SUBCHAPTER C—ENTERPRISES

PART 1240—CAPITAL ADEQUACY OF ENTERPRISES

AUTHORITY: 12 U.S.C. 4511, 4513, 4513b, 4514, 4515, 4517, 4526, 4611–4612, 4631–36.

SOURCE: 85 FR 82198, Dec. 17, 2020, unless otherwise noted.

Subpart A—General Provisions

§ 1240.1 Purpose, applicability, reservations of authority, reporting, and timing.

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

(b) *Authorities*—(1) *Limitations of authority.* Nothing in this part shall be read to limit the authority of FHFA 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 the Safety and Soundness Act, and including action under sections 1313(a)(2), 1365–1367, 1371–1376 of the Safety and Soundness Act (12 U.S.C. 4513(a)(2), 4615–4617, and 4631–4636).

(2) *Permissible activities.* Nothing in this part may be construed to authorize, permit, or require an Enterprise to engage in any activity not authorized by its authorizing statute or that would otherwise be inconsistent with its authorizing statute or the Safety and Soundness Act.

(c) *Applicability*—(1) *Covered regulated entities.* This part applies on a consolidated basis to each Enterprise.

(2) *Capital requirements and overall capital adequacy standards.* Subject to § 1240.4, each Enterprise must calculate its capital requirements and meet the overall capital adequacy standards in subpart B of this part.

(3) *Regulatory capital.* Subject to § 1240.4, each Enterprise must calculate its regulatory capital in accordance with subpart C of this part.

(4) *Risk-weighted assets.* (i) Subject to § 1240.4, each Enterprise must use the methodologies in subparts D and F of this part to calculate standardized total risk-weighted assets.

(ii) Subject to § 1240.4, each Enterprise must use the methodologies in subparts E and F of this part to calculate advanced approaches total risk-weighted assets.

(d) *Reservation of authority regarding capital.* Subject to applicable provisions of the Safety and Soundness Act—

(1) *Additional capital in the aggregate.* FHFA may require an Enterprise to hold an amount of regulatory capital greater than otherwise required under this part if FHFA determines that the Enterprise's capital requirements under this part are not commensurate with the Enterprise's credit, market, operational, or other risks.

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

(ii) Notwithstanding the criteria for regulatory capital instruments set forth in subpart C of this part, FHFA may find that a capital element may be included in an Enterprise's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital on a permanent or temporary basis consistent with the loss absorption capacity of the element and in accordance with § 1240.20(e).

(3) *Risk-weighted asset amounts.* If FHFA determines that the risk-weighted asset amount calculated under this part by the Enterprise for one or more exposures is not commensurate with the risks associated with those exposures, FHFA may require the Enterprise 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 FHFA determines that the adjusted total asset amount calculated by an Enterprise is inappropriate for the exposure(s) or the circumstances of the Enterprise, FHFA may require the Enterprise to adjust this exposure amount in the numerator and the denominator for purposes of the leverage ratio calculations.

(5) *Consolidation of certain exposures.* FHFA may determine that the risk-

based capital treatment for an exposure or the treatment provided to an entity that is not consolidated on the Enterprise's balance sheet is not commensurate with the risk of the exposure and the relationship of the Enterprise to the entity. Upon making this determination, FHFA may require the Enterprise to treat the exposure or entity as if it were consolidated on the balance sheet of the Enterprise for purposes of determining the Enterprise's risk-based capital requirements and calculating the Enterprise's risk-based capital ratios accordingly. FHFA will look to the substance of, and risk associated with, the transaction, as well as other relevant factors FHFA deems appropriate in determining whether to require such treatment.

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

(e) *Corrective action and enforcement.* (1) FHFA may enforce this part pursuant to sections 1371, 1372, and 1376 of the Safety and Soundness Act (12 U.S.C. 4631, 4632, 4636).

(2) FHFA also may enforce the total capital requirement established under §1240.10(a) and the core capital requirement established under §1240.10(e) pursuant to section 1364 of the Safety and Soundness Act (12 U.S.C. 4614).

(3) This part is also a prudential standard adopted under section 1313B of the Safety and Soundness Act (12 U.S.C. 4513b), excluding §1240.11, which is a prudential standard only for purposes of §1240.4. Section 1313B of the Safety and Soundness Act (12 U.S.C. 4513b) authorizes the Director to require that an Enterprise submit a corrective plan under §1236.4 specifying the actions the Enterprise will take to correct the deficiency if the Director determines that an Enterprise is not in compliance with this part.

(f) *Reporting procedure and timing*—(1) *Capital Reports*—(i) *In general.* Each Enterprise shall file a capital report with FHFA every calendar quarter providing the information and data required by FHFA. The specifics of required information and data, and the report format, will be separately provided to the Enterprise by FHFA.

(ii) *Required content.* The capital report shall include, as of the end of the last calendar quarter—

(A) The common equity tier 1 capital, core capital, tier 1 capital, total capital, and adjusted total capital of the Enterprise;

(B) The stress capital buffer, the capital conservation buffer amount (if prescribed by FHFA), the stability capital buffer, and the maximum payout ratio of the Enterprise;

(C) The adjusted total assets of the Enterprise; and

(D) The standardized total risk-weighted assets of the Enterprise.

(2) *Timing.* The Enterprise must submit the capital report not later than 60 days after the last day of the calendar quarter or at such other time as the Director requires.

(3) *Approval.* The capital report must be approved by the Chief Risk Officer and the Chief Financial Officer of an Enterprise prior to submission to FHFA.

(4) *Adjustment.* In the event an Enterprise makes an adjustment to its financial statements for a quarter or a date for which information was provided pursuant to this paragraph (f), which would cause an adjustment to a capital report, an Enterprise must file with the Director an amended capital report not later than 15 days after the date of such adjustment.

(5) *Public disclosure.* An Enterprise must disclose in an appropriate publicly available filing or other document each of the information reported under paragraph (f)(1)(ii) of this section.

§ 1240.2 Definitions.

As used in this part:

Acquired CRT exposure means, with respect to an Enterprise:

(1) Any exposure that arises from a credit risk transfer of the Enterprise and has been acquired by the Enterprise since the issuance or entry into the credit risk transfer by the Enterprise; or

(2) Any exposure that arises from a credit risk transfer of the other Enterprise.

Additional tier 1 capital is defined in § 1240.20(c).

Adjusted allowances for credit losses (AACL) means valuation allowances that have been established through a charge against earnings or retained earnings for expected credit losses on financial assets measured at amortized cost and a lessor's net investment in leases that have been established to reduce the amortized cost basis of the assets to amounts expected to be collected as determined in accordance with GAAP. For purposes of this part, adjusted allowances for credit losses include allowances for expected credit losses on off-balance sheet credit exposures not accounted for as insurance as determined in accordance with GAAP. Adjusted allowances for credit losses allowances created that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities.

Adjusted total assets means the sum of the items described in paragraphs (1) though (9) of this definition, as adjusted pursuant to paragraph (9) of this definition for a clearing member Enterprise:

(1) The balance sheet carrying value of all of the Enterprise's on-balance sheet assets, plus the value of securities sold under a repurchase transaction or a securities lending transaction that qualifies for sales treatment under Generally Accepted Accounting Principles (GAAP), less amounts deducted from tier 1 capital under § 1240.22(a), (c), and (d), and less the value of securities received in security-for-security repo-style transactions, where the Enterprise acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received, *less* the fair value of any derivative contracts;

(2)(i) The potential future exposure (PFE) for each netting set to which the Enterprise is a counterparty (including cleared transactions except as provided in paragraph (9) of this definition and, at the discretion of the Enterprise, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under GAAP), as determined under § 1240.36(c)(7), in which the term C in § 1240.36(c)(7)(i) equals zero, and, for any counterparty that is not a commercial end-user, multiplied by 1.4. For purposes of this paragraph, an Enterprise may set the value of the term C in § 1240.36(c)(7)(i) equal to the amount of collateral posted by a clearing member client of the Enterprise in connection with the client-facing derivative transactions within the netting set; and

(ii) An Enterprise may choose to exclude the PFE of all credit derivatives or other similar instruments through which it provides credit protection when calculating the PFE under § 1240.36(c), provided that it does so consistently over time for the calculation of the PFE for all such instruments;

(3)(i)(A) The replacement cost of each derivative contract or single product netting set of derivative contracts to which the Enterprise is a counterparty, calculated according to the following formula, and, for any counterparty that is not a commercial end-user, multiplied by 1.4:

$$\textit{Replacement Cost} = \max\{V - CVM_r + CVM_p; 0\}$$

Where:

(*1*) V equals the fair value for each derivative contract or each single-product netting set of derivative contracts (including a cleared transaction except as provided in paragraph (9) of this definition and, at the discretion of the Enterprise, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under GAAP);

(*2*) CVM_r equals the amount of cash collateral received from a counterparty to a derivative contract and that satisfies the conditions in paragraphs (3)(ii) through (vi) of this definition, or, in the case of a client-facing derivative transaction, the amount of collateral received from the clearing member client; and

(*3*) CVM_p equals the amount of cash collateral that is posted to a counterparty to a derivative contract and that has not offset the fair value of the derivative contract and that satisfies the conditions in paragraphs (3)(ii) through (vi) of this definition, or, in the case of a client-facing derivative transaction, the amount of collateral posted to the clearing member client;

(B) Notwithstanding paragraph (3)(i)(A) of this definition, where multiple netting sets are subject to a single variation margin agreement, an Enterprise must apply the formula for replacement cost provided in §1240.36(c)(10)(i), in which the term C_{MA} may only include cash collateral that satisfies the conditions in paragraphs (3)(ii) through (vi) of this definition; and

(C) For purposes of paragraph (3)(i)(A) of this definition, an Enterprise must treat a derivative contract that references an index as if it were multiple derivative contracts each referencing one component of the index if the Enterprise elected to treat the derivative contract as multiple derivative contracts under §1240.36(c)(5)(vi);

(ii) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated (by law, regulation, or an agreement with the counterparty);

(iii) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(iv) The variation margin transferred under the derivative contract or the governing rules of the CCP or QCCP for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(v) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph, currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(vi) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction, and the qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

(4) The effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the derivative contract) of a credit derivative, or other similar instrument, through which the Enterprise provides credit protection, provided that:

(i) The Enterprise may reduce the effective notional principal amount of the credit derivative by the amount of any reduction in the mark-to-fair value of the credit derivative if the reduction is recognized in common equity tier 1 capital;

(ii) The Enterprise may reduce the effective notional principal amount of the credit derivative by the effective notional principal amount of a purchased credit derivative or other similar instrument, provided that the remaining maturity of the purchased credit derivative is equal to or greater than the remaining maturity of the credit derivative through which the Enterprise provides credit protection and that:

(A) With respect to a credit derivative that references a single exposure, the reference exposure of the purchased credit derivative is to the same legal entity and ranks *pari passu* with, or is junior to, the reference exposure of the credit derivative through which the Enterprise provides credit protection; or

(B) With respect to a credit derivative that references multiple exposures, the reference exposures of the purchased credit derivative are to the same legal entities and rank *pari passu* with the reference exposures of the credit derivative through which the Enterprise provides credit protection, and the level of seniority of the purchased credit derivative ranks *pari passu* to the level of seniority of the credit derivative through which the Enterprise provides credit protection;

(C) Where an Enterprise has reduced the effective notional amount of a credit derivative through which the Enterprise provides credit protection in accordance with paragraph (4)(i) of this definition, the Enterprise must also reduce the effective notional principal amount of a purchased credit derivative used to offset the credit derivative through which the Enterprise provides credit protection, by the amount of any increase in the mark-to-fair value of the purchased credit derivative that is recognized in common equity tier 1 capital; and

(D) Where the Enterprise purchases credit protection through a total return swap and records the net payments received on a credit derivative through which the Enterprise provides credit protection in net income, but does not record offsetting deterioration in the mark-to-fair value of the credit derivative through which the Enterprise provides credit protection in net income (either through reductions in fair value or by additions to reserves), the Enterprise may not use the purchased credit protection to offset the effective notional principal amount of the related credit derivative through which the Enterprise provides credit protection;

(5) Where an Enterprise acting as a principal has more than one repo-style transaction with the same counterparty and has offset the gross value of receivables due from a counterparty under reverse repurchase transactions by the gross value of payables under repurchase transactions due to the same counterparty, the gross value of receivables associated with the repo-style transactions less any on-balance sheet receivables amount associated with these repo-style transactions included under paragraph (1) of this definition, unless the following criteria are met:

(i) The offsetting transactions have the same explicit final settlement date under their governing agreements;

(ii) The right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding; and

(iii) Under the governing agreements, the counterparties intend to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement, (that is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date), where both transactions are settled through the same settlement system, the settlement arrangements are supported by cash or intraday credit facilities intended to ensure that settlement of both transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement;

(6) The counterparty credit risk of a repo-style transaction, including where the Enterprise acts as an agent for a repo-style transaction and indemnifies the customer with respect to the performance of the customer's counterparty in an amount limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, calculated as follows:

(i) If the transaction is not subject to a qualifying master netting agreement, the counterparty credit risk (E*) for transactions with a counterparty must be calculated on a transaction by transaction basis, such that each transaction i is treated as its own netting set, in accordance with the following formula, where Ei is the fair value of the instruments, gold, or cash that the Enterprise has lent, sold subject to repurchase, or provided as collateral to the counterparty, and Ci is the fair value of the instruments, gold, or cash that the Enterprise has borrowed, purchased subject to resale, or received as collateral from the counterparty:

$$E_i^* = \max \{0, [E_i—C_i]\}$$

(ii) If the transaction is subject to a qualifying master netting agreement, the counterparty credit risk (E*) must be calculated as the greater of zero and the total fair value of the instruments, gold, or cash that the Enterprise has lent, sold subject to repurchase or provided as collateral to a counterparty for all transactions included in the qualifying master netting agreement (ΣE_i), less the total fair value of the instruments, gold, or cash that the Enterprise borrowed, purchased subject to resale or received as collateral from the counterparty for those transactions (ΣC_i), in accordance with the following formula:

$$E^* = \max \{0, [\Sigma E_i - \Sigma C_i]\}$$

(7) If an Enterprise acting as an agent for a repo-style transaction provides a guarantee to a customer of the security or cash its customer has lent or borrowed with respect to the performance of the customer's counterparty and the guarantee is not limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, the amount of the guarantee that is greater than the difference between the fair value of the security or cash its customer has lent and the value of the collateral the borrower has provided;

(8) The credit equivalent amount of all off-balance sheet exposures of the Enterprise, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under GAAP, and derivative transactions, determined using the applicable credit conversion factor under §1240.35(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

(9) For an Enterprise that is a clearing member:

(i) A clearing member Enterprise that guarantees the performance of a clearing member client with respect to a cleared transaction must treat its exposure to the clearing member client as a derivative contract for purposes of determining its adjusted total assets;

(ii) A clearing member Enterprise that guarantees the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client must treat its exposure to the CCP as a derivative contract for purposes of determining its adjusted total assets;

(iii) A clearing member Enterprise that does not guarantee the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client may exclude its exposure to the CCP for purposes of determining its adjusted total assets;

(iv) An Enterprise that is a clearing member may exclude from its adjusted total assets the effective notional principal amount of credit protection sold through a credit derivative contract, or other similar instrument, that it clears on behalf of a clearing member client through a CCP as calculated in accordance with paragraph (4) of this definition; and

(v) Notwithstanding paragraphs (9)(i) through (iii) of this definition, an Enterprise may exclude from its adjusted total assets a clearing member's exposure to a clearing member client for a derivative contract, if the clearing member client and the clearing member are affiliates and consolidated for financial reporting purposes on the Enterprise's balance sheet.

Adjusted total capital means the sum of tier 1 capital and tier 2 capital.

Advanced approaches total risk-weighted assets means:

(1) The sum of:

(i) Credit-risk-weighted assets for general credit risk (including for mortgage exposures), cleared transactions, default fund contributions, unsettled transactions, securitization exposures (including retained CRT exposures), equity exposures, and the fair value adjustment to reflect counterparty credit risk in valuation of OTC derivative contracts, each as calculated under §1240.123.

(ii) Risk-weighted assets for operational risk, as calculated under §1240.162(c); and

(iii) Advanced market risk-weighted assets; minus

(2) Excess eligible credit reserves not included in the Enterprise's tier 2 capital.

Advanced market risk-weighted assets means the advanced measure for spread risk calculated under §1240.204(a) multiplied by 12.5.

Affiliate has the meaning given in section 1303(1) of the Safety and Soundness Act (12 U.S.C. 4502(1)).

Allowances for loan and lease losses (ALLL) means valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans, lease financing receivables or other extensions of credit as determined in accordance with GAAP. For purposes of this part, *ALLL* 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.

Backtesting means the comparison of an Enterprise's internal estimates with actual outcomes during a sample period not used in model development. In this context, backtesting is one form of out-of-sample testing.

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.

Basis derivative contract means a non-foreign-exchange derivative contract (*i.e.*, the contract is denominated in a single currency) in which the cash flows of the derivative contract depend on the difference between two risk factors that are attributable solely to one of the following derivative asset classes: Interest rate, credit, equity, or commodity.

Carrying value means, with respect to an asset, the value of the asset on the balance sheet of an Enterprise as determined in accordance with GAAP. For all assets other than available-for-sale debt securities or purchased credit deteriorated assets, the carrying value is not reduced by any associated credit loss allowance that is determined in accordance with GAAP.

Central counterparty (CCP) means a counterparty (for example, a clearing house) 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 Enterprise 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 an Enterprise 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) A transaction between a CCP and an Enterprise that is a clearing member of the CCP where the Enterprise enters into the transaction with the CCP for the Enterprise's own account;

(ii) A transaction between a CCP and an Enterprise that is a clearing member of the CCP where the Enterprise is acting as a financial intermediary on behalf of a clearing member client and the transaction offsets another transaction that satisfies the requirements set forth in §1240.3(a);

(iii) A transaction between a clearing member client Enterprise 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 §1240.3(a) are met; or

(iv) A transaction between a clearing member client Enterprise and a CCP where a clearing member guarantees the performance of the clearing member client Enterprise to the CCP and the transaction meets the requirements of §1240.3(a)(2) and (3).

(2) The exposure of an Enterprise that is a clearing member to its clearing member client is not a cleared transaction where the Enterprise is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the Enterprise provides a guarantee to the CCP on the performance of the client.

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 acts either as a financial intermediary with respect to the party or guarantees the performance of the party to the CCP.

Client-facing derivative transaction means a derivative contract that is not a cleared transaction where the Enterprise is either acting as a financial intermediary and enters into an offsetting transaction with a qualifying central counterparty (QCCP) or where the Enterprise provides a guarantee on the performance of a client on a transaction between the client and a QCCP.

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to an Enterprise for a single financial contract or for all financial contracts in a netting set and confers upon the Enterprise 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 Enterprise 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 Enterprise'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 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 applicable law.

Commercial end-user means an entity that:

(1)(i) Is using derivative contracts to hedge or mitigate commercial risk; and

(ii)(A) Is not an entity described in section 2(h)(7)(C)(i)(I) through (VIII) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(C)(i)(I) through (VIII)); or

(B) Is not a ''financial entity'' for purposes of section 2(h)(7) of the Commodity Exchange Act (7 U.S.C. 2(h)) by virtue of section 2(h)(7)(C)(iii) of the Act (7 U.S.C. 2(h)(7)(C)(iii)); or

(2)(i) Is using derivative contracts to hedge or mitigate commercial risk; and

(ii) Is not an entity described in section 3C(g)(3)(A)(i) through (viii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(3)(A)(i) through (viii)); or

(3) Qualifies for the exemption in section 2(h)(7)(A) of the Commodity Exchange Act (7 U.S.C. 2(h)(7)(A)) by virtue of section 2(h)(7)(D) of the Act (7 U.S.C. 2(h)(7)(D)); or

(4) Qualifies for an exemption in section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(1)) by virtue of section 3C(g)(4) of the Act (15 U.S.C. 78c–3(g)(4)).

