for the System bank. (e) Total standardized risk-weighted assets.

TABLE 4 TO § 628.63—CAPITAL BUFFERS

Quantitative Disclosures	(a) At least quarterly, the System bank must calculate and publicly disclose the capital conservation buffer and leverage buffer as described under § 628.11. (b) At least quarterly, the System bank must calculate and publicly disclose the eligible retained income of the System bank, as described under § 628.11. (c) At least quarterly, the System bank must calculate and publicly disclose any limitations it has on distributions and discretionary bonus payments resulting from the buffer framework described under § 628.11, including the maximum payout amount and/or maximum leverage payout amount for the quarter.

(c) *General qualitative disclosure requirement*. For each separate risk area described in tables 5 through 10 of this section, the System bank must describe its risk management objectives and policies, including: Strategies and processes; the structure and organization of the relevant risk management function; the scope and nature of risk reporting and/or measurement systems;

policies for hedging and/or mitigating risk and strategies and processes for monitoring the continuing effectiveness of hedges/mitigants.

TABLE 5 TO §628.63 [1]—CREDIT RISK: GENERAL DISCLOSURES

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to credit risk (excluding counterparty credit risk disclosed in accordance with Table 6 of this section), including the: (1) Policy for determining past due or delinquency status; (2) Policy for placing loans in nonaccrual status; (3) Policy for returning loans to accrual status; (4) Definition of and policy for identifying impaired loans (for financial accounting purposes); (5) Description of the methodology that the System bank uses to estimate its allowance for loan losses, including statistical methods used where applicable; (6) Policy for charging-off uncollectible amounts; and (7) Discussion of the System bank's credit risk management policy.
Quantitative Disclosures	(b) Total credit risk exposures and average credit risk exposures, after accounting offsets in accordance with GAAP, without taking into account the effects of credit risk mitigation techniques (for example, collateral and netting not permitted under GAAP), over the period categorized by major types of credit exposure. For example, System banks could use categories similar to that used for financial statement purposes. Such categories might include, for instance: (1) Loans, off-balance sheet commitments, and other non-derivative off-balance sheet exposures; (2) Debt securities; and (3) OTC derivatives.[2]
	(c) Geographic distribution of exposures, categorized in significant areas by major types of credit exposure.[3]
	(d) Industry or counterparty type distribution of exposures, categorized by major types of credit exposure.
	(e) By major industry or counterparty type: (1) Amount of impaired loans for which there was a related allowance under GAAP; (2) Amount of impaired loans for which there was no related allowance under GAAP; (3) Amount of loans past due 90 days and in nonaccrual status; (4) Amount of loans past due 90 days and still accruing;[4] (5) The balance in the allowance for loan losses at the end of each period according to GAAP; and (6) Charge-offs during the period.

TABLE 5 TO § 628.63 [1]—CREDIT RISK: GENERAL DISCLOSURES—Continued

	(f) Amount of impaired loans and, if available, the amount of past due loans categorized by significant geographic areas including, if practical, the amounts of allowances related to each geographical area,[5] further categorized as required by GAAP. (g) Reconciliation of changes in allowances for loan losses.[6] (h) Remaining contractual maturity delineation (for example, one year or less) of the whole portfolio, categorized by credit exposure.

[1] This Table 5 does not cover equity exposures, which should be reported in Table 9 of this section.
[2] *See*, for example, ASC Topic 815–10 and 210, as they may be amended from time to time.
[3] A System bank can satisfy this requirement by describing the geographic distribution of its loan portfolio by State or other significant geographic division, if any.
[4] A System bank is encouraged also to provide an analysis of the aging of past-due loans.
[5] The portion of the general allowance that is not allocated to a geographical area should be disclosed separately.
[6] The reconciliation should include the following: A description of the allowance; the opening balance of the allowance; charge-offs taken against the allowance during the period; amounts provided (or reversed) for estimated probable loan losses during the period; any other adjustments (for example, exchange rate differences, business combinations, acquisitions and disposals of subsidiaries), including transfers between allowances; and the closing balance of the allowance. Charge-offs and recoveries that have been recorded directly to the income statement should be disclosed separately.

TABLE 6 TO § 628.63—GENERAL DISCLOSURE FOR COUNTERPARTY CREDIT RISK-RELATED EXPOSURES

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to OTC derivatives, eligible margin loans, and repo-style transactions, including a discussion of: (1) The methodology used to assign credit limits for counterparty credit exposures; Policies for securing collateral, valuing and managing collateral, and establishing credit reserves; (3) The primary types of collateral taken; and (4) The impact of the amount of collateral the System bank would have to provide given deterioration in the System bank's own creditworthiness.
Quantitative Disclosures	(b) Gross positive fair value of contracts, collateral held (including type, for example, cash, government securities), and net unsecured credit exposure.[1] A System bank also must disclose the notional value of credit derivative hedges purchased for counterparty credit risk protection and the distribution of current credit exposure by exposure type.[2] (c) Notional amount of purchased credit derivatives used for the System bank's own credit portfolio.

[1] Net unsecured credit exposure is the credit exposure after considering both the benefits from legally enforceable netting agreements and collateral arrangements without taking into account haircuts for price volatility, liquidity, etc.
[2] This may include interest rate derivative contracts, foreign exchange derivative contracts, equity derivative contracts, credit derivatives, commodity or other derivative contracts, repo-style transactions, and eligible margin loans.

TABLE 7 TO § 628.63—CREDIT RISK MITIGATION [1 2]

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to credit risk mitigation, including: (1) Policies and processes for collateral valuation and management;

TABLE 7 TO § 628.63—CREDIT RISK MITIGATION[1] [2]—Continued

	(2) A description of the main types of collateral taken by the System bank; (3) The main types of guarantors/credit derivative counterparties and their creditworthiness; and (4) Information about (market or credit) risk concentrations with respect to credit risk mitigation.
Quantitative Disclosures	(b) For each separately disclosed credit risk portfolio, the total exposure that is covered by eligible financial collateral, and after the application of haircuts. (c) For each separately disclosed portfolio, the total exposure that is covered by guarantees/credit derivatives and the risk-weighted asset amount associated with that exposure.

[1] At a minimum, a System bank must provide the disclosures in this Table 7 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this subpart. Where relevant, System banks are encouraged to give further information about mitigants that have not been recognized for that purpose.

[2] Credit derivatives that are treated, for the purposes of this subpart, as synthetic securitization exposures should be excluded from the credit risk mitigation disclosures and included within those relating to securitization (Table 8 of this section).

TABLE 8 TO § 628.63—SECURITIZATION [1]

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of: (1) The System bank's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the System bank to other entities and including the type of risks assumed and retained with resecuritization activity; [2] (2) The nature of the risks (*e.g.* liquidity risk) inherent in the securitized assets; (3) The roles played by the System bank in the securitization process [3] and an indication of the extent of the System bank's involvement in each of them; (4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures; (5) The System bank's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the System bank follows for its securitization exposures including the type of securitization exposure to which each approach applies. (b) [Reserved] (c) Summary of the System bank's accounting policies for securitization activities, including: (1) Whether the transactions are treated as sales or financings; (2) Recognition of gain-on-sale;

TABLE 8 TO § 628.63—SECURITIZATION [1]—Continued

	(3) Methods and key assumptions applied in valuing retained or purchased interests; (4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes; (5) Treatment of synthetic securitizations; (6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and (7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the System bank to provide financial support for securitized assets. (d) An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e) The total outstanding exposures securitized by the System bank in securitizations that meet the operational criteria provided in § 628.41 (categorized into traditional and synthetic securitizations), by exposure type.[4] (f) For exposures securitized by the System bank in securitizations that meet the operational criteria in § 628.41: (1) Amount of securitized assets that are impaired/past due categorized by exposure type; [5] and (2) Losses recognized by the System bank during the current period categorized by exposure type.[6] (g) The total amount of outstanding exposures intended to be securitized categorized by exposure type. (h) Aggregate amount of: (1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and (2) Off-balance sheet securitization exposures categorized by exposure type. (i) (1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (*e.g.,* SSFA); and (2) Exposures that have been deducted entirely from tier 1 capital, CEIOs deducted from total capital (as described in § 628.42(a)(1)), and other exposures deducted from total capital should be disclosed separately by exposure type. (j) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type.