Commingled security means a resecuritization of UMBS in which one or more of the underlying exposures is a UMBS guaranteed by the other Enterprise or is a resecuritization of UMBS guaranteed by the other Enterprise.

Commitment means any legally binding arrangement that obligates an Enterprise to extend credit or to purchase assets.

Common equity tier 1 capital is defined in §1240.20(b).

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

Core capital has the meaning given in section 1303(7) of the Safety and Soundness Act (12 U.S.C. 4502(7)).

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, the European Stability Mechanism, the European Financial Stability Facility, 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 mortgage exposure;

(4) A cleared transaction;

(5) A default fund contribution;

(6) A securitization exposure;

(7) An equity exposure;

(8) An unsettled transaction; or

(9) A separate account.

Credit default swap (CDS) means a financial contract executed under standard industry 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 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 risk mitigant means collateral, a credit derivative, or a guarantee.

Credit risk transfer (CRT) means any traditional securitization, synthetic securitization, senior/subordinated structure, credit derivative, guarantee, or other contract, structure, or arrangement (other than primary mortgage insurance) that allows an Enterprise to transfer the credit risk of one or more mortgage exposures (reference exposure(s)) to another party (the protection provider).

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

Credit valuation adjustment (CVA) means the fair value adjustment to reflect counterparty credit risk in valuation of OTC derivative contracts.

CRT special purpose entity (CRT SPE) means a corporation, trust, or other entity organized for the specific purpose of bearing credit risk transferred through a CRT, the activities of which are limited to those appropriate to accomplish this purpose.

Current Expected Credit Losses (CECL) means the current expected credit losses methodology under GAAP.

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

Default fund contribution means the funds contributed or commitments made by a clearing member to a CCP's mutualized loss sharing arrangement.

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

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 five business days.

Discretionary bonus payment means a payment made to an executive officer of an Enterprise, where:

(1) The Enterprise retains discretion as to whether to make, and the amount of, the payment until the payment is awarded to the executive officer;

(2) The amount paid is determined by the Enterprise without prior promise to, or agreement with, the executive officer; and

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

Distribution means:

(1) A reduction of tier 1 capital through the repurchase of a tier 1 capital instrument or by other means, except when an Enterprise, within the same quarter when the repurchase is

announced, fully replaces a tier 1 capital instrument it has repurchased by issuing another capital instrument that meets the eligibility criteria for:

(i) A common equity tier 1 capital instrument if the instrument being repurchased was part of the Enterprise's common equity tier 1 capital, or

(ii) A common equity tier 1 or additional tier 1 capital instrument if the instrument being repurchased was part of the Enterprise's tier 1 capital;

(2) A reduction of tier 2 capital through the repurchase, or redemption prior to maturity, of a tier 2 capital instrument or by other means, except when an Enterprise, within the same quarter when the repurchase or redemption is announced, fully replaces a tier 2 capital instrument it has repurchased by issuing another capital instrument that meets the eligibility criteria for a tier 1 or tier 2 capital instrument;

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

(4) A dividend declaration or interest payment on any tier 2 capital instrument if the Enterprise has full discretion to permanently or temporarily suspend such payments without triggering an event of default; or

(5) Any similar transaction that FHFA determines to be in substance a distribution of capital.

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 Enterprise (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 Enterprise 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 or credit risk transfer, 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, nth-to-default swap, total return swap, or any other form of credit derivative approved by FHFA, 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 nth-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 nth-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 Enterprise records net payments received on the swap as net income, the Enterprise records offsetting deterioration in the value of the hedged exposure (either through reductions in fair value or by an addition to reserves).

Eligible credit reserves means all general allowances that have been established through a charge against earnings or retained earnings to cover expected credit losses associated with on- or off-balance sheet wholesale and retail exposures, including AACL associated with such exposures. Eligible credit reserves exclude allowances that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities and other specific reserves created against recognized losses.

Eligible funded synthetic risk transfer means a credit risk transfer in which—

(1) A CRT SPE that is bankruptcy remote from the Enterprise and not consolidated with the Enterprise under GAAP is contractually obligated to reimburse the Enterprise for specified losses on a reference pool of mortgage exposures of the Enterprise upon designated credit events and designated modification events;

(2) The credit risk transferred to the CRT SPE is transferred to one or more third parties through two or more classes of securities of different seniority issued by the CRT SPE;

(3) The performance of each class of securities issued by the CRT SPE depends on the performance of the reference pool; and

(4) The proceeds of the securities issued by the CRT SPE—

(i) Are, at the time of entry into the transaction, in the aggregate no less than the maximum obligation of the CRT SPE to the Enterprise; and

(ii) Are invested in financial collateral that secures the payment obligations of the CRT SPE to the Enterprise.

Eligible guarantee means a guarantee 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;

(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;

(9) Is not provided by an affiliate of the Enterprise; and

(10) Is provided by an eligible guarantor.

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), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*), 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 Enterprise 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,[1] 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 applicable law.

(2) In order to recognize an exposure as an eligible margin loan for purposes of this subpart, an Enterprise must comply with the requirements of §1240.3(b) with respect to that exposure.

Eligible multifamily lender risk share means a credit risk transfer under which an entity that is approved by an Enterprise to sell multifamily mortgage exposures to an Enterprise retains credit risk of one or more multifamily mortgage exposures on substantially the same terms and conditions as in effect on June 30, 2020 for Fannie Mae's credit risk transfers known as the

[1] 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.

"Delegated Underwriting and Servicing program".

Eligible reinsurance risk transfer means a credit risk transfer in which the Enterprise transfers the credit risk on one or more mortgage exposures to an insurance company or reinsurer that has been approved by the Enterprise.

Eligible senior-subordinated structure means a traditional securitization in which the underlying exposures are mortgage exposures of the Enterprise and the Enterprise guarantees the timely payment of principal and interest on one or more senior tranches.

Eligible single-family lender risk share means any partial or full recourse agreement or similar agreement (other than a participation agreement) between an Enterprise and the seller or servicer of a single-family mortgage exposure pursuant to which the seller or servicer agrees either to reimburse the Enterprise for losses arising out of the default of the single-family mortgage exposure or to repurchase or replace the single-family mortgage exposure in the event of the default of the single-family mortgage exposure.

Eligible time-based call means a time-based call that:

(1) Is exercisable solely at the discretion of the originating Enterprise, provided the Enterprise obtains FHFA's non-objection prior to exercising the time-based call;

(2) Is not structured to avoid allocating credit losses to investors or otherwise structured to provide at most *de minimis* credit protection to the securitization or credit risk transfer; and

(3) Is exercisable no less than five years after the securitization or credit risk transfer issuance date or effective date, where the underlying collateral is mortgage exposures with amortization terms greater than 20 years.

(4) Is exercisable no less than four years after the securitization or credit risk transfer issuance date or effective date, where the underlying collateral is mortgage exposures with amortization terms of 20 years or less.

Equity exposure means:

(1) A security or instrument (whether voting or non-voting and whether certificated or not certificated) 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 Enterprise under GAAP;

(ii) The Enterprise 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.*).

Executive officer means a person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions: President, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, or head of a major business line, and other staff that the board of directors of the Enterprise deems to have equivalent responsibility.

Exposure amount means:

(1) For the on-balance sheet component of an exposure (including a mortgage exposure); (other than an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the Enterprise determines the exposure amount under §1240.39; a cleared transaction; a default fund contribution; or a securitization exposure), the Enterprise's carrying value of the exposure.

(2) 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 Enterprise calculates the exposure amount under § 1240.39; a cleared transaction; a default fund contribution; or a securitization exposure), the notional amount of the off-balance sheet component multiplied by the appropriate credit conversion factor (CCF) in § 1240.35.

(3) For an exposure that is an OTC derivative contract, the exposure amount or exposure at default (EAD) determined under § 1240.36.

(4) For an exposure that is a cleared transaction, the exposure amount determined under § 1240.37.

(5) For an exposure that is an eligible margin loan or repo-style transaction for which the Enterprise calculates the exposure amount as provided in § 1240.39, the exposure amount determined under § 1240.39.

(6) For an exposure that is a securitization exposure, the exposure amount determined under § 1240.42.

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

Federal Reserve Board means the Board of Governors of the Federal Reserve System.

Financial collateral means collateral:

(1) In the form of:

(i) Cash on deposit with the Enterprise (including cash held for the Enterprise 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 Enterprise has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof, (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

Gain-on-sale means an increase in the equity capital of an Enterprise resulting from a traditional securitization other than an increase in equity capital resulting from:

(1) The Enterprise's receipt of cash in connection with the securitization; or

(2) The reporting of a mortgage servicing asset.

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, including an Enterprise.

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).

Guarantee asset means the present value of a future consideration to be received for providing a financial guarantee on a portfolio of mortgage exposures not recognized on the balance sheet.

Independent collateral means financial collateral, other than variation margin, that is subject to a collateral agreement, or in which an Enterprise has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; notwithstanding the prior security interest of any custodial agent or any prior security interest granted to a CCP in connection with collateral posted to that CCP), and the amount of which does not change directly in response to the value of the derivative contract or contracts that the financial collateral secures.

Investment grade means that the entity to which the Enterprise 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.

Minimum transfer amount means the smallest amount of variation margin that may be transferred between counterparties to a netting set pursuant to the variation margin agreement.

Mortgage-backed security (MBS) means a security collateralized by a pool or pools of mortgage exposures, including any pass-through or collateralized mortgage obligation.

Mortgage exposure means either a single-family mortgage exposure or a multifamily mortgage exposure.

Multifamily mortgage exposure means an exposure that is secured by a first or subsequent lien on a property with five or more residential units.

Mortgage servicing assets (MSAs) means the contractual rights to service mortgage loans for a fee.

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 FHFA determines poses comparable credit risk.

Net independent collateral amount means the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under §1240.39(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to an Enterprise less the fair value amount of the independent collateral, as adjusted by the standard supervisory haircuts under §1240.39(b)(2)(ii), as applicable, posted by the Enterprise to the counterparty, excluding such amounts held in a bankruptcy remote manner or posted to a QCCP and held in conformance with the operational requirements in §1240.3.

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 derivative contracts, netting set also includes a single derivative contract between an Enterprise and a single counterparty.

Non-guaranteed separate account means a separate account where the insurance company:

(1) Does not contractually guarantee either a minimum return or account value to the contract holder; and

(2) Is not required to hold reserves (in the general account) pursuant to its contractual obligations to a policyholder.

Nth-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.

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 Enterprise can, at its option, unconditionally cancel the commitment.

Originating Enterprise, with respect to a securitization, means an Enterprise that directly or indirectly originated or securitized the underlying exposures included in the securitization.

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

(1) Between an Enterprise that is a clearing member and a counterparty

where the Enterprise is acting as a financial intermediary and enters into a cleared transaction with a CCP that offsets the transaction with the counterparty; or

(2) In which an Enterprise that is a clearing member provides a CCP a guarantee on the performance of the counterparty to the transaction.

Participation agreement is defined in §1240.33(a).

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 §1240.38).

Publicly-traded means traded on:

(1) Any exchange registered with the 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.

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

(1)(i) Is a designated financial market utility (FMU) under Title VIII 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 Enterprise demonstrates to the satisfaction of FHFA that the central counterparty:

(*1*) Is in sound financial condition;

(*2*) Is subject to supervision by the Federal Reserve 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 Federal Reserve 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 Enterprise with the central counterparty's hypothetical capital requirement or the information necessary to calculate such hypothetical capital requirement, and other information the Enterprise is required to obtain under §1240.37(d)(3);

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

(iii) Has not otherwise been determined by FHFA 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 §1240.37.

(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 §1240.3(f).

Qualifying cross-product master netting agreement means a qualifying master netting agreement that provides for termination and close-out netting across multiple types of financial transactions or qualifying master netting agreements in the event of a counterparty's default, provided that the underlying financial transactions are OTC derivative contracts, eligible margin loans, or repo-style transactions. In order to treat an agreement as a qualifying cross-product master netting agreement for purposes of this subpart, an Enterprise must comply with the requirements of § 1240.3(c) with respect to that agreement.

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 Enterprise 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 applicable law.

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the Enterprise 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; 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 Enterprise 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 applicable law; or

(B) The transaction is:

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

(*2*) Executed under an agreement that provides the Enterprise 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

(*3*) In order to recognize an exposure as a repo-style transaction for purposes of this subpart, an Enterprise must comply with the requirements of §1240.3(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.

Retained CRT exposure means, with respect to an Enterprise, any exposure that arises from a credit risk transfer of the Enterprise and has been retained by the Enterprise since the issuance or entry into the credit risk transfer by the Enterprise.

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.

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 that arises from a traditional securitization or synthetic securitization (including a resecuritization);

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

(3) A retained CRT exposure; or

(4) An acquired CRT exposure.

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.

Separate account means a legally segregated pool of assets owned and held by an insurance company and maintained separately from the insurance company's general account assets for the benefit of an individual contract holder. To be a separate account:

(1) The account must be legally recognized as a separate account under applicable law;

(2) The assets in the account must be insulated from general liabilities of the insurance company under applicable law in the event of the insurance company's insolvency;

(3) The insurance company must invest the funds within the account as directed by the contract holder in designated investment alternatives or in accordance with specific investment objectives or policies; and

(4) All investment gains and losses, net of contract fees and assessments, must be passed through to the contract holder, provided that the contract may specify conditions under which there may be a minimum guarantee but must not include contract terms that limit the maximum investment return available to the policyholder.

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.

Single-family mortgage exposure means an exposure that is secured by a first or subsequent lien on a property with one to four residential units.

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.

Specific wrong-way risk means wrong-way risk that arises when either:

(1) The counterparty and issuer of the collateral supporting the transaction; or

(2) The counterparty and the reference asset of the transaction, are affiliates or are the same entity.

Speculative grade means the reference entity has adequate capacity to meet financial commitments in the near term, but is vulnerable to adverse economic conditions, such that should economic conditions deteriorate, the reference entity would present an elevated default risk.

Standardized market risk-weighted assets means the standardized measure for spread risk calculated under §1240.204(a) multiplied by 12.5.

Standardized total risk-weighted assets means:

(1) The sum of—

(i) Total risk-weighted assets for general credit risk as calculated under §1240.31;

(ii) Total risk-weighted assets for cleared transactions and default fund contributions as calculated under §1240.37;

(iii) Total risk-weighted assets for unsettled transactions as calculated under §1240.40;

(iv) Total risk-weighted assets for retained CRT exposures, acquired CRT exposures, and other securitization exposures as calculated under §1240.42;

(v) Total risk-weighted assets for equity exposures as calculated under §1240.52;

(vi) Credit valuation adjustment (CVA) risk-weighted assets as calculated under §1240.36(d);

(vii) Risk-weighted assets for operational risk, as calculated under §1240.162(c) or §1240.162(d), as applicable; and

(viii) Standardized market risk-weighted assets, as calculated under §1240.204; minus

(2) Excess eligible credit reserves not included in the Enterprise's tier 2 capital.

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

Sub-speculative grade means the reference entity depends on favorable economic conditions to meet its financial commitments, such that should such economic conditions deteriorate the reference entity likely would default on its financial commitments.

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 mortgage exposure or other 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 mortgage exposures, loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities).

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

Tier 2 capital is defined in §1240.20(d).

Time-based call means a contractual provision that permits an originating Enterprise to redeem a securitization exposure on or after a specified redemption or cancellation date.

Total capital has the meaning given in section 1303(23) of the Safety and Soundness Act (12 U.S.C. 4502(23)).

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 mortgage exposures, 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 company;

(6) The underlying exposures are not owned by a small business investment company defined in section 302 of the Small Business Investment Act;

(7) The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under section 24 (Eleventh) of the National Bank Act;

(8) FHFA 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) FHFA 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 held by a State member bank as fiduciary and, consistent with local law, invested collectively—

(A) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or

(B) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (26 U.S.C.).

(iii) An employee benefit plan (as defined in 29 U.S.C. 1002(3)), 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;

(iv) A synthetic exposure to the capital of a financial institution to the extent deducted from capital under §1240.22; or

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

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

Transition order means an order issued by the Director under section 1371 of the Safety and Soundness Act (12 U.S.C. 4631), a plan required by the Director under section 1313B of the Safety and Soundness Act (12 U.S.C. 4513b), or an order, agreement, or similar arrangement of FHFA that, in any case, provides for a compliance date for a requirement of this part that is later than the compliance date for the requirement specified under §1240.4.

Unconditionally cancelable means with respect to a commitment, that an Enterprise 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.

Uniform Mortgage-backed Security (UMBS) means the same as that defined in §1248.1.

Value-at-Risk (VaR) means the estimate of the maximum amount that the value of one or more exposures could decline due to market price or rate movements during a fixed holding period within a stated confidence interval.

Variation margin means financial collateral that is subject to a collateral agreement provided by one party to its counterparty to meet the performance of the first party's obligations under one or more transactions between the parties as a result of a change in value of such obligations since the last time such financial collateral was provided.

Variation margin agreement means an agreement to collect or post variation margin.

Variation margin amount means the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under §1240.39(b)(2)(ii), as applicable, that a counterparty to a netting set has posted to an Enterprise less the fair value amount of the variation margin, as adjusted by the standard supervisory haircuts under §1240.39(b)(2)(ii), as applicable, posted by the Enterprise to the counterparty.

Variation margin threshold means the amount of credit exposure of an Enterprise to its counterparty that, if exceeded, would require the counterparty to post variation margin to the Enterprise pursuant to the variation margin agreement.

Volatility derivative contract means a derivative contract in which the payoff of the derivative contract explicitly depends on a measure of the volatility of an underlying risk factor to the derivative contract.

Wrong-way risk means the risk that arises when an exposure to a particular counterparty is positively correlated with the probability of default of such counterparty itself.

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022; 88 FR 83474, Nov. 30, 2023]

§ 1240.3 Operational requirements for counterparty credit risk.

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 paragraphs (1)(ii), (iii), or (iv) of the definition of "cleared transaction" in §1240.2, the exposures must meet the applicable 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 Enterprise 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.

(3) The Enterprise 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 §1240.2, an Enterprise 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 §1240.2, 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 § 1240.2, an Enterprise 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 § 1240.2; 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 § 1240.2.

(e) *Repo-style transaction.* In order to recognize an exposure as a repo-style transaction as defined in § 1240.2, an Enterprise 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 § 1240.2, 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 an Enterprise 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 paragraphs (2)(i) through (iii) of the definition of a "QCCP" in § 1240.2, the Enterprise may continue to treat the CCP as a QCCP for up to three months following the determination. If the CCP fails to remedy the relevant deficiency within three months after the initial determination, or the CCP fails to satisfy the requirements set forth in paragraphs (2)(i) through (iii) of the definition of a "QCCP" continuously for a three-month period after remedying the relevant deficiency, an Enterprise may not treat the CCP as a QCCP for the purposes of this part until after the Enterprise has determined that the CCP has satisfied the requirements in paragraphs (2)(i) through (iii) of the definition of a "QCCP" for three continuous months.

§ 1240.4 Transition.

(a) *Compliance dates.* An Enterprise will not be subject to any requirement under this part until the compliance date for the requirement under this section.

(b) *Reporting requirements.* (1) For any reporting requirement under § 1240.1(f) or § 1240.41, the compliance date will be January 1, 2022.

(2) For any reporting requirement under §§ 1240.61 through 1240.63, the compliance date will be no later than 10 business days after an Enterprise files its Annual Report on SEC Form 10–K for the fiscal year ending December 31, 2022.

(3) For any reporting requirement under § 1240.205, the compliance date will be no later than 10 business days after an Enterprise files its Annual Report on SEC Form 10–K for the fiscal year ending December 31, 2022.

(c) *Advanced approaches requirements.* Any requirement under subpart E or F (other than § 1240.162(d) or any requirement to calculate the standardized measure for spread risk under § 1240.204) will have a compliance date of the later of January 1, 2028 and any later compliance date for that requirement provided in a transition order applicable to the Enterprise.

(d) *Capital requirements and buffers*—(1) *Requirements.* The compliance date of any requirement under § 1240.10 will be the later of:

(i) The date of the termination of the conservatorship of the Enterprise (or, if later, the effective date of this part); and

(ii) Any later compliance date for § 1240.10 provided in a transition order applicable to the Enterprise.

(2) *Buffers.* The compliance date of any requirement under § 1240.11 will be the date of the termination of the conservatorship of the Enterprise (or, if later, the effective date of this part).

(3) *Capital restoration plan.* If a transition order of an Enterprise provides a

compliance date for § 1240.10, the Director may determine that, for the period between the compliance date for § 1240.11 under paragraph (d)(2) of this section and any later compliance date for § 1240.10 provided in the transition order—

(i) The prescribed capital conservation buffer amount of the Enterprise will be the amount equal to the sum of—

(A) The common equity tier 1 capital that would otherwise be required under § 1240.10(d); and

(B) The prescribed capital conservation buffer amount that would otherwise apply under § 1240.11(a)(5); and

(ii) The prescribed leverage buffer amount of the Enterprise will be equal to 4.0 percent of the adjusted total assets of the Enterprise.

(4) *Prudential standard.* If the Director makes a determination under paragraph (d)(3) of this section, § 1240.11 will be a prudential standard adopted under section 1313B of the Safety and Soundness Act (12 U.S.C. 4513b) until the compliance date of § 1240.10.

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 33429, June 2, 2022; 88 FR 83476, Nov. 30, 2023]

Subpart B—Capital Requirements and Buffers

§ 1240.10 Capital requirements.

(a) *Total capital.* An Enterprise must maintain total capital not less than the amount equal to 8.0 percent of the greater of:

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(b) *Adjusted total capital.* An Enterprise must maintain adjusted total capital not less than the amount equal to 8.0 percent of the greater of:

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(c) *Tier 1 capital.* An Enterprise must maintain tier 1 capital not less than the amount equal to 6.0 percent of the greater of:

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(d) *Common equity tier 1 capital.* An Enterprise must maintain common equity tier 1 capital not less than the amount equal to 4.5 percent of the greater of:

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(e) *Core capital.* An Enterprise must maintain core capital not less than the amount equal to 2.5 percent of adjusted total assets.

(f) *Leverage ratio.* An Enterprise must maintain tier 1 capital not less than the amount equal to 2.5 percent of adjusted total assets.

(g) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, an Enterprise must maintain capital commensurate with the level and nature of all risks to which the Enterprise is exposed. The supervisory evaluation of an Enterprise's capital adequacy is based on an individual assessment of numerous factors, including the character and condition of the Enterprise's assets and its existing and prospective liabilities and other corporate responsibilities.

(2) An Enterprise 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.

§ 1240.11 Capital conservation buffer and leverage buffer.

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

(1) *Capital conservation buffer.* An Enterprise's capital conservation buffer is the amount calculated under paragraph (c)(2) of this section.

(2) *Eligible retained income.* The eligible retained income of an Enterprise is the greater of:

(i) The Enterprise's net income, as defined under GAAP, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(ii) The average of the Enterprise's net income for the four calendar quarters preceding the current calendar quarter.

(3) *Leverage buffer*. An Enterprise's leverage buffer is the amount calculated under paragraph (d)(2) of this section.

(4) *Maximum payout ratio*. The maximum payout ratio is the percentage of eligible retained income that an Enterprise can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is determined under paragraph (b)(2) of this section.

(5) *Prescribed capital conservation buffer amount*. An Enterprise's prescribed capital conservation buffer amount is equal to its stress capital buffer in accordance with paragraph (a)(7) of this section plus its applicable countercyclical capital buffer amount in accordance with paragraph (e) of this section plus its applicable stability capital buffer in accordance with paragraph (f) of this section.

(6) *Prescribed leverage buffer amount*. An Enterprise's prescribed leverage buffer amount is 50 percent of the Enterprise's stability capital buffer calculated in accordance with subpart G of this part.

(7) *Stress capital buffer*. (i) The stress capital buffer for an Enterprise is the stress capital buffer determined under §1240.500 except as provided in paragraph (a)(7)(ii) of this section.

(ii) If an Enterprise has not yet received a stress capital buffer requirement, its stress capital buffer for purposes of this part is 0.75 percent of the Enterprise's adjusted total assets, as of the last day of the previous calendar quarter.

(b) *Maximum payout amount*—(1) *Limits on distributions and discretionary bonus payments*. An Enterprise shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the amount equal to the Enterprise's eligible retained income for the calendar quarter, multiplied by its maximum payout ratio.

(2) *Maximum payout ratio*. The maximum payout ratio of an Enterprise is the lowest of the payout ratios determined by its capital conservation buffer and its leverage buffer, as set forth on Table 1 to paragraph (b)(5) of this section.

(3) *No maximum payout amount limitation*. An Enterprise is not subject to a restriction under paragraph (b)(1) of this section if it has:

(i) A capital conservation buffer that is greater than its prescribed capital conservation buffer amount; and

(ii) A leverage buffer that is greater than its prescribed leverage buffer amount.

(4) *Negative eligible retained income*. An Enterprise may not make distributions or discretionary bonus payments during the current calendar quarter if:

(i) The eligible retained income of the Enterprise is negative; and

(ii) Either:

(A) The capital conservation buffer of the Enterprise was less than its stress capital buffer; or

(B) The leverage buffer of the Enterprise was less than its prescribed leverage buffer amount.

(5) *Prior approval*. Notwithstanding the limitations in paragraphs (b)(1) through (3) of this section, FHFA may permit an Enterprise to make a distribution or discretionary bonus payment upon a request of the Enterprise, if FHFA determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section or to the safety and soundness of the Enterprise. In making such a determination, FHFA will consider the nature and extent of the request and the particular circumstances giving rise to the request.

TABLE 1 TO PARAGRAPH (b)(5): CALCULATION OF MAXIMUM PAYOUT RATIO

Capital buffer[1]	Maximum payout ratio
Greater than or equal to the Enterprise's prescribed buffer amount.[2]	No payout ratio limitation applies
Less than the Enterprise's prescribed buffer amount, and greater than or equal to 75 percent of the Enterprise's prescribed buffer amount.	60 percent
Less than 75 percent of the Enterprise's prescribed buffer amount, and greater than or equal to 50 percent of the Enterprise's prescribed buffer amount.	40 percent
Less than 50 percent of the Enterprise's prescribed buffer amount, and greater than or equal to 25 percent of the Enterprise's prescribed buffer amount.	20 percent
Less than 25 percent of the Enterprise's prescribed buffer amount.	0 percent

[1] An Enterprise's "capital buffer" means, as applicable, its capital conservation buffer or its leverage buffer.

[2] An Enterprise's "prescribed buffer amount" means, as applicable, its prescribed capital conservation buffer amount or its prescribed leverage buffer amount.

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

(2) *Calculation of capital conservation buffer*. (i) An Enterprise's capital conservation buffer is equal to the lowest of the following, calculated as of the last day of the previous calendar quarter:

(A) The Enterprise's adjusted total capital minus the minimum amount of adjusted total capital under § 1240.10(b);

(B) The Enterprise's tier 1 capital minus the minimum amount of tier 1 capital under § 1240.10(c); or

(C) The Enterprise's common equity tier 1 capital minus the minimum amount of common equity tier 1 capital under § 1240.10(d).

(ii) Notwithstanding paragraphs (c)(2)(i)(A) through (C) of this section, if the Enterprise's adjusted total capital, tier 1 capital, or common equity tier 1 capital is less than or equal to the Enterprise's minimum adjusted total capital, tier 1 capital, or common equity tier 1 capital, respectively, the Enterprise's capital conservation buffer is zero.

(d) *Leverage buffer*—(1) *Composition of the leverage buffer*. The leverage buffer is composed solely of tier 1 capital.

(2) *Calculation of the leverage buffer*. (i) An Enterprise's leverage buffer is equal to the Enterprise's tier 1 capital minus the minimum amount of tier 1 capital under § 1240.10(f), calculated as of the last day of the previous calendar quarter.

(ii) Notwithstanding paragraph (d)(2)(i) of this section, if the Enterprise's tier 1 capital is less than or equal to the minimum amount of tier 1 capital under § 1240.10(d), the Enterprise's leverage buffer is zero.

(e) *Countercyclical capital buffer amount*—(1) *Composition of the countercyclical capital buffer amount*. The countercyclical capital buffer amount is composed solely of common equity tier 1 capital.

(2) *Amount*—(i) *Initial countercyclical capital buffer*. The initial countercyclical capital buffer amount is zero.

(ii) *Adjustment of the countercyclical capital buffer amount*. FHFA will adjust the countercyclical capital buffer amount in accordance with applicable law.

(iii) *Range of countercyclical capital buffer amount*. FHFA will adjust the countercyclical capital buffer amount between zero percent and 0.75 percent of adjusted total assets.

(iv) *Adjustment determination.* FHFA will base its decision to adjust the countercyclical capital buffer amount under this section on a range of macroeconomic, financial, and supervisory information indicating an increase in systemic risk, including the ratio of credit to gross domestic product, a variety of asset prices, other factors indicative of relative credit and liquidity expansion or contraction, funding spreads, credit condition surveys, indices based on credit default swap spreads, options implied volatility, and measures of systemic risk.

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

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

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

(f) *Stability capital buffer.* An Enterprise must use its stability capital buffer calculated in accordance with subpart G of this part for purposes of determining its maximum payout ratio under Table 1 to paragraph (b)(5) of this section.

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022; 87 FR 33617, June 3, 2022]

Subpart C—Definition of Capital

§ 1240.20 Capital components and eligibility criteria for regulatory capital instruments.

(a) *Regulatory capital components.* An Enterprise's regulatory capital components are:

(1) Common equity tier 1 capital;

(2) Additional tier 1 capital;

(3) Tier 2 capital;

(4) Core capital; and

(5) Total capital.

(b) *Common equity tier 1 capital.* Common equity tier 1 capital is the sum of the common equity tier 1 capital elements in this paragraph (b), minus regulatory adjustments and deductions in § 1240.22. The common equity tier 1 capital elements are:

(1) Any common stock instruments (plus any related surplus) issued by the Enterprise, net of treasury stock, that meet all the following criteria:

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

(ii) The holder of the instrument is entitled to a claim on the residual assets of the Enterprise that is proportional with the holder's share of the Enterprise's issued capital after all senior claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument has no maturity date, can only be redeemed via discretionary repurchases with the prior approval of FHFA to the extent otherwise required by law or regulation, and does not contain any term or feature that creates an incentive to redeem;

(iv) The Enterprise did not create at issuance of the instrument through any action or communication an expectation that it will buy back, cancel, or redeem the instrument, and the instrument does not include any term or feature that might give rise to such an expectation;

(v) Any cash dividend payments on the instrument are paid out of the Enterprise's net income, retained earnings, or surplus related to common stock, and are not subject to a limit imposed by the contractual terms governing the instrument.

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

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

(viii) The holders of the instrument bear losses as they occur equally, proportionately, and simultaneously with the holders of all other common stock instruments before any losses are borne by holders of claims on the Enterprise with greater priority in a receivership, insolvency, liquidation, or similar proceeding;

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

(x) The Enterprise, or an entity that the Enterprise controls, did not purchase or directly or indirectly fund the purchase of the instrument;

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

(xii) The instrument has been issued in accordance with applicable laws and regulations; and

(xiii) The instrument is reported on the Enterprise's regulatory financial statements separately from other capital instruments.

(2) Retained earnings.

(3) Accumulated other comprehensive income (AOCI) as reported under GAAP.[1]

(4) Notwithstanding the criteria for common stock instruments referenced above, an Enterprise's common stock issued and held in trust for the benefit of its employees as part of an employee stock ownership plan does not violate any of the criteria in paragraph (b)(1)(iii), (iv), or (xi) of this section, provided that any repurchase of the stock is required solely by virtue of ERISA for an instrument of an Enterprise that is not publicly-traded. In addition, an instrument issued by an Enterprise to its employee stock ownership plan does not violate the criterion in paragraph (b)(1)(x) of this section.

(c) *Additional tier 1 capital.* Additional tier 1 capital is the sum of additional tier 1 capital elements and any related surplus, minus the regulatory adjustments and deductions in § 1240.22. Additional tier 1 capital elements are:

(1) Subject to paragraph (e)(2) of this section, instruments (plus any related surplus) 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 Enterprise in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument is not secured, not covered by a guarantee of the Enterprise or of an affiliate of the Enterprise, 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; and

(v) If callable by its terms, the instrument may be called by the Enterprise only after a minimum of five years following issuance, except that the terms of the instrument may allow it to be called earlier than five years upon the occurrence of a regulatory event that precludes the instrument from being included in additional tier 1 capital, a tax event, or if the issuing entity is required to register as an investment company pursuant to the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*). In addition:

(A) The Enterprise must receive prior approval from FHFA to exercise a call option on the instrument.

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

[1] *See* § 1240.22 for specific adjustments related to AOCI.

(C) Prior to exercising the call option, or immediately thereafter, the Enterprise 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);[2] or demonstrate to the satisfaction of FHFA that following redemption, the Enterprise will continue to hold capital commensurate with its risk.

(vi) Redemption or repurchase of the instrument requires prior approval from FHFA.

(vii) The Enterprise 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 Enterprise except in relation to any distributions to holders of common stock or instruments that are *pari passu* with the instrument.

(viii) Any distributions on the instrument are paid out of the Enterprise's net income, retained earnings, or surplus related to other additional tier 1 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 Enterprise's credit quality, but may have a dividend rate that is adjusted periodically independent of the Enterprise'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 Enterprise, or an entity that the Enterprise controls, 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 Enterprise, such as provisions that require the Enterprise to compensate holders of the instrument if a new instrument is issued at a lower price during a specified time frame.

(xiii) If the instrument is not issued directly by the Enterprise or by a subsidiary of the Enterprise that is an operating entity, the only asset of the issuing entity is its investment in the capital of the Enterprise, and proceeds must be immediately available without limitation to the Enterprise or to the Enterprise's top-tier holding company in a form which meets or exceeds all of the other criteria for additional tier 1 capital instruments.[3]

(xiv) The governing agreement, offering circular, or prospectus of an instrument issued after February 16, 2021 must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the Enterprise enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Notwithstanding the criteria for additional tier 1 capital instruments referenced above, an instrument issued by an Enterprise and held in trust for the benefit of its employees as part of an employee stock ownership plan does not violate any of the criteria in paragraph (c)(1)(iii) of this section, provided that any repurchase is required solely by virtue of ERISA for an instrument of an Enterprise that is not publicly-traded. In addition, an instrument issued by an Enterprise to its employee stock ownership plan does not violate the criteria in paragraphs (c)(1)(v) or (c)(1)(xi) of this section.

(d) *Tier 2 capital*. Tier 2 capital is the sum of tier 2 capital elements and any related surplus, minus the regulatory adjustments and deductions in §1240.22. Tier 2 capital elements are:

(1) Subject to paragraph (e)(2) of this section, 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 Enterprise.

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

[2] Replacement can be concurrent with redemption of existing additional tier 1 capital instruments.

[3] *De minimis* assets related to the operation of the issuing entity can be disregarded for purposes of this criterion.

(iv) The instrument has a minimum original maturity of at least five years. At the beginning of each of the last five 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 one year. In addition, the instrument must not have any terms or features that require, or create significant incentives for, the Enterprise to redeem the instrument prior to maturity.[4]

(v) The instrument, by its terms, may be called by the Enterprise only after a minimum of five 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, a tax event. In addition:

(A) The Enterprise must receive the prior approval of FHFA to exercise a call option on the instrument.

(B) The Enterprise 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 Enterprise 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 FHFA that following redemption, the Enterprise 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 or interest on the instrument, except in the event of a receivership, insolvency, liquidation, or similar proceeding of the Enterprise.

(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 Enterprise's credit standing, but may have a dividend rate that is adjusted periodically independent of the Enterprise's credit standing, in relation to general market interest rates or similar adjustments.

(viii) The Enterprise, or an entity that the Enterprise controls, has not purchased and has not directly or indirectly funded the purchase of the instrument.

(ix) If the instrument is not issued directly by the Enterprise or by a subsidiary of the Enterprise that is an operating entity, the only asset of the issuing entity is its investment in the capital of the Enterprise, and proceeds must be immediately available without limitation to the Enterprise or the Enterprise's top-tier holding company in a form that meets or exceeds all the other criteria for tier 2 capital instruments under this section.[6]

(x) Redemption of the instrument prior to maturity or repurchase requires the prior approval of FHFA.

(xi) The governing agreement, offering circular, or prospectus of an instrument issued after February 16, 2021 must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the Enterprise enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Any eligible credit reserves that exceed expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of credit risk-weighted assets.

(e) *FHFA approval of a capital element.* (1) An Enterprise must receive FHFA prior approval to include a capital element (as listed in this section) in its common equity tier 1 capital, additional tier 1 capital, or tier 2 capital unless the element:

(i) Was included in an Enterprise's tier 1 capital or tier 2 capital prior to June 30, 2020 and the underlying instrument may continue to be included

[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] An Enterprise may replace tier 2 capital instruments concurrent with the redemption of existing tier 2 capital instruments.

[6] An Enterprise may disregard *de minimis* assets related to the operation of the issuing entity for purposes of this criterion.

under the criteria set forth in this section; or

(ii) Is equivalent, in terms of capital quality and ability to absorb losses with respect to all material terms, to a regulatory capital element FHFA determined may be included in regulatory capital pursuant to paragraph (e)(3) of this section.

(2) An Enterprise may not include an instrument in its additional tier 1 capital or a tier 2 capital unless FHFA has determined that the Enterprise has made appropriate provision, including in any resolution plan of the Enterprise, to ensure that the instrument would not pose a material impediment to the ability of an Enterprise to issue common stock instruments following the appointment of FHFA as conservator or receiver under the Safety and Soundness Act.

(3) After determining that a regulatory capital element may be included in an Enterprise's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, FHFA will make its decision publicly available, including a brief description of the material terms of the regulatory capital element and the rationale for the determination.

(f) *FHFA prior approval.* An Enterprise may not repurchase or redeem any common equity tier 1 capital, additional tier 1, or tier 2 capital instrument without the prior approval of FHFA to the extent such prior approval is required by paragraph (b), (c), or (d) of this section, as applicable.

§ 1240.21 [Reserved]

§ 1240.22 Regulatory capital adjustments and deductions.

(a) *Regulatory capital deductions from common equity tier 1 capital.* An Enterprise must deduct from the sum of its common equity tier 1 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 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, held by the Enterprise. With the prior approval of FHFA, this deduction is not required for any defined benefit pension fund net asset to the extent the Enterprise has unrestricted and unfettered access to the assets in that fund. An Enterprise must risk weight any portion of the defined benefit pension fund asset that is not deducted under this paragraph (a) as if the Enterprise directly holds a proportional ownership share of each exposure in the defined benefit pension fund.

(6) The amount of expected credit loss that exceeds its eligible credit reserves.

(b) *Regulatory adjustments to common equity tier 1 capital.* (1) An Enterprise must adjust the sum of common equity tier 1 capital elements pursuant to the requirements set forth in this paragraph (b). Such adjustments to common equity tier 1 capital must be made net of the associated deferred tax effects.

(i) An Enterprise must deduct any accumulated net gains and add any accumulated net losses on cash flow hedges included in AOCI that relate to the hedging of items that are not recognized at fair value on the balance sheet.

(ii) An Enterprise must deduct any net gain and add any net loss related to changes in the fair value of liabilities that are due to changes in the Enterprise's own credit risk. An Enterprise must deduct the difference between its credit spread premium and the risk-free rate for derivatives that are liabilities as part of this adjustment.

(2) [Reserved]

(c) *Deductions from regulatory capital related to investments in capital instruments.*[1] An Enterprise must deduct an

[1] The Enterprise must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of

investment in the Enterprise's own capital instruments as follows:

(1) An Enterprise must deduct an investment in the Enterprise's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under §1240.20(b)(1);

(2) An Enterprise must deduct an investment in the Enterprise's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(3) An Enterprise must deduct an investment in the Enterprise's own tier 2 capital instruments from its tier 2 capital elements.