TABLE 8 TO § 628.63—SECURITIZATION [1]—Continued

	(k) Aggregate amount of resecuritization exposures retained or purchased categorized according to: (1) Exposures to which credit risk mitigation is applied and those not applied; and (2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

[1] A System bank is not authorized to perform every role in a securitization, and nothing in these capital rules authorizes a System bank to engage in activities relating to securitizations that are not otherwise authorized.

[2] The System bank should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the System bank is active.

[3] Roles in securitizations generally could include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider. As noted in footnote 1 of this table, however, a System bank is not authorized to perform all of these roles.

[4] "Exposures securitized" include underlying exposures originated by the System bank, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the System bank's balance sheet and underlying exposures acquired by the System bank from third-party entities) in which the originating System bank (as an originating System institution) does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. System banks are required to disclose exposures regardless of whether there is a capital charge under this part.

[5] Include credit-related other than temporary impairment (OTTI).

[6] For example, charge-offs/allowances (if the assets remain on the System bank's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the System bank with respect to securitized assets.

TABLE 9 TO § 628.63—EQUITIES

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to equity risk: (1) Differentiation between holdings on which capital gains are expected and those taken under other objectives including for relationship and strategic reasons; and (2) Discussion of important policies covering the valuation of and accounting for equity. This includes the accounting techniques and valuation methodologies used, including key assumptions and practices affecting valuation as well as significant changes in these practices.
Quantitative Disclosures	(b) Value disclosed on the balance sheet of investments, as well as the fair value of those investments; for securities that are publicly traded, a comparison to publicly quoted share values where the share price is materially different from fair value. (c) The types and nature of investments, including the amount that is: (1) Publicly traded; and (2) Non-publicly traded. (d) The cumulative realized gains (losses) arising from sales and liquidations in the reporting period. (e) (1) Total unrealized gains (losses).[1] (2) Total latent revaluation gains (losses).[2] (3) Any amounts of the above included in tier 1 or tier 2 capital. (f) [Reserved]

[1] Unrealized gains (losses) recognized on the balance sheet but not through earnings.

[2] Unrealized gains (losses) not recognized either on the balance sheet or through earnings.

TABLE 10 TO § 628.63—INTEREST RATE RISK FOR NON-TRADING ACTIVITIES

Qualitative disclosures	(a) The general qualitative disclosure requirement, including the nature of interest rate risk for non-trading activities and key assumptions, including assumptions regarding loan prepayments and behavior of non-maturity deposits, and frequency of measurement of interest rate risk for non-trading activities.
Quantitative disclosures	(b) The increase (decline) in earnings or economic value (or market value of equity or other relevant measure used by management) for upward and downward rate shocks according to management's method for measuring interest rate risk for non-trading activities, categorized by currency (as appropriate).

[81 FR 49779, July 28, 2016, as amended at 86 FR 54360, Oct. 1, 2021]

§§ 628.64–628.99 [Reserved]

Subparts E–F [Reserved]

Subpart G—Transition Provisions

§ 628.300 Transitions.

(a) *Capital conservation buffer.* (1) [Reserved]

(2) Beginning January 1, 2017 through December 31, 2019 a System institution's maximum capital conservation buffer payout ratio must be determined as set forth in Table 1 to § 628.300.