(d) *Items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds.* (1) An Enterprise must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d) that, individually, exceeds 10 percent of the sum of the Enterprise's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(i) DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An Enterprise is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section) arising from timing differences that the Enterprise could realize through net operating loss carrybacks. The Enterprise must risk weight these assets at 100 percent.

(ii) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(2) An Enterprise must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(1) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the Enterprise's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(1) of this section (the 15 percent common equity tier 1 capital deduction threshold).[2]

(3) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an Enterprise may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An Enterprise that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An Enterprise may change its exclusion preference only after obtaining the prior approval of FHFA.

(e) *Netting of DTLs against assets subject to deduction.* (1) Except as described in paragraph (e)(3) of this section, netting of DTLs against assets that are subject to deduction under this section is permitted, but not 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) For purposes of calculating the amount of DTAs subject to the threshold deduction in paragraph (d) of this section, the amount of DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, and of DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks, net of

ALLL or AACL, as applicable, includable in tier 2 capital under §1240.20(d).

[2] The amount of the items in paragraph (d) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the Enterprise and assigned a 250 percent risk weight.

any related valuation allowances, may be offset by DTLs (that have not been netted against assets subject to deduction pursuant to paragraph (e)(1) of this section) subject to the conditions set forth in this paragraph (e).

(i) Only the DTAs and DTLs that relate to taxes levied by the same taxation authority and that are eligible for offsetting by that authority may be offset for purposes of this deduction.

(ii) The amount of DTLs that the Enterprise nets against DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, and against DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks, net of any related valuation allowances, must be allocated in proportion to the amount of DTAs that arise from net operating loss and tax credit carryforwards (net of any related valuation allowances, but before any offsetting of DTLs) and of DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks (net of any related valuation allowances, but before any offsetting of DTLs), respectively.

(4) An Enterprise must net DTLs against assets subject to deduction under this section in a consistent manner from reporting period to reporting period. An Enterprise may change its preference regarding the manner in which it nets DTLs against specific assets subject to deduction under this section only after obtaining the prior approval of FHFA.

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

(g) *Treatment of assets that are deducted*. An Enterprise must exclude from standardized total risk-weighted assets and advanced approaches total risk-weighted assets any item deducted from regulatory capital under paragraphs (a), (c), and (d) of this section.

Subpart D—Risk-Weighted Assets—Standardized Approach

§ 1240.30 Applicability.

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

(b) This subpart is also applicable to covered positions, as defined in subpart F of this part.

RISK-WEIGHTED ASSETS FOR GENERAL CREDIT RISK

§ 1240.31 Mechanics for calculating risk-weighted assets for general credit risk.

(a) *General risk-weighting requirements*. An Enterprise must apply risk weights to its exposures as follows:

(1) An Enterprise must determine the exposure amount of each mortgage exposure, each other on-balance sheet exposure, each OTC derivative contract, and each off-balance sheet commitment, trade and transaction-related contingency, guarantee, repo-style transaction, forward agreement, or other similar transaction that is not:

(i) An unsettled transaction subject to § 1240.40;

(ii) A cleared transaction subject to § 1240.37;

(iii) A default fund contribution subject to § 1240.37;

(iv) A retained CRT exposure, acquired CRT exposure, or other securitization exposure subject to §§ 1240.41 through 1240.46;

(v) An equity exposure (other than an equity OTC derivative contract) subject to §§ 1240.51 and 1240.52; or

(vi) CVA risk-weighted assets subject to § 1240.36(d).

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

[88 FR 82198, Dec. 17, 2020, as amended at 88 FR 83476, Nov. 30, 2023]

§ 1240.32 General risk weights.

(a) *Exposures to the U.S. government.* (1) Notwithstanding any other requirement in this subpart, an Enterprise must assign a zero percent risk weight to:

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

(ii) 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 FDIC or NCUA.

(2) An Enterprise 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 FDIC or NCUA.

(b) *Certain supranational entities and multilateral development banks (MDBs).* An Enterprise must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

(c) *Exposures to GSEs.* (1) An Enterprise must assign a zero percent risk weight to any MBS guaranteed by the Enterprise (other than any retained CRT exposure).

(2) An Enterprise must assign a 5 percent risk weight to an exposure to the other Enterprise in a commingled security.

(3) An Enterprise must assign a 20 percent risk weight to an exposure to another GSE, including an MBS guaranteed by the other Enterprise, except for exposures under paragraph (c)(2) of this section.

(d) *Exposures to depository institutions and credit unions.* (1) An Enterprise 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 under paragraph (d)(2) of this section.

(2) An Enterprise must assign a 100 percent risk weight to an exposure to a financial institution if the exposure may be included in that financial institution's capital unless the exposure is:

(i) An equity exposure; or

(ii) Deducted from regulatory capital under § 1240.22.

(e) *Exposures to U.S. public sector entities (PSEs).* (1) An Enterprise 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.

(2) An Enterprise 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.

(f) *Corporate exposures.* (1) An Enterprise must assign a 100 percent risk weight to all its corporate exposures, except as provided in paragraphs (f)(2) and (3) of this section.

(2) An Enterprise must assign a 2 percent risk weight to an exposure to a QCCP arising from the Enterprise posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 1240.37(b)(3)(i)(A) and a 4 percent risk weight to an exposure to a QCCP arising from the Enterprise posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 1240.37(b)(3)(i)(B).

(3) An Enterprise must assign a 2 percent risk weight to an exposure to a QCCP arising from the Enterprise posting cash collateral to the QCCP in connection with a cleared transaction that meets the requirements of § 1240.37(c)(3)(i).

(g) *Residential mortgage exposures*—(1) *Single-family mortgage exposures.* An Enterprise must assign a risk weight to a single-family mortgage exposure in accordance with § 1240.33.

(2) *Multifamily mortgage exposures.* An Enterprise must assign a risk weight to

a multifamily mortgage exposure in accordance with § 1240.34.

(h) *Past due exposures.* Except for an exposure to a sovereign entity or a mortgage exposure, if an exposure is 90 days or more past due or on non-accrual:

(1) An Enterprise must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) An Enterprise may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under § 1240.38 if the guarantee or credit derivative meets the requirements of that section; and

(3) An Enterprise may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under § 1240.39 if the collateral meets the requirements of that section.

(i) *Other assets.* (1) An Enterprise must assign a zero percent risk weight to cash owned and held in the offices of an insured depository institution or in transit.

(2) An Enterprise must assign a 20 percent risk weight to cash items in the process of collection.

(3) An Enterprise must assign a 100 percent risk weight to DTAs arising from temporary differences that the Enterprise could realize through net operating loss carrybacks.

(4) An Enterprise must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to § 1240.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks.

(5) An Enterprise must assign a 20 percent risk weight to guarantee assets.

(6) An Enterprise must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to § 1240.22.

(j) *Insurance assets.* (1) An Enterprise must risk-weight the individual assets held in a separate account that does not qualify as a non-guaranteed separate account as if the individual assets were held directly by the Enterprise.

(2) An Enterprise must assign a zero percent risk weight to an asset that is held in a non-guaranteed separate account.

[85 FR 82198, Dec. 17, 2020, as amended at 88 FR 83476, Nov. 30, 2023]

§ 1240.33 Single-family mortgage exposures.

(a) *Definitions.* Subject to any additional instructions set forth on table 1 to this paragraph (a), for purposes of this section:

Adjusted MTMLTV means, with respect to a single-family mortgage exposure and as of a particular time, the amount equal to:

(i) The MTMLTV of the single-family mortgage exposure (or, if the loan age of the single-family mortgage exposure is less than 6, the OLTV of the single-family mortgage exposure); divided by

(ii) The amount equal to 1 plus either:

(A) The single-family countercyclical adjustment available at the time of the exposure's origination if the loan age of the single-family mortgage exposure is less than or equal to 5; or

(B) The single-family countercyclical adjustment available as of that time if the loan age of the single-family mortgage exposure is greater than or equal to 6.

Approved insurer means an insurance company that is currently approved by an Enterprise to guarantee or insure single-family mortgage exposures acquired by the Enterprise.

Cancelable mortgage insurance means a mortgage insurance policy that, pursuant to its terms, may or will be terminated before the maturity date of the insured single-family mortgage exposure, including as required or permitted by the Homeowners Protection Act of 1998 (12 U.S.C. 4901).

Charter-level coverage means mortgage insurance that satisfies the minimum requirements of the authorizing statute of an Enterprise.

Cohort burnout means the number of refinance opportunities since the loan age of the single-family mortgage exposure was 6, categorized into ranges pursuant to the instructions set forth on Table 1 to this paragraph (a).

Coverage percent means the percent of the sum of the unpaid principal balance, any lost interest, and any foreclosure costs that is used to determine the benefit or other coverage under a mortgage insurance policy.

COVID–19-related forbearance means a forbearance granted pursuant to section 4022 of the Coronavirus Aid, Relief, and Economic Security Act or under a program established by FHFA to provide forbearance to borrowers adversely impacted by COVID–19.

Days past due means the number of days a single-family mortgage exposure is past due.

Debt-to-income ratio (DTI) means the ratio of a borrower's total monthly obligations (including housing expense) divided by the borrower's monthly income, as calculated under the Guide of the Enterprise.

Deflated HPI means, as of a particular time, the amount equal to:

(i) The national, not-seasonally adjusted Expanded-Data FHFA House Price Index® as of the end of the preceding calendar quarter; divided by

(ii) The average of the three monthly observations of the preceding calendar quarter from the non-seasonally adjusted Consumer Price Index for All Urban Consumers, U.S. City Average, All Items Less Shelter.

Guide means, as applicable, the Fannie Mae Single Family Selling Guide, the Fannie Mae Single Family Servicing Guide and the Freddie Mac Single-family Seller/Servicers Guide.

Guide-level coverage means mortgage insurance that satisfies the requirements of the Guide of the Enterprise with respect to mortgage insurance that has a coverage percent that exceeds charter-level coverage.

Interest-only (IO) means a single-family mortgage exposure that requires only payment of interest without any principal amortization during all or part of the loan term.

Loan age means the number of scheduled payment dates since the origination of a single-family mortgage exposure.

Loan-level credit enhancement means:

(i) Mortgage insurance; or

(ii) A participation agreement.

Loan documentation means the completeness of the documentation used to underwrite a single-family mortgage exposure, as determined under the Guide of the Enterprise.

Loan purpose means the purpose of a single-family mortgage exposure at origination.

Long-term HPI trend means, as of a particular time, the amount equal to: $0.66112295e^{(0.002619948*t)}$.

Where t = the number of quarters from the first quarter of 1975 to and including the end of the preceding calendar quarter and where the first quarter of 1975 is counted as one.[1]

Long-term trend departure means, as of a particular time, the percent amount equal to—

(i) The deflated HPI as of that time divided by the long-term HPI trend as of that time; minus

(ii) 1.0.

MI cancelation feature means an indicator for whether mortgage insurance is cancelable mortgage insurance or non-cancelable mortgage insurance, assigned pursuant to the instructions set forth on Table 1 to this paragraph (a).

Modification means a permanent amendment or other change to the interest rate, maturity date, unpaid principal balance, or other contractual term of a single-family mortgage exposure or a deferral of a required payment until the maturity or earlier payoff of the single-family mortgage exposure. A modification does not include a repayment plan with respect to any

[1] FHFA will adjust the formula for the long-term HPI trend in accordance with applicable law if two conditions are satisfied as of the end of a calendar quarter that follows the last adjustment to the long-term HPI trend: (i) The average of the long-term trend departures over four consecutive calendar quarters has been less than −5.0 percent; and (ii) after the end of the calendar quarter in which the first condition is satisfied, the deflated HPI has increased to an extent that it again exceeds the long-term HPI trend. The point in time of the new trough used by FHFA to adjust the formula for the long-term HPI trend will be identified by the calendar quarter with the smallest deflated HPI in the period that includes the calendar quarter in which the first condition is satisfied and ends at the end of the calendar quarter in which the second condition is first satisfied.

amounts that are past due or a COVID–19-related forbearance.

Modified re-performing loan (modified RPL) means a single-family mortgage exposure (other than an NPL) that is or has been subject to a modification, excluding any single-family mortgage exposure that was not 60 or more days past due at any time in a continuous 60-calendar month period that begins at any time after the effective date of the last modification.

Months since last modification means the number of scheduled payment dates since the effective date of the last modification of a single-family mortgage exposure.

Mortgage concentration risk means the extent to which a mortgage insurer or other counterparty is exposed to mortgage credit risk relative to other risks.

MTMLTV means, with respect to a single-family mortgage exposure, the amount equal to:

(i) The unpaid principal balance of the single-family mortgage exposure; divided by

(ii) The amount equal to:

(A) The unpaid principal balance of the single-family mortgage exposure at origination; divided by

(B) The OLTV of the single-family mortgage exposure; multiplied by

(C) The most recently available FHFA Purchase-only State-level House Price Index of the State in which the property securing the single-family mortgage exposure is located; divided by

(D) The FHFA Purchase-only State-level House Price Index, as of date of the origination of the single-family mortgage exposure, in which the property securing the single-family mortgage exposure is located.

Non-cancelable mortgage insurance means a mortgage insurance policy that, pursuant to its terms, may not be terminated before the maturity date of the insured single-family mortgage exposure.

Non-modified re-performing loan (non-modified RPL) means a single-family mortgage exposure (other than a modified RPL or an NPL) that was previously an NPL at any time in the prior 48 calendar months.

Non-performing loan (NPL) means a single-family mortgage exposure that is 60 days or more past due.

Occupancy type means the borrowers' intended use of the property securing a single-family mortgage exposure.

Original credit score means the borrower's credit score as of the origination date of a single-family mortgage exposure.

OLTV (original loan-to-value) means, with respect to a single-family mortgage exposure, the amount equal to:

(i) The unpaid principal balance of the single-family mortgage exposure at origination; divided by

(ii) The lesser of:

(A) The appraised value of the property securing the single-family mortgage exposure; and

(B) The sale price of the property securing the single-family mortgage exposure.

Origination channel means the type of institution that originated a single-family mortgage exposure, assigned pursuant to the instructions set forth on table 1 to this paragraph (a).

Participation agreement means, with respect to a single-family mortgage exposure, any agreement between an Enterprise and the seller of the single-family mortgage exposure pursuant to which the seller retains a participation of not less than 10 percent in the single-family mortgage exposure.

Past due means, with respect to a single-family mortgage exposure, that any amount required to be paid by the borrower under the terms of the single-family mortgage exposure has not been paid.

Payment change from modification means the amount, expressed as a percent, equal to:

(i) The amount equal to:

(A) The monthly payment of a single-family mortgage exposure after a modification; divided by

(B) The monthly payment of the single-family mortgage exposure before the modification; minus

(ii) 1.0.

Performing loan means any single-family mortgage exposure that is not an NPL, a modified RPL, or a non-modified RPL.

Previous maximum days past due means the maximum number of days a modified RPL or non-modified RPL was past due in the prior 36 calendar months.

Product type means an indicator reflecting the contractual terms of a single-family mortgage exposure as of the origination date, assigned pursuant to the instructions set forth on Table 1 to this paragraph (a).

Property type means the physical structure of the property securing a single-family mortgage exposure.

Refinance opportunity means, with respect to a single-family mortgage exposure, any calendar month in which the Primary Mortgage Market Survey (PMMS) rate for the month and year of the origination of the single-family mortgage exposure exceeds the PMMS rate for that calendar month by more than 50 basis points.

Refreshed credit score means the borrower's most recently available credit score.

Single-family countercyclical adjustment means, as of a particular time, zero percent except:

(i) If the long-term trend departure as of that time is greater than 5 percent, the percent amount equal to:

(A) 1.05 multiplied by the long-term HPI trend, as of that time, divided by the deflated HPI, as of that time, minus

(B) 1.0.

(ii) If the long-term trend departure as of that time is less than −5 percent, the percent amount equal to:

(A) 0.95 multiplied by the long-term HPI trend, as of that time, divided by the deflated HPI, as of that time, minus

(B) 1.0.

Streamlined refi means a single-family mortgage exposure that was refinanced through a streamlined refinance program of an Enterprise, including the Home Affordable Refinance Program, Relief Refi, and Refi-Plus.

Subordination means, with respect to a single-family mortgage exposure, the amount equal to the original unpaid principal balance of any second lien single-family mortgage exposure divided by the lesser of the appraised value or sale price of the property that secures the single-family mortgage exposure.

TABLE 1 TO PARAGRAPH (a)—PERMISSIBLE VALUES AND ADDITIONAL INSTRUCTIONS

Defined term	Permissible values	Additional instructions
Cohort burnout	"No burnout," if the single-family mortgage exposure has not had a refinance opportunity since the loan age of the single-family mortgage exposure was 6.. "Low," if the single-family mortgage exposure has had 12 or fewer refinance opportunities since the loan age of the single-family mortgage exposure was 6. "Medium," if the single-family mortgage exposure has had between 13 and 24 refinance opportunities since the loan age of the single-family mortgage exposure was 6. "High," if the single-family mortgage exposure has had more than 24 refinance opportunities since the loan age of the single-family mortgage exposure was 6.	High if unable to determine.
Coverage percent	0 percent <= coverage percent <= 100 percent	0 percent if outside of permissible range or unable to determine.
Days past due	Non-negative integer	210 if negative or unable to determine.
Debt-to-income (DTI) ratio.	0 percent < DTI < 100 percent	42 percent if outside of permissible range or unable to determine.
Interest-only (IO)	Yes, no	Yes if unable to determine.
Loan age	0 <= loan age <= 500	500 if outside of permissible range or unable to determine.
Loan documentation	None, low, full	None if unable to determine.
Loan purpose	Purchase, cashout refinance, rate/term refinance	Cashout refinance if unable to determine.
MTMLTV	0 percent < MTMLTV <= 300 percent	If the property securing the single-family mortgage exposure is located in Puerto Rico or the U.S. Virgin Islands, use the FHFA House Price Index of the United States. If the property securing the single-family mortgage exposure is located in Hawaii, use the FHFA Purchase-only State-level House Price Index of Guam. If the single-family mortgage exposure was originated before 1991, use the Enterprise's proprietary housing price index. Use geometric interpolation to convert quarterly housing price index data to monthly data. 300 percent if outside of permissible range or unable to determine.
Mortgage concentration risk.	High, not high	High if unable to determine.
MI cancellation feature	Cancellable mortgage insurance, non-cancellable mortgage insurance.	Cancellable mortgage insurance, if unable to determine.
Occupancy type	Investment, owner-occupied, second home	Investment if unable to determine.
OLTV	0 percent < OLTV <= 300 percent	300 percent if outside of permissible range or unable to determine.
Original credit score	300 <= original credit score <= 850	If there are credit scores from multiple credit repositories for a borrower, use the following logic to determine a single original credit score:

		• If there are credit scores from two repositories, take the lower credit score. • If there are credit scores from three repositories, use the middle credit score. • If there are credit scores from three repositories and two of the credit scores are identical, use the identical credit score. If there are multiple borrowers, use the following logic to determine a single original credit score: • Using the logic above, determine a single credit score for each borrower. • Select the lowest single credit score across all borrowers. The original credit score for the single-family mortgage exposure is 680 if the Enterprise has verified that no borrower has a credit score at any of the three repositories. 600 if outside of permissible range or unable to determine.
Origination channel	Retail, third-party origination (TPO)	TPO includes broker and correspondent channels. TPO if unable to determine.
Payment change from modification.	−80 percent < payment change from modification < 50 percent	If the single-family mortgage exposure initially had an adjustable or step-rate feature, the monthly payment after a permanent modification is calculated using the initial modified rate. 0 percent if unable to determine. −79 percent if less than or equal to −80 percent. 49 percent if greater than or equal to 50 percent.
Previous maximum days past due.	Non-negative integer	181 months if negative or unable to determine.
Product type	‘‘FRM30’’ means a fixed-rate single-family mortgage exposure with an original amortization term greater than 309 months and less than or equal to 429 months. ‘‘FRM20’’ means a fixed-rate single-family mortgage exposure with an original amortization term greater than 189 months and less than or equal to 309 months. ‘‘FRM15’’ means a fixed-rate single-family mortgage exposure with an amortization term less than or equal to 189 months. ‘‘ARM1/1’’ is an adjustable-rate single-family mortgage exposure that has a mortgage rate and required payment that adjust annually.	Product types other than FRM30, FRM20, FRM15 or ARM 1/1 should be assigned to FRM30. Use the post-modification product type for modified mortgage exposures. ARM 1/1 if unable to determine.
Property type	1-unit, 2–4 units, condominium, manufactured home	Use condominium for cooperatives. 2–4 units if unable to determine.
Refreshed credit score	300 <= refreshed credit score <= 850	If there are credit scores from multiple credit repositories for a borrower, use the following logic to determine a single refreshed credit score: • If there are credit scores from two repositories, take the lower credit score.

TABLE 1 TO PARAGRAPH (a)—PERMISSIBLE VALUES AND ADDITIONAL INSTRUCTIONS—Continued

Defined term	Permissible values	Additional instructions
		• If there are credit scores from three repositories, use the middle credit score. • If there are credit scores from three repositories and two of the credit scores are identical, use the identical credit score. If there are multiple borrowers, use the following logic to determine a single Refreshed Credit Score: • Using the logic above, determine a single credit score for each borrower. • Select the lowest single credit score across all borrowers. 600 if outside of permissible range or unable to determine.
Streamlined refi	Yes, no	No if unable to determine.
Subordination	0 percent <= Subordination <= 80 percent	80 percent if outside permissible range.

(b) *Risk weight*—(1) *In general*. Subject to paragraph (b)(2) of this section, an Enterprise must assign a risk weight to a single-family mortgage exposure equal to:

(i) The base risk weight for the single-family mortgage exposure as determined under paragraph (c) of this section; multiplied by

(ii) The combined risk multiplier for the single-family mortgage exposure as determined under paragraph (d) of this section; multiplied by

(iii) The adjusted credit enhancement multiplier for the single-family mortgage exposure as determined under paragraph (e) of this section.

(2) *Minimum risk weight*. Notwithstanding the risk weight determined under paragraph (b)(1) of this section, the risk weight assigned to a single-family mortgage exposure may not be less than 20 percent.

(c) *Base risk weight*—(1) *Performing loan*. The base risk weight for a performing loan is set forth on Table 2 to this paragraph (c)(1). For purposes of this paragraph (c)(1), credit score means, with respect to a single-family mortgage exposure:

(i) The original credit score of the single-family mortgage exposure, if the loan age of the single-family mortgage exposure is less than 6; or

(ii) The refreshed credit score of the single-family mortgage exposure.

TABLE 2 TO PARAGRAPH (c)(1): PERFORMING LOANS

	Adjusted MTMLTV													
Credit Score	<= 30%	> 30%, <= 40%	> 40%, <= 50%	> 50%, <= 60%	> 60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%, <= 95%	> 95%, <= 100%	> 100%, <= 110%	> 110%, <= 120%	> 120%
< 620	2%	10%	18%	34%	49%	72%	105%	129%	159%	188%	218%	247%	275%	317%
>=620, < 640	2%	8%	14%	27%	39%	58%	84%	102%	127%	151%	178%	208%	237%	282%
>=640, < 660	2%	7%	12%	23%	34%	51%	73%	89%	111%	133%	159%	186%	214%	258%
>=660, < 680	2%	6%	10%	20%	29%	44%	63%	78%	98%	119%	141%	168%	194%	236%
>=680, < 700	2%	6%	9%	18%	26%	38%	55%	67%	88%	109%	125%	150%	176%	215%
>=700, < 720	2%	5%	8%	15%	22%	33%	47%	57%	75%	94%	110%	134%	158%	194%
>=720, < 740	2%	4%	6%	13%	19%	28%	41%	50%	66%	84%	96%	118%	140%	172%
>=740, < 760	2%	4%	5%	11%	16%	23%	33%	40%	54%	69%	80%	99%	119%	147%
>=760, < 780	2%	3%	4%	9%	13%	19%	27%	32%	43%	56%	65%	82%	99%	122%
>= 780	2%	3%	3%	7%	10%	14%	21%	25%	33%	43%	50%	63%	77%	96%

(2) *Non-modified RPL*. The base risk weight for a non-modified RPL is set forth on Table 3 to this paragraph (c)(2). For purposes of this paragraph (c)(2), re-performing duration means, with respect to a non-modified RPL, the number of scheduled payment dates since the non-modified RPL was last an NPL.

TABLE 3 TO PARAGRAPH (c)(2): NON-MODIFIED RPLS

	Adjusted MTMLTV													
Non-modified re-performing duration	<= 30%	> 30%, <= 40%	> 40%, <= 50%	> 50%, <= 60%	>60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%, <= 95%	> 95%, <= 100%	> 100%, <= 110%	> 110%, <= 120%	> 120%
<= 3	2%	11%	20%	35%	50%	69%	84%	105%	122%	135%	149%	160%	174%	180%
>3, <= 12	2%	8%	14%	27%	39%	54%	67%	84%	100%	113%	127%	141%	160%	177%
> 12, <= 36	2%	7%	11%	22%	32%	46%	57%	69%	84%	97%	111%	127%	150%	175%
> 36, <= 48	2%	5%	7%	14%	21%	32%	46%	56%	72%	88%	103%	123%	143%	174%

(3) *Modified RPL.* The base risk weight for a modified RPL is set forth on Table 4 to paragraph (c)(3)(ii) of this section. For purposes of this paragraph (c)(3), re-performing duration means, with respect to a modified RPL, the lesser of:

(i) The months since last modification of the modified RPL; and

(ii) The number of scheduled payment dates since the modified RPL was last an NPL.

TABLE 4 TO PARAGRAPH (c)(3)(ii): MODIFIED RPLS

	Adjusted MTMLTV													
Modified re-performing duration	<= 30%	> 30%, <= 40%	> 40%, <= 50%	> 50%, <= 60%	>60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%, <= 95%	> 95%, <= 100%	> 100%, <= 110%	> 110%, <= 120%	> 120%
<= 3	2%	17%	31%	54%	76%	98%	115%	129%	145%	159%	170%	179%	189%	196%
>3, <= 12	2%	14%	25%	44%	62%	81%	95%	109%	124%	139%	152%	164%	178%	195%
> 12, <= 36	2%	11%	19%	35%	50%	66%	79%	92%	107%	123%	136%	152%	169%	194%
> 36	2%	8%	13%	24%	35%	50%	68%	80%	98%	117%	133%	150%	168%	193%

(4) *NPL.* The base risk weight for an NPL is set forth on Table 5 to this paragraph (c)(4).

TABLE 5 TO PARAGRAPH (c)(4): NPLS

	Adjusted MTMLTV									
Days past due	<= 30%	> 30%, <= 40%	> 40%, <= 50%	> 50%, <= 60%	>60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%
60 to 89 days	8%	40%	71%	122%	173%	193%	205%	215%	226%	238%
90 to 209 days	11%	48%	85%	135%	184%	201%	211%	218%	224%	230%
>= 210 days	28%	76%	124%	172%	219%	227%	231%	233%	234%	221%

(d) *Combined risk multiplier*—(1) *In general.* Subject to paragraph (d)(2) of this section, the combined risk multiplier for a single-family mortgage exposure is equal to the product of each of the applicable risk multipliers set forth under the applicable single-family segment on Table 6 to paragraph (d)(2) of this section.

(2) *Maximum combined risk multiplier*. Notwithstanding the combined risk multiplier determined under paragraph (d)(1) of this section, the combined risk multiplier for a single-family mortgage exposure may not exceed 3.0.

TABLE 6 TO PARAGRAPH (d)(2): RISK MULTIPLIERS

Risk factor	Value or range	Single-family segment			
		Performing loan	Non-modified RPL	Modified RPL	NPL
Loan Purpose	Purchase	1.0	1.0	1.0	
	Cashout refinance	1.4	1.4	1.4	
	Rate/term refinance	1.3	1.2	1.3	
Occupancy Type	Owner-occupied or second home	1.0	1.0	1.0	1.0
	Investment	1.2	1.5	1.3	1.2
Property Type	1-unit	1.0	1.0	1.0	1.0
	2–4 unit	1.4	1.4	1.3	1.1
	Condominium	1.1	1.0	1.0	1.0
	Manufactured home	1.3	1.8	1.6	1.2
Origination Channel	Retail	1.0	1.0	1.0	1.0
	TPO	1.1	1.1	1.1	1.0
DTI	DTI <= 25%	0.8	0.9	0.9	
	25% < DTI <= 40%	1.0	1.0	1.0	
	DTI >40%	1.2	1.2	1.1	
Product Type	FRM30	1.0	1.0	1.0	1.0
	ARM1/1	1.7	1.1	1.0	1.1
	FRM15	0.3	0.3	0.5	0.5
	FRM20	0.6	0.6	0.5	0.8
Subordination	No subordination	1.0	1.0	1.0	
	30% < OLTV <= 60% and 0% <subordination <= 5%.	1.1	0.8	1.0	
	30% < OLTV <= 60% and subordination >5%.	1.5	1.1	1.2	
	OLTV >60% and 0% <subordination <= 5%.	1.1	1.2	1.1	
	OLTV >60% and subordination >5%.	1.4	1.5	1.3	
Loan Age	Loan age <= 24 months	1.0	....		
	24 months <loan age <= 36 months	0.95	....		
	36 months <loan Age <= 60 months.	0.80	....		
	Loan age >60 months	0.75	....		
Cohort Burnout	No burnout	1.0	....		
	Low	1.2	....		
	Medium	1.3	....		
	High	1.4	....		
Interest-only	No IO	1.0	1.0	1.0	
	Yes IO	1.6	1.4	1.1	
Loan Documentation	Full	1.0	1.0	1.0	
	None or low	1.3	1.3	1.2	
Streamlined Refi	No	1.0	1.0	1.0	
	Yes	1.0	1.2	1.1	
Refreshed Credit Score for Modified RPLs and Non-modified RPLs.	Refreshed credit score <620	....	1.6	1.4	
	620 <= refreshed credit score <640		1.3	1.2	
	640 <= refreshed credit score <660	....	1.2	1.1	
	660 <= refreshed credit score <700	....	1.0	1.0	
	700 <= refreshed credit score <720	....	0.7	0.8	
	720 <= refreshed credit score <740	....	0.6	0.7	
	740 <= refreshed credit score <760	....	0.5	0.6	
	760 <= refreshed credit score <780	....	0.4	0.5	
	Refreshed credit score >= 780	....	0.3	0.4	
Payment Change from Modification.	Payment change >= 0%	....	....	1.1	
	−20% <= payment change <0%	....	....	1.0	
	−30% <= payment change < −20%.	....	....	0.9	
	Payment change < −30%	....	....	0.8	
Previous Maximum Days Past Due.	0–59 days	....	1.0	1.0	
	60–90 days	....	1.2	1.1	
	91–150 days	....	1.3	1.1	

TABLE 6 TO PARAGRAPH (d)(2): RISK MULTIPLIERS—Continued

Risk factor	Value or range	Single-family segment			
		Performing loan	Non-modified RPL	Modified RPL	NPL
	151+ days		1.5	1.1	
Refreshed Credit Score for NPLs.	Refreshed credit score <580				1.2
	580 <= refreshed credit score <640				1.1
	640 <= refreshed credit score <700				1.0
	700 <= refreshed credit score <720				0.9
	720 <= refreshed credit score <760				0.8
	760 <= refreshed credit score <780				0.7
	Refreshed credit score >= 780				0.5

(e) *Credit enhancement multiplier*—(1) *Amount*—(i) *In general*. The adjusted credit enhancement multiplier for a single-family mortgage exposure that is subject to loan-level credit enhancement is equal to 1.0 minus the product of:

(A) 1.0 minus the credit enhancement multiplier for the single-family mortgage exposure as determined under paragraph (e)(2) of this section; multiplied by

(B) 1.0 minus the counterparty haircut for the loan-level credit enhancement as determined under paragraph (e)(3) of this section.

(ii) *No loan-level credit enhancement*. The adjusted credit enhancement multiplier for a single-family mortgage exposure that is not subject to loan-level credit enhancement is equal to 1.0.

(2) *Credit enhancement multiplier*. (i) The credit enhancement multiplier for a single-family mortgage exposure that is subject to a participation agreement is 1.0.

(ii) Subject to paragraph (e)(2)(iii) of this section, the credit enhancement multiplier for—

(A) A performing loan, non-modified RPL, or modified RPL that is subject to non-cancelable mortgage insurance is set forth on Table 7 to paragraph (e)(2)(iii)(E) of this section;

(B) A performing loan or non-modified RPL that is subject to cancelable mortgage insurance is set forth on Table 8 to paragraph (e)(2)(iii)(E) of this section;

(C) A modified RPL with a 30-year post-modification amortization that is subject to cancelable mortgage insurance is set forth on Table 9 to paragraph (e)(2)(iii)(E) of this section;

(D) A modified RPL with a 40-year post-modification amortization that is subject to cancelable mortgage insurance is set forth on Table 10 to paragraph (e)(2)(iii)(E) of this section; and

(E) NPL, whether subject to non-cancelable mortgage insurance or cancelable mortgage insurance, is set forth on Table 11 to paragraph (e)(2)(iii)(E) of this section.

(iii) Notwithstanding anything to the contrary in this paragraph (e), for purposes of paragraph (e)(2)(ii) of this section:

(A) The OLTV of a single-family mortgage exposure will be deemed to be 80 percent if the single-family mortgage exposure has an OLTV less than or equal to 80 percent.

(B) If the single-family mortgage exposure has an interest-only feature, any cancelable mortgage insurance will be deemed to be non-cancelable mortgage insurance.

(C) If the coverage percent of the mortgage insurance is greater than charter-level coverage and less than guide-level coverage, the credit enhancement multiplier is the amount equal to a linear interpolation between the credit enhancement multiplier of the single-family mortgage exposure for charter-level coverage and the credit enhancement multiplier of the single-family mortgage exposure for guide-level coverage.

(D) If the coverage percent of the mortgage insurance is less than charter-level coverage, the credit enhancement multiplier is the amount equal to the midpoint of a linear interpolation between a credit enhancement multiplier of 1.0 and the credit enhancement multiplier of the single-family mortgage exposure for charter-level coverage.

(E) If the coverage percent of the mortgage insurance is greater than guide-level coverage, the credit enhancement multiplier is determined as if the coverage percent were guide-level coverage.

TABLE 7 TO PARAGRAPH (e)(2)(iii)(E): CREDIT ENHANCEMENT MULTIPLIERS FOR SINGLE-FAMILY MORTGAGE EXPOSURES SUBJECT TO NON-CANCELABLE MORTGAGE INSURANCE (EXCEPT NPLS)

Amortization Term / Coverage Type	Coverage Category	Credit Enhancement Multiplier
15/20-year with Guide-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.846
	85% < OLTV <= 90% and coverage percent = 12%	0.701
	90% < OLTV <= 95% and coverage percent = 25%	0.408
	95% < OLTV <= 97% and coverage percent = 35%	0.226
	OLTV > 97% and coverage percent = 35%	0.184
30-year with Guide-level Coverage	80% < OLTV <= 85% and coverage percent = 12%	0.706
	85% < OLTV <= 90% and coverage percent = 25%	0.407
	90% < OLTV <= 95% and coverage percent = 30%	0.312
	95% < OLTV <= 97% and coverage percent = 35%	0.230
	OLTV > 97% and coverage percent = 35%	0.188
15/20-year with Charter-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.846
	85% < OLTV <= 90% and coverage percent = 12%	0.701
	90% < OLTV <= 95% and coverage percent = 16%	0.612
	95% < OLTV <= 97% and coverage percent = 18%	0.570
	OLTV > 97% and coverage percent = 20%	0.535
30-year with Charter-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.850
	85% < OLTV <= 90% and coverage percent = 12%	0.713
	90% < OLTV <= 95% and coverage percent = 16%	0.627
	95% < OLTV <= 97% and coverage percent = 18%	0.590
	OLTV > 97% and coverage percent = 20%	0.558

TABLE 8 TO PARAGRAPH (e)(2)(iii)(E): CREDIT ENHANCEMENT MULTIPLIERS FOR PERFORMING LOANS AND NON-MODIFIED RPLS SUBJECT TO CANCELABLE MORTGAGE INSURANCE

	Loan Age													
	OLTV	Coverage Percent	<= 5	>5, <= 12	>12, <= 24	>24, <= 36	>36, <= 48	>48, <= 60	> 60, <= 72	> 72, <= 84	> 84, <= 96	>96, <=108	>108, <=120	>120
15/20 Year Amortizing Loan with Guide-level Coverage	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>90%, <=95%	25%	0.826	0.853	0.912	0.973	0.996	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>95%, <=97%	35%	0.732	0.765	0.848	0.936	0.986	0.998	1.000	1.000	1.000	1.000	1.000	1.000
	>97%	35%	0.630	0.673	0.762	0.865	0.945	0.980	0.996	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Guide-level Coverage	>80%, <=85%	12%	0.867	0.884	0.928	0.962	0.994	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	25%	0.551	0.584	0.627	0.679	0.785	0.893	0.950	0.986	0.998	1.000	1.000	1.000
	>90%, <=95%	30%	0.412	0.440	0.456	0.484	0.547	0.654	0.743	0.845	0.932	0.969	0.992	1.000
	>95%, <=97%	35%	0.322	0.351	0.369	0.391	0.449	0.535	0.631	0.746	0.873	0.925	0.965	1.000
	>97%	35%	0.272	0.295	0.314	0.353	0.410	0.462	0.515	0.607	0.756	0.826	0.887	1.000
15/20 Year Amortizing Loan with Charter-level Coverage	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>90%, <=95%	16%	0.887	0.904	0.943	0.983	0.997	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>95%, <=97%	18%	0.854	0.874	0.918	0.966	0.992	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	>97%	20%	0.788	0.810	0.859	0.922	0.969	0.989	0.998	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Charter-level Coverage	>80%, <=85%	6%	0.934	0.943	0.964	0.981	0.997	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	12%	0.780	0.795	0.819	0.845	0.896	0.948	0.976	0.993	0.999	1.000	1.000	1.000
	>90%, <=95%	16%	0.679	0.690	0.703	0.719	0.755	0.813	0.861	0.916	0.963	0.983	0.995	1.000
	>95%, <=97%	18%	0.642	0.652	0.662	0.676	0.708	0.756	0.806	0.866	0.933	0.960	0.981	1.000
	>97%	20%	0.597	0.607	0.617	0.629	0.658	0.686	0.715	0.765	0.845	0.882	0.914	1.000

TABLE 9 TO PARAGRAPH (e)(2)(iii)(E): CREDIT ENHANCEMENT MULTIPLIERS FOR MODIFIED RPLS WITH 30-YEAR POST-MODIFICATION AMORTIZATION THAT IS SUBJECT TO CANCELABLE MORTGAGE INSURANCE

	Months Since Last Modification													
	OLTV	Coverage Percent	<= 5	>5, <= 12	>12, <= 24	>24, <= 36	>36, <= 48	>48, <= 60	> 60, <= 72	> 72, <= 84	> 84, <= 96	>96, <=108	>108, <=120	>120
15/20 Year Amortizing Loan with Guide-level Coverage	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>90%, <=95%	25%	0.826	0.853	0.912	0.973	0.996	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>95%, <=97%	35%	0.732	0.765	0.848	0.936	0.986	0.998	1.000	1.000	1.000	1.000	1.000	1.000
	>97%	35%	0.630	0.673	0.762	0.865	0.945	0.980	0.996	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Guide-level Coverage	>80%, <=85%	12%	0.867	0.906	0.978	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	25%	0.551	0.568	0.653	0.839	0.968	0.992	0.998	1.000	1.000	1.000	1.000	1.000
	>90%, <=95%	30%	0.412	0.426	0.470	0.601	0.794	0.889	0.951	0.981	0.992	1.000	1.000	1.000
	>95%, <=97%	35%	0.322	0.337	0.380	0.492	0.689	0.810	0.899	0.945	0.965	1.000	1.000	1.000
	>97%	35%	0.272	0.284	0.334	0.436	0.561	0.682	0.791	0.857	0.887	1.000	1.000	1.000
15/20 Year Amortizing Loan with Charter-level Coverage	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>90%, <=95%	16%	0.887	0.904	0.943	0.983	0.997	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>95%, <=97%	18%	0.854	0.874	0.918	0.966	0.992	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	>97%	20%	0.788	0.810	0.859	0.922	0.969	0.989	0.998	1.000	1.000	1.000	1.000	1.000
30 Year Amortizing Loan with Charter-level Coverage	>80%, <=85%	6%	0.934	0.954	0.989	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	12%	0.780	0.788	0.832	0.922	0.985	0.996	0.999	1.000	1.000	1.000	1.000	1.000
	>90%, <=95%	16%	0.679	0.685	0.711	0.784	0.889	0.940	0.973	0.989	0.995	1.000	1.000	1.000
	>95%, <=97%	18%	0.642	0.647	0.669	0.732	0.836	0.900	0.947	0.971	0.981	1.000	1.000	1.000
	>97%	20%	0.597	0.602	0.623	0.672	0.740	0.805	0.864	0.898	0.914	1.000	1.000	1.000