TABLE 1 TO § 628.300

Transition Period	Capital conservation buffer	Maximum payout ratio (as a percentage of eligible retained income)
Calendar year 2017	>0.625 percent	No limitation.
	≤0.625 percent, and >0.469 percent	60 percent.
	≤0.469 percent, and >0.313 percent	40 percent.
	≤0.313 percent, and >0.156 percent	20 percent.
	≤0.156 percent	0 percent.
Calendar year 2018	>1.25 percent	No limitation.
	≤1.25 percent, and >0.938 percent	60 percent.
	≤0.938 percent, and >0.625 percent	40 percent.
	≤0.625 percent, and >0.313 percent	20 percent.
	≤0.313 percent	0 percent.
Calendar year 2019	>1.875 percent	No limitation.
	≤1.875 percent, and >1.406 percent	60 percent.
	≤1.406 percent, and >0.938 percent	40 percent.
	≤0.938 percent, and >0.469 percent	20 percent.
	≤0.469 percent	0 percent.

(b)–(e) [Reserved]

§ 628.301 Initial compliance and reporting requirements.

(a) A System institution that fails to satisfy one or more of its minimum applicable CET1, tier 1, or total risk-based capital ratios or its tier 1 leverage ratio at the end of the quarter in which these regulations become effective shall report its initial noncompliance to the FCA within 20 days following such quarterend and shall also submit a capital restoration plan for achieving and maintaining the standards, demonstrating appropriate annual progress toward meeting the goal, to the FCA within 60 days following such quarterend. If the capital restoration plan is not approved by the FCA, the FCA will inform the institution of the reasons for disapproval, and the institution shall submit a revised capital restoration plan within the time specified by the FCA.

(b) *Approval of compliance plans.* In determining whether to approve a capital restoration plan submitted under this section, the FCA shall consider the following factors, as applicable:

(1) The conditions or circumstances leading to the institution's falling below minimum levels, the exigency of those circumstances, and whether or not they were caused by actions of the institution or were beyond the institution's control;

(2) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated System institutions;

(3) The institution's capital, adverse assets (including nonaccrual and nonperforming loans), ALL, and other ratios compared to the ratios of its peers or industry norms;

(4) How far an institution's ratios are below the minimum requirements;

(5) The estimated rate at which the institution can reasonably be expected to generate additional earnings;

(6) The effect of the business changes required to increase capital;

(7) The institution's previous compliance practices, as appropriate;

(8) The views of the institution's directors and senior management regarding the plan; and

(9) Any other facts or circumstances that the FCA deems relevant.

(c) An institution shall be deemed to be in compliance with the regulatory capital requirements of this subpart if it is in compliance with a capital restoration plan that is approved by the FCA within 180 days following the end of the quarter in which these regulations become effective.

PART 630—DISCLOSURE TO INVESTORS IN SYSTEMWIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

Subpart A—General

Sec.
630.1 Purpose.
630.2 Definitions.
630.3 Publishing and filing the report to investors.
630.4 Responsibilities for preparing the report to investors.
630.5 Prohibition against incomplete, inaccurate, or misleading disclosure.
630.6 Funding Corporation committees.

Subpart B—Annual Report to Investors

630.20 Contents of the annual report to investors.

Subpart C—Quarterly Reports to Investors

630.40 Contents of the quarterly report to investors.

APPENDIX A TO PART 630—SUPPLEMENTAL INFORMATION DISCLOSURE GUIDELINES

AUTHORITY: Secs. 4.2, 4.9, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2153, 2160, 2243, 2252, 2254); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

SOURCE: 59 FR 46742, Sept. 12, 1994, unless otherwise noted.

Subpart A—General

§ 630.1 Purpose.

This part sets forth the requirements for preparation and publication by the Farm Credit System (FCS or System) of annual and quarterly reports to investors and potential investors in Systemwide and consolidated bank debt obligations of the System and to other users of the reports in the general public.

§ 630.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Bank* means any bank chartered under the Farm Credit Act of 1971, as amended (Act).

(b) *Combined financial statements* means financial statements prepared