TABLE 10 TO PARAGRAPH (e)(2)(iii)(E): CREDIT ENHANCEMENT MULTIPLIERS FOR MODIFIED RPLS WITH 40-YEAR POST-MODIFICATION AMORTIZATION THAT IS SUBJECT TO CANCELABLE MORTGAGE INSURANCE

	Months Since Last Modification													
	OLTV	Coverage Percent	<= 5	>5, <= 12	>12, <= 24	>24, <= 36	>36, <= 48	>48, <= 60	> 60, <= 72	> 72, <= 84	> 84, <= 96	>96, <=108	>108, <=120	>120
15/20 Year Amortizing Loan with Guide-level Coverage	>80%, <=85%	6%	0.997	0.998	0.999	0.999	0.999	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	12%	0.963	0.971	0.971	0.971	0.980	0.988	0.994	0.999	1.000	1.000	1.000	1.000
	>90%, <=95%	25%	0.826	0.853	0.853	0.853	0.883	0.912	0.943	0.973	0.996	1.000	1.000	1.000
	>95%, <=97%	35%	0.732	0.765	0.765	0.765	0.807	0.848	0.892	0.936	0.986	0.998	1.000	1.000
	>97%	35%	0.630	0.673	0.673	0.673	0.718	0.762	0.814	0.865	0.945	0.980	0.996	1.000
30 Year Amortizing Loan with Guide-level Coverage	>80%, <=85%	12%	0.867	0.884	0.928	0.962	0.994	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	25%	0.551	0.584	0.627	0.679	0.785	0.893	0.950	0.986	0.998	1.000	1.000	1.000
	>90%, <=95%	30%	0.412	0.440	0.456	0.484	0.547	0.654	0.743	0.845	0.932	0.969	0.992	1.000
	>95%, <=97%	35%	0.322	0.351	0.369	0.391	0.449	0.535	0.631	0.746	0.873	0.925	0.965	1.000
	>97%	35%	0.272	0.295	0.314	0.353	0.410	0.462	0.515	0.607	0.756	0.826	0.887	1.000
15/20 Year Amortizing Loan with Charter-level Coverage	>80%, <=85%	6%	0.997	0.998	0.998	0.999	0.998	0.998	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	12%	0.963	0.971	0.971	0.971	0.980	0.988	0.994	0.999	1.000	1.000	1.000	1.000
	>90%, <=95%	16%	0.887	0.904	0.904	0.904	0.924	0.943	0.963	0.983	0.997	1.000	1.000	1.000
	>95%, <=97%	18%	0.854	0.874	0.874	0.874	0.896	0.918	0.942	0.966	0.992	0.999	1.000	1.000
	>97%	20%	0.788	0.810	0.810	0.810	0.835	0.859	0.891	0.922	0.969	0.989	0.998	1.000
30 Year Amortizing Loan with Charter-level Coverage	>80%, <=85%	6%	0.934	0.943	0.964	0.981	0.997	0.999	1.000	1.000	1.000	1.000	1.000	1.000
	>85%, <=90%	12%	0.780	0.795	0.819	0.845	0.896	0.948	0.976	0.993	0.999	1.000	1.000	1.000
	>90%, <=95%	16%	0.679	0.690	0.703	0.719	0.755	0.813	0.861	0.916	0.963	0.983	0.995	1.000
	>95%, <=97%	18%	0.642	0.652	0.662	0.676	0.708	0.756	0.806	0.866	0.933	0.960	0.981	1.000
	>97%	20%	0.597	0.607	0.617	0.629	0.658	0.686	0.715	0.765	0.845	0.882	0.914	1.000

TABLE 11 TO PARAGRAPH (e)(2)(iii)(E): CREDIT ENHANCEMENT MULTIPLIERS FOR NPLS SUBJECT TO CANCELABLE MORTGAGE INSURANCE OR NON-CANCELABLE MORTGAGE INSURANCE

Amortization Term / Coverage Type	Coverage Category	Credit Enhancement Multiplier
15/20-year with Guide-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.893
	85% < OLTV <= 90% and coverage percent = 12%	0.803
	90% < OLTV <= 95% and coverage percent = 25%	0.597
	95% < OLTV <= 97% and coverage percent = 35%	0.478
	OLTV > 97% and coverage percent = 35%	0.461
30-year with Guide-level Coverage	80% < OLTV <= 85% and coverage percent = 12%	0.813
	85% < OLTV <= 90% and coverage percent = 25%	0.618
	90% < OLTV <= 95% and coverage percent = 30%	0.530
	95% < OLTV <= 97% and coverage percent = 35%	0.490
	OLTV > 97% and coverage percent = 35%	0.505
15/20-year with Charter-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.893
	85% < OLTV <= 90% and coverage percent = 12%	0.803
	90% < OLTV <= 95% and coverage percent = 16%	0.775
	95% < OLTV <= 97% and coverage percent = 18%	0.678
	OLTV > 97% and coverage percent = 20%	0.663
30-year with Charter-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.902
	85% < OLTV <= 90% and coverage percent = 12%	0.835
	90% < OLTV <= 95% and coverage percent = 16%	0.787
	95% < OLTV <= 97% and coverage percent = 18%	0.765
	OLTV > 97% and coverage percent = 20%	0.760

(3) *Credit enhancement counterparty haircut*—(i) *Counterparty rating*—(A) *In general*. For purposes of this paragraph (e)(3), the counterparty rating for a counterparty is—

(*1*) 1, if the Enterprise has determined that the counterparty has extremely strong capacity to perform its financial obligations in a severely adverse stress;

(*2*) 2, if the Enterprise has determined that the counterparty has very strong capacity to perform its financial obligations in a severely adverse stress;

(*3*) 3, if the Enterprise has determined that the counterparty has strong capacity to perform its financial obligations in a severely adverse stress;

(*4*) 4, if the Enterprise has determined that the counterparty has adequate capacity to perform its financial obligations in a severely adverse stress;

(*5*) 5, if the Enterprise has determined that the counterparty does not have adequate capacity to perform its financial obligations in a severely adverse stress but does have adequate capacity to perform its financial obligations in an adverse stress;

(*6*) 6, if the Enterprise has determined that the counterparty does not have adequate capacity to perform its financial obligations in an adverse stress;

(*7*) 7, if the Enterprise has determined that the counterparty's capacity to perform its financial obligations is questionable under prevailing economic conditions;

(*8*) 8, if the Enterprise has determined that the counterparty is in default on a material contractual obligation (including any obligation with respect to collateral requirements) or is under a resolution proceeding or similar regulatory proceeding.

(B) *Required considerations*. (*1*) In determining the capacity of a counterparty to perform its financial obligations, the Enterprise must consider the likelihood that the counterparty will not perform its material obligations with respect to the posting of collateral and the payment of any amounts payable under its contractual obligations.

(*2*) A counterparty does not have an adequate capacity to perform its financial obligations in a severely adverse stress if there is a material risk that the counterparty would fail to timely perform any financial obligation in a severely adverse stress.

(ii) *Counterparty haircut*. The counterparty haircut is set forth on table 12 to this paragraph (e)(3)(ii). For purposes of this paragraph (e)(3)(ii), RPL means either a modified RPL or a non-modified RPL.

TABLE 12 TO PARAGRAPH (e)(3)(ii): COUNTERPARTY HAIRCUTS

	Mortgage Concentration Risk: Not High			High Mortgage Concentration Risk and Approved Insurer			High Mortgage Concentration Risk and Not an Approved Insurer		
Counterparty Rating	Performing Loans and RPLs		NPLs	Performing Loans and RPLs		NPLs	Performing Loans and RPLs		NPLs
	30 Year Product	20/15 Year Product		30 Year Product	20/15 Year Product		30 Year Product	20/15 Year Product	
1	1.8%	1.3%	0.6%	2.3%	1.6%	0.7%	2.8%	2.0%	0.9%
2	4.5%	3.5%	2.0%	5.9%	4.5%	2.6%	7.3%	5.6%	3.2%
3	5.2%	4.0%	2.4%	6.7%	5.1%	3.1%	8.3%	6.4%	3.9%
4	11.4%	9.5%	6.9%	14.2%	11.8%	8.5%	17.2%	14.3%	10.4%
5	14.8%	12.7%	9.9%	17.8%	15.2%	11.9%	20.9%	18.0%	14.0%
6	21.2%	19.1%	16.4%	24.0%	21.7%	18.6%	26.8%	24.2%	20.8%
7	40.0%	38.2%	35.7%	42.0%	40.1%	37.5%	43.7%	41.7%	39.0%
8	47.6%	46.6%	45.3%	47.6%	46.6%	45.3%	47.6%	46.6%	45.3%

(f) *COVID–19-related forbearances*—(1) *During forbearance*. Notwithstanding anything to the contrary under paragraph (c)(4) of this section, the base risk weight for an NPL is equal to the product of 0.45 and the base risk weight that would otherwise be assigned to the NPL under paragraph (c)(4) of this section if the NPL—

(i) Is subject to a COVID–19-related forbearance; or

(ii) Was subject to a COVID–19-related forbearance at any time in the prior 6 calendar months and is subject to a trial modification plan.

(2) *After forbearance*. Notwithstanding the definition of ''past due'' under paragraph (a) of this section, any period of time in which a single-family mortgage exposure was past due while subject to a COVID–19-related forbearance is to be disregarded for the purpose of assigning a risk weight under this section if the entire amount past due was repaid upon the termination of the COVID–19-related forbearance.

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022; 88 FR 83476, Nov. 30, 2023]

§ 1240.34 Multifamily mortgage exposures.

(a) *Definitions*. Subject to any additional instructions set forth on Table 1 to this paragraph (a), for purposes of this section:

Acquisition debt-service-coverage ratio (acquisition DSCR) means, with respect to a multifamily mortgage exposure, the amount equal to:

(i) The net operating income (NOI) (or, if not available, the net cash flow) of the multifamily property that secures the multifamily mortgage exposure, at the time of the acquisition by the Enterprise (or, if not available, at the time of the underwriting or origination) of the multifamily mortgage exposure; divided by

(ii) The scheduled periodic payment on the multifamily mortgage exposure (or, if interest-only, fully amortizing payment), at the time of the acquisition by the Enterprise (or, if not available, at the time of the origination) of the multifamily mortgage exposure.

Acquisition loan-to-value (acquisition LTV) means, with respect to a multifamily mortgage exposure, the amount, determined as of the time of the acquisition by the Enterprise (or, if not available, at the time of the underwriting or origination) of the multifamily mortgage exposure, equal to:

(i) The unpaid principal balance of the multifamily mortgage exposure; divided by

(ii) The value of the multifamily property securing the multifamily mortgage exposure.

Affordable unit means a unit within a property securing a multifamily mortgage exposure that can be rented by occupants with income less than or equal to 80 percent of the area median income where the property resides.

Debt-service-coverage ratio (DSCR) means, with respect to a multifamily mortgage exposure:

(i) The acquisition DSCR of the multifamily mortgage exposure if the loan age of the multifamily mortgage exposure is less than 6; or

(ii) The MTMDSCR of the multifamily mortgage exposure.

Government subsidy means that the property satisfies both of the following criteria:

(i) At least 20 percent of the property's units are restricted to be affordable units per a regulatory agreement, recorded use restriction, a housing-assistance payments contract, or other restrictions codified in loan agreements; and

(ii) The property benefits from one of the following government programs:

(A) Low Income Housing Tax Credits (LIHTC);

(B) Section 8 project-based rental assistance;

(C) Section 515 Rural Rental Housing Loans; or

(D) State/Local affordable housing programs that require the provision of affordable housing for the life of the loan.

Interest-only (IO) means a multifamily mortgage exposure that requires only payment of interest without any principal amortization during all or part of the loan term.

Loan age means the number of scheduled payment dates since the origination of the multifamily mortgage exposure.

Loan term means the number of years until final loan payment (which may be a balloon payment) under the terms of a multifamily mortgage exposure.

LTV means, with respect to a multifamily mortgage exposure;

(i) The acquisition LTV of the multifamily mortgage exposure if the loan age of the multifamily mortgage exposure is less than 6, or

(ii) The MTMLTV of the multifamily mortgage exposure.

Mark-to-market debt-service coverage ratio (MTMDSCR) means, with respect to a multifamily mortgage exposure, the amount equal to—

(i) The net operating income (or, if not available, the net cash flow) of the multifamily property that secures the multifamily mortgage exposure, as reported on the most recently available property operating statement; divided by

(ii) The scheduled periodic payment on the multifamily mortgage exposure (or, for interest-only, fully amortizing payment), as reported on the most recently available property operating statement.

Mark-to-market loan-to-value (MTMLTV) means, with respect to a multifamily mortgage exposure, the amount equal to:

(i) The unpaid principal balance of the multifamily mortgage exposure; divided by

(ii) The current value of the property security the multifamily mortgage exposure, estimated using either:

(A) The acquisition property value adjusted using a multifamily property value index; or

(B) The property value estimated based on net operating income and capitalization rate indices.

Multifamily adjustable-rate exposure means a multifamily mortgage exposure that is not, at that time, a multifamily fixed-rate exposure.

Multifamily fixed-rate exposure means a multifamily mortgage exposure that, at that time, has an interest rate that may not then increase or decrease based on a change in a reference index or other methodology, including:

(i) A multifamily mortgage exposure that has an interest rate that is fixed over the life of the loan; and

(ii) A multifamily mortgage exposure that has an interest rate that may increase or decrease in the future, but is fixed at that time.

Net cash flow means, with respect to a multifamily mortgage exposure, the amount equal to:

(i) The net operating income of the multifamily mortgage exposure; minus

(ii) Reserves for capital improvements; minus

(iii) Other expenses not included in net operating income required for the proper operation of the multifamily property securing the multifamily mortgage exposure, including any commissions paid to leasing agents in securing renters and special improvements to the property to accommodate the needs of certain renters.

Net operating income means, with respect to a multifamily mortgage exposure, the amount equal to:

(i) The rental income generated by the multifamily property securing the multifamily mortgage exposure; minus

(ii) The vacancy and property operating expenses of the multifamily property securing the multifamily mortgage exposure.

Original amortization term means the number of years, determined as of the time of the origination of a multifamily mortgage exposure, that it would take a borrower to pay a multifamily mortgage exposure completely if the borrower only makes the scheduled payments, and without making any balloon payment.

Original loan size means the dollar amount of the unpaid principal balance of a multifamily mortgage exposure at origination.

Payment performance means the payment status of history of a multifamily mortgage exposure, assigned pursuant to the instructions set forth on table 1 to this paragraph (a).

Supplemental mortgage exposure means any multifamily fixed-rate exposure or multifamily adjustable-rate exposure that is originated after the origination of a multifamily mortgage exposure that is secured by all or part of the same multifamily property.

Unpaid principal balance (UPB) means the outstanding loan amount of a multifamily mortgage exposure.

TABLE 1 TO PARAGRAPH (a)—PERMISSIBLE VALUES AND ADDITIONAL INSTRUCTIONS

Defined Term	Permissible Values	Additional Instructions
Acquisition DSCR	Greater than or equal to 0.	Origination DSCR if negative or unable to determine. If origination DSCR is unavailable, use underwriting DSCR. If underwriting DSCR is unavailable, use 1.00.
Acquisition LTV	Greater than or equal to 0.	Origination LTV if negative or unable to determine. If origination LTV is unavailable, use underwriting LTV. If underwriting LTV is unavailable, use 100 percent.
Government Subsidy	Yes, no	Yes if at least one property securing the multifamily mortgage exposure has a government subsidy. If the multifamily mortgage exposure is secured by more than one property, calculate a weighted average government subsidy multiplier per the instructions in Table 4 to Paragraph (d). No otherwise
Interest-only	Yes, no.	Yes if unable to determine.
Loan Term	Non-negative integer in years.	11 years if negative or unable to determine.
MTMDSCR	Greater than or equal to 0.	If the MTMDSCR is unavailable, the last observed DSCR can be marked to market using a property NOI index or an NOI estimate based on rent and expense indices. If the index is not sufficiently granular, either because of its frequency or geography, or with respect to a certain multifamily property type, use a more geographically broad index or a recently estimated mark-to-market value.
MTMLTV	Greater than or equal to 0.	If the MTMLTV is unavailable, mark to market using an index. If the index is not sufficiently granular, either because of its frequency or geography or with respect to a certain multifamily property type, use a more geographically broad index or a recently estimated mark-to-market value.
Net Operating Income (NOI) / Net Cash Flow (NCF)	Greater than or equal to 0.	Infer using origination LTV or origination DSCR if NOI/NCF is unavailable. Alternatively, infer using actual MTMLTV or actual MTMDSCR.
Original Amortization Term	Non-negative integer in years.	31 years if negative or unable to determine.
Original Loan Size	Non-negative dollar value.	$3,000,000 if negative or unable to determine
Payment Performance	Performing, delinquent 60 days or more, re-performing (without modification), modified.	Modified if unable to determine.
Special Product	Not a special product, student housing, rehab/value-add/lease-up, supplemental mortgage exposure.	Rehab/value-add/lease-up if unable to determine.
UPB	UPB > $0	$100,000,000 if negative or unable to determine.

(b) *Risk weight*—(1) *In general.* Subject to paragraphs (b)(2) and (3) of this section, an Enterprise must assign a risk weight to a multifamily mortgage exposure equal to:

(i) The base risk weight for the multifamily mortgage exposure as determined under paragraph (c) of this section; multiplied by

(ii) The combined risk multiplier for the multifamily mortgage exposure as determined under paragraph (d) of this section.

(2) *Minimum risk weight.* Notwithstanding the risk weight determined under paragraph (b)(1) of this section, the risk weight assigned to a multifamily mortgage exposure may not be less than 20 percent.

(3) *Loan groups.* If a multifamily property that secures a multifamily mortgage exposure also secures one or more supplemental mortgage exposures:

(i) A multifamily mortgage exposure-specific base risk weight must be determined under paragraph (c) of this section using for each of these multifamily mortgage exposures a single DSCR and single LTV, both calculated as if all of the multifamily mortgage exposures secured by the multifamily property were consolidated into a single multifamily mortgage exposure; and

(ii) A multifamily mortgage exposure-specific combined risk multiplier must be determined under paragraph (d) of this section based on the risk characteristics of the multifamily mortgage exposure (except with respect to the loan size multiplier, which would be determined using the aggregate unpaid principal balance of these multifamily mortgage exposures).

(c) *Base risk weight*—(1) *Multifamily fixed-rate exposure*. The base risk weight for a multifamily fixed-rate exposure is set forth on table 2 to this paragraph (c)(1).

TABLE 2 TO PARAGRAPH (c)(1): MULTIFAMILY FIXED-RATE EXPOSURE

		LTV									
		<=35%	> 35%, <=45%	> 45%, <=55%	> 55%, <=65%	> 65%, <=70%	> 70%, <=75%	> 75%, <=80%	> 80%, <=90%	> 90%, <=100%	>100%
	<1.00	52%	60%	76%	109%	125%	140%	153%	166%	172%	182%
	>= 1.00, <1.15	45%	52%	65%	92%	105%	118%	129%	140%	145%	153%
	>=1.15, < 1.20	40%	46%	58%	81%	93%	103%	112%	122%	127%	134%
	>=1.20, < 1.25	37%	42%	52%	72%	83%	92%	97%	107%	112%	119%
	>=1.25, < 1.30	33%	38%	47%	65%	74%	81%	86%	94%	99%	105%
	>=1.30, < 1.35	31%	35%	43%	59%	66%	71%	76%	84%	88%	93%
DSCR	>=1.35, < 1.50	29%	32%	39%	54%	59%	64%	69%	76%	80%	86%
	>=1.50, < 1.65	25%	27%	31%	39%	43%	47%	51%	57%	62%	70%
	>=1.65, < 1.80	22%	23%	26%	31%	34%	37%	41%	47%	53%	61%
	>=1.80, < 1.95	16%	17%	19%	24%	26%	29%	32%	41%	47%	56%
	>=1.95, < 2.10	15%	15%	16%	20%	23%	26%	28%	37%	44%	54%
	>=2.10, < 2.25	13%	14%	15%	19%	21%	24%	25%	36%	42%	53%
	>=2.25	13%	13%	14%	18%	20%	23%	24%	35%	42%	52%

(2) *Multifamily adjustable-rate exposure*. The base risk weight for a multifamily adjustable-rate exposure is set forth on table 3 to this paragraph (c)(2).

TABLE 3 TO PARAGRAPH (c)(2): MULTIFAMILY ADJUSTABLE-RATE EXPOSURE

		LTV									
		<=35%	> 35%, <=45%	> 45%, <=55%	> 55%, <=65%	> 65%, <=70%	> 70%, <=75%	> 75%, <=80%	> 80%, <=90%	> 90%, <=100%	>100%
DSCR	<1.00	81%	86%	93%	133%	153%	172%	189%	211%	229%	255%
	>=1.00, <1.25	71%	75%	80%	113%	129%	145%	158%	178%	193%	215%
	>=1.25, < 1.30	63%	67%	71%	100%	114%	127%	138%	156%	169%	188%
	>=1.30, < 1.36	57%	60%	63%	88%	101%	113%	120%	136%	149%	168%
	>=1.36, < 1.42	51%	54%	57%	79%	90%	99%	106%	120%	131%	148%
	>=1.42, < 1.47	45%	49%	51%	71%	80%	86%	93%	107%	116%	131%
	>=1.47, < 1.53	37%	42%	47%	64%	71%	77%	84%	97%	106%	120%
	>=1.53, < 1.70	30%	33%	37%	47%	51%	56%	63%	72%	83%	98%
	>=1.70, < 1.87	23%	26%	30%	36%	40%	45%	51%	60%	70%	86%
	>=1.87, < 2.03	19%	21%	22%	28%	31%	35%	40%	52%	62%	79%
	>=2.03, < 2.21	17%	18%	19%	24%	26%	31%	34%	47%	58%	75%
	>=2.21, < 2.38	16%	17%	17%	22%	24%	28%	31%	45%	56%	73%
	>=2.38	16%	16%	16%	21%	23%	27%	30%	44%	55%	72%

(d) *Combined risk multiplier*. The combined risk multiplier for a multifamily mortgage exposure is equal to the product of each of the applicable risk multipliers set forth on table 4 to this paragraph (d).

TABLE 4 TO PARAGRAPH (d)—MULTIFAMILY RISK MULTIPLIERS

Risk Factor	Value or Range	Risk Multiplier
Payment Performance	Performing	1.00
	Delinquent more than 60 days	1.10
	Re-performing (without modification)	1.10
	Modified	1.20
Government Subsidy[1]	No	1.00
	Yes	0.60
Interest-Only	No	1.00
	Yes (during the interest-only period)	1.10
Loan Term	Loan term <= 1Yr	0.70
	1Yr < loan term <= 2Yr	0.75
	2Yr < loan term <= 3Yr	0.80
	3Yr < loan term <= 4Yr	0.85
	4Yr < loan term <= 5Yr	0.90
	5Yr < loan term <= 7Yr	0.95
	7Yr < loan term <= 10Yr	1.00
	Loan term > 10Yr	1.15
Original Amortization Term	Original amortization term <= 20Yr	0.70
	20Yr < original amortization term <= 25Yr	0.80
	25Yr < original amortization term <= 30Yr	1.00
	Original amortization term > 30Yr	1.10
Original Loan Size (in millions)	Loan size <= $2m	1.45
	$2m < loan size <= $3m	1.35
	$3m < loan size <= $4m	1.25
	$4m < loan size <= $5m	1.15
	$5m < loan size <= $6m	1.08
	$6m < loan size <= $7m	1.02
	$7m < loan size <= $8m	0.96
	$8m < loan size <= $9m	0.92
	$9m < loan size <= $10m	0.88
	$10m < loan size <= $11m	0.86
	$11m < loan size <= $12m	0.84
	$12m < loan size <= $13m	0.82
	$13m < loan size <= $15m	0.81
	$15m < loan size <= $22m	0.80
	$22m < loan size <= $23m	0.79
	$23m < loan size <= $24m	0.78
	$24m < loan size <= $25m	0.76
	Loan size >$25m	0.70
Special Products	Not a special product	1.00
	Student housing	1.15
	Rehab/value-add/lease-up	1.25

[1] If a multifamily mortgage exposure is collateralized by multiple properties, calculate a weighted average government subsidy multiplier by assigning a 0.6 multiplier to each property with a government subsidy and 1.0 multiplier to each property without a government subsidy, and using the total number of units in a property as weights.

[85 FR 82198, Dec. 17, 2020, as amended at 88 FR 83478, Nov. 30, 2023]

§ 1240.35 Off-balance sheet exposures.

(a) *General.* (1) An Enterprise 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 an Enterprise commits to provide a commitment, the Enterprise may apply the lower of the two applicable CCFs.

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

(4) Where an Enterprise provides a commitment or enters into a repurchase agreement and such commitment or repurchase agreement, the exposure amount shall be no greater than the maximum contractual amount of the commitment or repurchase agreement, as applicable.

(b) *Credit conversion factors*—(1) *Zero percent CCF.* An Enterprise must apply a zero percent CCF to the unused portion of a commitment that is unconditionally cancelable by the Enterprise.

(2) *20 percent CCF.* An Enterprise must apply a 20 percent CCF to the amount of commitments with an original maturity of one year or less that are not unconditionally cancelable by the Enterprise.

(3) *50 percent CCF.* An Enterprise must apply a 50 percent CCF to:

(i) The amount of commitments with an original maturity of more than one year that are not unconditionally cancelable by the Enterprise; and

(ii) Guarantees on exposures to the other Enterprise in commingled securities.

(4) *100 percent CCF.* An Enterprise must apply a 100 percent CCF to the amount of the following off-balance sheet items and other similar transactions:

(i) Guarantees, except guarantees included in paragraph (b)(3)(ii) of this section;

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

(iii) 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 Enterprise has lent under the transaction);

(iv) 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 Enterprise has posted as collateral under the transaction); and

(v) Forward agreements.

[85 FR 82198, Dec. 17, 2020, as amended at 88 FR 83480, Nov. 30, 2023]

§ 1240.36 Derivative contracts.

(a) *Exposure amount for derivative contracts.* An Enterprise must calculate the exposure amount or EAD for all its derivative contracts using the standardized approach for counterparty credit risk (SA–CCR) in paragraph (c) of this section for purposes of standardized total risk-weighted assets. An Enterprise must apply the treatment of cleared transactions under § 1240.37 to its derivative contracts that are cleared transactions and to all default fund contributions associated with such derivative contracts for purposes of standardized total risk-weighted assets.

(b) *Methodologies for collateral recognition.* (1) An Enterprise may use the methodologies under § 1240.39 to recognize the benefits of financial collateral in mitigating the counterparty credit risk of repo-style transactions, eligible margin loans, collateralized OTC derivative contracts and single product netting sets of such transactions.

(2) An Enterprise must use the methodology in paragraph (c) of this section to calculate EAD for an OTC derivative contract or a set of OTC derivative

contracts subject to a qualifying master netting agreement.

(3) An Enterprise must also use the methodology in paragraph (d) of this section to calculate the risk-weighted asset amounts for CVA for OTC derivatives.

(c) *EAD for derivative contracts*—(1) *Options for determining EAD*. An Enterprise must determine the EAD for a derivative contract using SA–CCR under paragraph (c)(5) of this section. The exposure amount determined under SA–CCR is the EAD for the derivative contract or derivatives contracts. An Enterprise must use the same methodology to calculate the exposure amount for all its derivative contracts. An Enterprise may reduce the EAD calculated according to paragraph (c)(5) of this section by the credit valuation adjustment that the Enterprise has recognized in its balance sheet valuation of any derivative contracts in the netting set. For purposes of this paragraph (c)(1), the credit valuation adjustment does not include any adjustments to common equity tier 1 capital attributable to changes in the fair value of the Enterprise's liabilities that are due to changes in its own credit risk since the inception of the transaction with the counterparty.

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

(i) *End date* means the last date of the period referenced by an interest rate or credit derivative contract or, if the derivative contract references another instrument, by the underlying instrument, except as otherwise provided in this paragraph (c).

(ii) *Start date* means the first date of the period referenced by an interest rate or credit derivative contract or, if the derivative contract references the value of another instrument, by underlying instrument, except as otherwise provided in this paragraph (c).

(iii) *Hedging set* means:

(A) With respect to interest rate derivative contracts, all such contracts within a netting set that reference the same reference currency;

(B) With respect to exchange rate derivative contracts, all such contracts within a netting set that reference the same currency pair;

(C) With respect to credit derivative contracts, all such contracts within a netting set;

(D) With respect to equity derivative contracts, all such contracts within a netting set;

(E) With respect to a commodity derivative contract, all such contracts within a netting set that reference one of the following commodity categories: Energy, metal, agricultural, or other commodities;

(F) With respect to basis derivative contracts, all such contracts within a netting set that reference the same pair of risk factors and are denominated in the same currency; or

(G) With respect to volatility derivative contracts, all such contracts within a netting set that reference one of interest rate, exchange rate, credit, equity, or commodity risk factors, separated according to the requirements under paragraphs (c)(2)(iii)(A) through (E) of this section.

(H) If the risk of a derivative contract materially depends on more than one of interest rate, exchange rate, credit, equity, or commodity risk factors, FHFA may require an Enterprise to include the derivative contract in each appropriate hedging set under paragraphs (c)(2)(iii)(A) through (E) of this section.

(3) *Credit derivatives*. Notwithstanding paragraphs (c)(1) and (2) of this section:

(i) An Enterprise that purchases a credit derivative that is recognized under §1240.38 as a credit risk mitigant for an exposure is not required to calculate a separate counterparty credit risk capital requirement under this section so long as the Enterprise does so consistently for all such credit derivatives and either includes or excludes all such credit derivatives that are subject to a master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(ii) An Enterprise that is the protection provider in a credit derivative must treat the credit derivative as an exposure to the reference obligor and is not required to calculate a counterparty credit risk capital requirement for the credit derivative under this section, so long as it does so consistently for all such credit derivatives and either includes all or excludes all such credit derivatives that are subject to a master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(4) *Equity derivatives*. An Enterprise must treat an equity derivative contract as an equity exposure and compute a risk-weighted asset amount for the equity derivative contract under §1240.51. In addition, if an Enterprise is treating the contract as a covered position under subpart F of this part, the Enterprise must also calculate a risk-based capital requirement for the counterparty credit risk of an equity derivative contract under this section.

(5) *Exposure amount*. (i) The exposure amount of a netting set, as calculated under this paragraph (c), is equal to 1.4 multiplied by the sum of the replacement cost of the netting set, as calculated under paragraph (c)(6) of this section, and the potential future exposure of the netting set, as calculated under paragraph (c)(7) of this section.

(ii) Notwithstanding the requirements of paragraph (c)(5)(i) of this section, the exposure amount of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty to the variation margin agreement is not required to post variation margin, is equal to the lesser of the exposure amount of the netting set calculated under paragraph (c)(5)(i) of this section and the exposure amount of the netting set calculated under paragraph (c)(5)(i) as if the netting set were not subject to a variation margin agreement.

(iii) Notwithstanding the requirements of paragraph (c)(5)(i) of this section, the exposure amount of a netting set that consists of only sold options in which the premiums have been fully paid by the counterparty to the options and where the options are not subject to a variation margin agreement is zero.

(iv) Notwithstanding the requirements of paragraph (c)(5)(i) of this section, the exposure amount of a netting set in which the counterparty is a commercial end-user is equal to the sum of replacement cost, as calculated under paragraph (c)(6) of this section, and the potential future exposure of the netting set, as calculated under paragraph (c)(7) of this section.

(v) For purposes of the exposure amount calculated under paragraph (c)(5)(i) of this section and all calculations that are part of that exposure amount, an Enterprise may elect to treat a derivative contract that is a cleared transaction that is not subject to a variation margin agreement as one that is subject to a variation margin agreement, if the derivative contract is subject to a requirement that the counterparties make daily cash payments to each other to account for changes in the fair value of the derivative contract and to reduce the net position of the contract to zero. If an Enterprise makes an election under this paragraph (c)(5)(v) for one derivative contract, it must treat all other derivative contracts within the same netting set that are eligible for an election under this paragraph (c)(5)(v) as derivative contracts that are subject to a variation margin agreement.

(vi) For purposes of the exposure amount calculated under paragraph (c)(5)(i) of this section and all calculations that are part of that exposure amount, an Enterprise may elect to treat a credit derivative contract, equity derivative contract, or commodity derivative contract that references an index as if it were multiple derivative contracts each referencing one component of the index.

(6) *Replacement cost of a netting set*—(i) *Netting set subject to a variation margin agreement under which the counterparty must post variation margin*. The replacement cost of a netting set subject to a variation margin agreement, excluding a netting set that is subject to a variation margin agreement under which the counterparty is not required to post variation margin, is the greater of:

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the sum of the net independent collateral amount and the variation margin amount applicable to such derivative contracts;

(B) The sum of the variation margin threshold and the minimum transfer amount applicable to the derivative contracts within the netting set less the net independent collateral amount applicable to such derivative contracts; or

(C) Zero.

(ii) *Netting sets not subject to a variation margin agreement under which the counterparty must post variation margin.* The replacement cost of a netting set that is not subject to a variation margin agreement under which the counterparty must post variation margin to the Enterprise is the greater of:

(A) The sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set less the sum of the net independent collateral amount and variation margin amount applicable to such derivative contracts; or

(B) Zero.

(iii) *Multiple netting sets subject to a single variation margin agreement.* Notwithstanding paragraphs (c)(6)(i) and (ii) of this section, the replacement cost for multiple netting sets subject to a single variation margin agreement must be calculated according to paragraph (c)(10)(i) of this section.

(iv) *Netting set subject to multiple variation margin agreements or a hybrid netting set.* Notwithstanding paragraphs (c)(6)(i) and (ii) of this section, the replacement cost for a netting set subject to multiple variation margin agreements or a hybrid netting set must be calculated according to paragraph (c)(11)(i) of this section.

(7) *Potential future exposure of a netting set.* The potential future exposure of a netting set is the product of the PFE multiplier and the aggregated amount.

(i) *PFE multiplier.* The PFE multiplier is calculated according to the following formula:

$$PFE\ multiplier = \min\left(1; 0.05 + 0.95 * e^{\left(\frac{V-C}{1.9*A}\right)}\right)$$

Where:

(A) V is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set;

(B) C is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting set; and

(C) A is the aggregated amount of the netting set.

(ii) *Aggregated amount.* The aggregated amount is the sum of all hedging set amounts, as calculated under paragraph (c)(8) of this section, within a netting set.

(iii) *Multiple netting sets subject to a single variation margin agreement.* Notwithstanding paragraphs (c)(7)(i) and (ii) of this section and when calculating the potential future exposure for purposes of adjusted total assets, the potential future exposure for multiple netting sets subject to a single variation margin agreement must be calculated according to paragraph (c)(10)(ii) of this section.

(iv) *Netting set subject to multiple variation margin agreements or a hybrid netting set.* Notwithstanding paragraphs (c)(7)(i) and (ii) of this section and when calculating the potential future exposure for purposes of adjusted total assets, the potential future exposure for a netting set subject to multiple variation margin agreements or a hybrid netting set must be calculated according to paragraph (c)(11)(ii) of this section.

(8) *Hedging set amount*—(i) *Interest rate derivative contracts.* To calculate the hedging set amount of an interest rate derivative contract hedging set, an Enterprise may use either of the formulas provided in paragraphs (c)(8)(i)(A) and (B) of this section:

(A) Formula 1 is as follows:

$$Hedging\ set\ amount = [(AddOn^{IR}_{TB1})^2 + (AddOn^{IR}_{TB2})^2 + (AddOn^{IR}_{TB3})^2 + 1.4 * AddOn^{IR}_{TB1} * AddOn^{IR}_{TB2} + 1.4 * AddOn^{IR}_{TB2} * AddOn^{IR}_{TB3} + 0.6 * AddOn^{IR}_{TB1} * AddOn^{IR}_{TB3}]^{\frac{1}{2}};\ \text{or}$$

(B) Formula 2 is as follows:

$$Hedging\ set\ amount = |AddOn^{IR}_{TB1}| + |AddOn^{IR}_{TB2}| + |AddOn^{IR}_{TB3}|.$$

Where in paragraphs (c)(8)(i)(A) and (B) of this section:

(*1*) $AddOn_{TB1}{}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of less than one year from the present date;

(*2*) $AddOn_{TB2}{}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of one to five years from the present date; and

(*3*) $AddOn_{TB3}{}^{IR}$ is the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set with an end date of more than five years from the present date.

(ii) *Exchange rate derivative contracts.* For an exchange rate derivative contract hedging set, the hedging set amount equals the absolute value of the sum of the adjusted derivative contract amounts, as calculated under paragraph (c)(9) of this section, within the hedging set.

(iii) *Credit derivative contracts and equity derivative contracts.* The hedging set amount of a credit derivative contract hedging set or equity derivative contract hedging set within a netting set is calculated according to the following formula:

$$Hedging\ set\ amount = \left[\left(\sum_{k=1}^{K} \rho_k * AddOn(Ref_k)\right)^2 + \sum_{k=1}^{K} (1-(\rho_k)^2) * \left(AddOn(Ref_k)\right)^2\right]^{\frac{1}{2}}$$

Where:

(A) k is each reference entity within the hedging set.

(B) K is the number of reference entities within the hedging set.

(C) $AddOn(Ref_k)$ equals the sum of the adjusted derivative contract amounts, as determined under paragraph (c)(9) of this section, for all derivative contracts within the hedging set that reference reference entity k.

(D) ρ_kPkequals the applicable supervisory correlation factor, as provided in table 2 to paragraph (c)(11)(ii)(B)(*2*).

(iv) *Commodity derivative contracts.* The hedging set amount of a commodity derivative contract hedging set within a netting set is calculated according to the following formula:

$$Hedging\ set\ amount = \left[\left(\rho * \sum_{k=1}^{K} AddOn(Type_k)\right)^2 + (1-(\rho)^2) * \sum_{k=1}^{K}\left(AddOn(Type_k)\right)^2\right]^{\frac{1}{2}}$$

Where:

(A) k is each commodity type within the hedging set.

(B) K is the number of commodity types within the hedging set.

(C) *AddOn (Type* $_k$*)* equals the sum of the adjusted derivative contract amounts, as determined under paragraph (c)(9) of this section, for all derivative contracts within the hedging set that reference commodity type.

(D) *P* equals the applicable supervisory correlation factor, as provided in table 2 to paragraph (c)(11)(ii)(B)(*2*).

(v) *Basis derivative contracts and volatility derivative contracts.* Notwithstanding paragraphs (c)(8)(i) through (iv) of this section, an Enterprise must calculate a separate hedging set amount for each basis derivative contract hedging set and each volatility derivative contract hedging set. An Enterprise must calculate such hedging set amounts using one of the formulas under paragraphs (c)(8)(i) through (iv) that corresponds to the primary risk factor of the hedging set being calculated.

(9) *Adjusted derivative contract amount*—(i) *Summary.* To calculate the adjusted derivative contract amount of a derivative contract, an Enterprise must determine the adjusted notional amount of derivative contract, pursuant to paragraph (c)(9)(ii) of this section, and multiply the adjusted notional amount by each of the supervisory delta adjustment, pursuant to paragraph (c)(9)(iii) of this section, the maturity factor, pursuant to paragraph (c)(9)(iv) of this section, and the applicable supervisory factor, as provided in table 2 to paragraph (c)(11)(ii)(B)(*2*).

(ii) *Adjusted notional amount.* (A)(*1*) For an interest rate derivative contract or a credit derivative contract, the adjusted notional amount equals the product of the notional amount of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation, and the supervisory duration, as calculated by the following formula:

$$Supervisory\ duration = max\left\{\frac{e^{-0.05*\left(\frac{S}{250}\right)} - e^{-0.05*\left(\frac{E}{250}\right)}}{0.05}, 0.04\right\}$$

Where:

(*i*) S is the number of business days from the present day until the start date of the derivative contract, or zero if the start date has already passed; and

(*ii*) E is the number of business days from the present day until the end date of the derivative contract.

(*2*) For purposes of paragraph (c)(9)(ii)(A)(*1*) of this section:

(*i*) For an interest rate derivative contract or credit derivative contract that is a variable notional swap, the notional amount is equal to the time-weighted average of the contractual notional amounts of such a swap over the remaining life of the swap; and

(*ii*) For an interest rate derivative contract or a credit derivative contract that is a leveraged swap, in which the notional amount of all legs of the derivative contract are divided by a factor and all rates of the derivative contract are multiplied by the same factor, the notional amount is equal to the notional amount of an equivalent unleveraged swap.

(B)(*1*) For an exchange rate derivative contract, the adjusted notional amount is the notional amount of the non-U.S. denominated currency leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation. If both legs of the exchange rate derivative contract are denominated in currencies other than U.S. dollars, the adjusted notional amount of the derivative contract is the largest leg of the derivative contract, as measured in U.S. dollars using the exchange rate on the date of the calculation.

(*2*) Notwithstanding paragraph (c)(9)(ii)(B)(*1*) of this section, for an exchange rate derivative contract with multiple exchanges of principal, the Enterprise must set the adjusted notional amount of the derivative contract equal to the notional amount of the derivative contract multiplied by the number of exchanges of principal under the derivative contract.

(C)(*1*) For an equity derivative contract or a commodity derivative contract, the adjusted notional amount is the product of the fair value of one unit of the reference instrument underlying the derivative contract and the number of such units referenced by the derivative contract.

(*2*) Notwithstanding paragraph (c)(9)(ii)(C)(*1*) of this section, when calculating the adjusted notional amount for an equity derivative contract or a commodity derivative contract that is a volatility derivative contract, the Enterprise must replace the unit price with the underlying volatility referenced by the volatility derivative contract and replace the number of units with the notional amount of the volatility derivative contract.

(iii) *Supervisory delta adjustments.* (A) For a derivative contract that is not an option contract or collateralized debt obligation tranche, the supervisory delta adjustment is 1 if the fair value of the derivative contract increases when the value of the primary risk factor increases and −1 if the fair value of the derivative contract decreases when the value of the primary risk factor increases.

(B)(*1*) For a derivative contract that is an option contract, the supervisory delta adjustment is determined by the following formulas, as applicable:

TABLE 1 TO PARAGRAPH (C)(9)(III)(B)(*1*)—SUPERVISORY DELTA ADJUSTMENT FOR OPTIONS CONTRACTS

	Bought	Sold
Call Options	$\Phi\left(\frac{ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$-\Phi\left(\frac{ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$
Put Options	$-\Phi\left(-\frac{ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$	$\Phi\left(-\frac{ln\left(\frac{P+\lambda}{K+\lambda}\right)+0.5*\sigma^2*T/250}{\sigma*\sqrt{T/250}}\right)$

(*2*) As used in the formulas in table 1 to paragraph (c)(9)(iii)(B)(*1*):

(*i*) *E* is the standard normal cumulative distribution function;

(*ii*) P equals the current fair value of the instrument or risk factor, as applicable, underlying the option;

(*iii*) K equals the strike price of the option;

(*iv*) T equals the number of business days until the latest contractual exercise date of the option;

(*v*) λ equals zero for all derivative contracts except interest rate options for the currencies where interest rates have negative values. The same value of λ must be used for all interest rate options that are denominated in the same currency. To determine the value of λ for a given currency, an Enterprise must find the lowest value L of P and K of all interest rate options in a given currency that the Enterprise has with all counterparties. Then, λ is set according to this formula:

$\lambda = \max\{-L + 0.1\%, 0\}$; and

(*vi*) σ equals the supervisory option volatility, as provided in table 2 to paragraph (c)(11)(ii)(B)(*2*).

(C)(*1*) For a derivative contract that is a collateralized debt obligation tranche, the supervisory delta adjustment is determined by the following formula:

$$\text{Supervisory Delta Adjustment} = \frac{15}{(1 + 14 * A) * (1 + 14 * D)}$$

(*2*) As used in the formula in paragraph (c)(9)(iii)(C)(1) of this section:

(*i*) A is the attachment point, which equals the ratio of the notional amounts of all underlying exposures that are subordinated to the Enterprise's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one;[1]

(*ii*) D is the detachment point, which equals one minus the ratio of the notional amounts of all underlying exposures that are senior to the Enterprise's exposure to the total notional amount of all underlying exposures, expressed as a decimal value between zero and one; and

(*iii*) The resulting amount is designated with a positive sign if the collateralized debt obligation tranche was purchased by the Enterprise and is designated with a negative sign if the collateralized debt obligation tranche was sold by the Enterprise.

(iv) *Maturity factor*. (A)(*1*) The maturity factor of a derivative contract that is subject to a variation margin agreement, excluding derivative contracts that are subject to a variation margin agreement under which the counterparty is not required to post variation margin, is determined by the following formula:

$$\text{Maturity factor} = \frac{3}{2}\sqrt{\frac{\text{MPOR}}{250}}$$

Where Margin Period of Risk (MPOR) refers to the period from the most recent exchange of collateral covering a netting set of derivative contracts with a defaulting counterparty until the derivative contracts are closed out and the resulting market risk is re-hedged.

(*2*) Notwithstanding paragraph (c)(9)(iv)(A)(*1*) of this section:

(*i*) For a derivative contract that is not a client-facing derivative transaction, MPOR cannot be less than ten business days plus the periodicity of re-margining expressed in business days minus one business day;

(*ii*) For a derivative contract that is a client-facing derivative transaction, cannot be less than five business days plus the periodicity of re-margining expressed in business days minus one business day; and

(*iii*) For a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, or a netting set that contains one or more trades involving illiquid collateral or a derivative contract that cannot be easily replaced, MPOR cannot be less than twenty business days.

(*3*) Notwithstanding paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section, for a netting set subject to more than two outstanding disputes over margin that lasted longer than the MPOR over the previous two quarters, the applicable floor is twice the amount provided in paragraphs (c)(9)(iv)(A)(*1*) and (*2*) of this section.

(B) The maturity factor of a derivative contract that is not subject to a

[1] In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the Enterprise's exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n−1) notional amounts of the underlying exposures are subordinated to the Enterprise's exposure.

variation margin agreement, or derivative contracts under which the counterparty is not required to post variation margin, is determined by the following formula:

$$\text{Maturity factor} = \sqrt{\frac{\min(M; 250)}{250}}$$

Where M equals the greater of 10 business days and the remaining maturity of the contract, as measured in business days.

(C) For purposes of paragraph (c)(9)(iv) of this section, if an Enterprise has elected pursuant to paragraph (c)(5)(v) of this section to treat a derivative contract that is a cleared transaction that is not subject to a variation margin agreement as one that is subject to a variation margin agreement, the Enterprise must treat the derivative contract as subject to a variation margin agreement with maturity factor as determined according to (c)(9)(iv)(A) of this section, and daily settlement does not change the end date of the period referenced by the derivative contract.

(v) *Derivative contract as multiple effective derivative contracts.* An Enterprise must separate a derivative contract into separate derivative contracts, according to the following rules:

(A) For an option where the counterparty pays a predetermined amount if the value of the underlying asset is above or below the strike price and nothing otherwise (binary option), the option must be treated as two separate options. For purposes of paragraph (c)(9)(iii)(B) of this section, a binary option with strike K must be represented as the combination of one bought European option and one sold European option of the same type as the original option (put or call) with the strikes set equal to 0.95 * K and 1.05 * K so that the payoff of the binary option is reproduced exactly outside the region between the two strikes. The absolute value of the sum of the adjusted derivative contract amounts of the bought and sold options is capped at the payoff amount of the binary option.

(B) For a derivative contract that can be represented as a combination of standard option payoffs (such as collar, butterfly spread, calendar spread, straddle, and strangle), an Enterprise must treat each standard option component as a separate derivative contract.

(C) For a derivative contract that includes multiple-payment options, (such as interest rate caps and floors), an Enterprise may represent each payment option as a combination of effective single-payment options (such as interest rate caplets and floorlets).

(D) An Enterprise may not decompose linear derivative contracts (such as swaps) into components.

(10) *Multiple netting sets subject to a single variation margin agreement*—(i) *Calculating replacement cost.* Notwithstanding paragraph (c)(6) of this section, an Enterprise shall assign a single replacement cost to multiple netting sets that are subject to a single variation margin agreement under which the counterparty must post variation margin, calculated according to the following formula:

$$\textit{Replacement Cost} = max\{\Sigma_{NS} max\{V_{NS}; 0\} - max\{C_{MA}; 0\}; 0\} + max\{\Sigma_{NS} min\{V_{NS}; 0\} - min\{C_{MA}; 0\}; 0\}$$

Where:

(A) NS is each netting set subject to the variation margin agreement MA;

V_{NS} is the sum of the fair values (after excluding any valuation adjustments) of the derivative contracts within the netting set NS; and

(B) C_{MA} is the sum of the net independent collateral amount and the variation margin amount applicable to the derivative contracts within the netting sets subject to the single variation margin agreement.

(ii) *Calculating potential future exposure.* Notwithstanding paragraph (c)(5) of this section, an Enterprise shall assign a single potential future exposure to multiple netting sets that are subject to a single variation margin agreement under which the counterparty must post variation margin equal to the sum of the potential future exposure of each such netting set, each calculated according to paragraph (c)(7) of this section as if such nettings sets were not subject to a variation margin agreement.

(11) *Netting set subject to multiple variation margin agreements or a hybrid netting set*—(i) *Calculating replacement cost.*

To calculate replacement cost for either a netting set subject to multiple variation margin agreements under which the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative contract subject to variation margin agreement under which the counterparty must post variation margin and at least one derivative contract that is not subject to such a variation margin agreement, the calculation for replacement cost is provided under paragraph (c)(6)(i) of this section, except that the variation margin threshold equals the sum of the variation margin thresholds of all variation margin agreements within the netting set and the minimum transfer amount equals the sum of the minimum transfer amounts of all the variation margin agreements within the netting set.

(ii) *Calculating potential future exposure*. (A) To calculate potential future exposure for a netting set subject to multiple variation margin agreements under which the counterparty to each variation margin agreement must post variation margin, or a netting set composed of at least one derivative contract subject to variation margin agreement under which the counterparty to the derivative contract must post variation margin and at least one derivative contract that is not subject to such a variation margin agreement, an Enterprise must divide the netting set into sub-netting sets (as described in paragraph (c)(11)(ii)(B) of this section) and calculate the aggregated amount for each sub-netting set. The aggregated amount for the netting set is calculated as the sum of the aggregated amounts for the sub-netting sets. The multiplier is calculated for the entire netting set.

(B) For purposes of paragraph (c)(11)(ii)(A) of this section, the netting set must be divided into sub-netting sets as follows:

(*1*) All derivative contracts within the netting set that are not subject to a variation margin agreement or that are subject to a variation margin agreement under which the counterparty is not required to post variation margin form a single sub-netting set. The aggregated amount for this sub-netting set is calculated as if the netting set is not subject to a variation margin agreement.

(*2*) All derivative contracts within the netting set that are subject to variation margin agreements in which the counterparty must post variation margin and that share the same value of the MPOR form a single sub-netting set. The aggregated amount for this sub-netting set is calculated as if the netting set is subject to a variation margin agreement, using the MPOR value shared by the derivative contracts within the netting set.

TABLE 2 TO PARAGRAPH (c)(11)(ii)(B)(*2*)—SUPERVISORY OPTION VOLATILITY, SUPERVISORY CORRELATION PARAMETERS, AND SUPERVISORY FACTORS FOR DERIVATIVE CONTRACTS

Asset class	Category	Type	Supervisory option volatility (percent)	Supervisory correlation factor (percent)	Supervisory factor [1] (percent)
Interest rate	N/A	N/A	50	N/A	0.50
Exchange rate	N/A	N/A	15	N/A	4.0
Credit, single name	Investment grade	N/A	100	50	0.46
	Speculative grade	N/A	100	50	1.3
	Sub-speculative grade	N/A	100	50	6.0
Credit, index	Investment Grade	N/A	80	80	0.38
	Speculative Grade	N/A	80	80	1.06
Equity, single name	N/A	N/A	120	50	32
Equity, index	N/A	N/A	75	80	20
Commodity	Energy	Electricity	150	40	40
		Other	70	40	18
	Metals	N/A	70	40	18
	Agricultural	N/A	70	40	18
	Other	N/A	70	40	18

[1] The applicable supervisory factor for basis derivative contract hedging sets is equal to one-half of the supervisory factor provided in this table 2, and the applicable supervisory factor for volatility derivative contract hedging sets is equal to 5 times the supervisory factor provided in this table 2.

(d) *Credit valuation adjustment (CVA) risk-weighted assets*—(1) *In general.* With respect to its OTC derivative contracts, an Enterprise must calculate a CVA risk-weighted asset amount for its portfolio of OTC derivative transactions that are subject to the CVA capital requirement using the simple CVA approach described in paragraph (d)(5) of this section.

(2) [Reserved]

(3) *Recognition of hedges.* (i) An Enterprise may recognize a single name CDS, single name contingent CDS, any other equivalent hedging instrument that references the counterparty directly, and index credit default swaps (CDS_{ind}) as a CVA hedge under paragraph (d)(5)(ii) of this section or paragraph (d)(6) of this section, provided that the position is managed as a CVA hedge in accordance with the Enterprise's hedging policies.

(ii) An Enterprise shall not recognize as a CVA hedge any tranched or n^{th}-to-default credit derivative.

(4) *Total CVA risk-weighted assets.* Total CVA risk-weighted assets is the CVA capital requirement, K_{CVA}, calculated for an Enterprise's entire portfolio of OTC derivative counterparties that are subject to the CVA capital requirement, multiplied by 12.5.

(5) *Simple CVA approach.* (i) Under the simple CVA approach, the CVA capital requirement, K_{CVA}, is calculated according to the following formula:

$$K_{CVA} = 2.33 \times \sqrt{\left(\sum_i 0.5 \times w_i \times \left(M_i \times EAD_i^{total} - M_i^{hedge} \times B_i\right) - \sum_{ind} w_{ind} \times M_{ind} \times B_{ind}\right)^2 + A}$$

Where:

$A = \Sigma_i\ 0.75 \times w_i^2 \times (M_i \times EAD_i^{total} - M_i^{hedge} \times B_i)^2$

(A) w_i = the weight applicable to counterparty i under table 3 to paragraph (d)(5)(ii);

(B) M_i = the EAD-weighted average of the effective maturity of each netting set with counterparty i (where each netting set's effective maturity can be no less than one year.)

(C) EAD_i^{total} = the sum of the EAD for all netting sets of OTC derivative contracts with counterparty i calculated using the standardized approach to counterparty credit risk described in paragraph (c) of this section. When the Enterprise calculates EAD under paragraph (c) of this section, such EAD may be adjusted for purposes of calculating EAD_i^{total} by multiplying EAD by $(1\text{-}\exp(-0.05 \times M_i))/(0.05 \times M_i)$, where ''exp'' is the exponential function.

(D) M_i^{hedge} = the notional weighted average maturity of the hedge instrument.

(E) B_i = the sum of the notional amounts of any purchased single name CDS referencing counterparty i that is used to hedge CVA risk to counterparty i multiplied by $(1\text{-}\exp(-0.05 \times M_i^{hedge}))/(0.05 \times M_i^{hedge})$.

(F) M_{ind} = the maturity of the CDS_{ind} or the notional weighted average maturity of any CDS_{ind} purchased to hedge CVA risk of counterparty i.

(G) B_{ind} = the notional amount of one or more CDS_{ind} purchased to hedge CVA risk for counterparty i multiplied by $(1\text{-}\exp(-0.05 \times M_{ind}))/(0.05 \times M_{ind})$

(H) w_{ind} = the weight applicable to the CDS_{ind} based on the average weight of the underlying reference names that comprise the index under table 3 to paragraph (d)(5)(ii).

(ii) The Enterprise may treat the notional amount of the index attributable to a counterparty as a single name hedge of counterparty i (B_i,) when calculating K_{CVA}, and subtract the notional amount of B_i from the notional amount of the CDS_{ind}. An Enterprise must treat the CDS_{ind} hedge with the notional amount reduced by B_i as a CVA hedge.

TABLE 3 TO PARAGRAPH (d)(5)(ii)—ASSIGNMENT OF COUNTERPARTY WEIGHT

Internal PD (in percent)	Weight w_i (in percent)
0.00–0.07	0.70
>0.070–0.15	0.80
>0.15–0.40	1.00
>0.40–2.00	2.00
>2.00–6.00	3.00
>6.00	10.00

[88 FR 83481, Nov. 30, 2023]

§ 1240.37 Cleared transactions.

(a) *General requirements*—(1) *Clearing member clients*. An Enterprise 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) *Clearing members*. An Enterprise that is a clearing member must use the methodologies described in paragraph (c) of this section to calculate its risk-weighted assets for a cleared transaction and paragraph (b) of this section to calculate its risk-weighted assets for its default fund contribution to a CCP.

(b) *Clearing member client Enterprises*—(1) *Risk-weighted assets for cleared transactions*. (i) To determine the risk-weighted asset amount for a cleared transaction, an Enterprise 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 Enterprise's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all of its cleared transactions.

(2) *Trade exposure amount*. (i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD for the derivative contract or netting set of derivative contracts calculated using the methodology used to calculate EAD for derivative contracts set forth in §1240.36(c), plus the fair value of the collateral posted by the clearing member client Enterprise and held by the CCP or a clearing member in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD for the repo-style transaction calculated using the methodology set forth in §1240.39(b)(2) or (3), plus the fair value of the collateral posted by the clearing member client Enterprise 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 QCCP, a clearing member client Enterprise must apply a risk weight of:

(A) 2 percent if the collateral posted by the Enterprise to the QCCP or clearing member is subject to an arrangement that prevents any loss to the clearing member client Enterprise 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 Enterprise 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 an event of default or from liquidation, insolvency, or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions.

(B) 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 Enterprise must apply the risk weight applicable to the CCP under this subpart D.

(4) *Collateral*. (i) Notwithstanding any other requirement of this section, collateral posted by a clearing member client Enterprise that is held by a custodian (in its capacity as a custodian) in a manner that is bankruptcy remote from the CCP, 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 Enterprise must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D, as applicable.

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

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

(2) *Trade exposure amount.* A clearing member Enterprise must calculate its trade exposure amount for a cleared transaction as follows:

(i) For a cleared transaction that is a derivative contract or a netting set of derivative contracts, trade exposure amount equals the EAD calculated using the methodology used to calculate EAD for derivative contracts set forth in §1240.36(c), plus the fair value of the collateral posted by the clearing member Enterprise and held by the CCP in a manner that is not bankruptcy remote.

(ii) For a cleared transaction that is a repo-style transaction or netting set of repo-style transactions, trade exposure amount equals the EAD calculated under §1240.39(b)(2) or (3), plus the fair value of the collateral posted by the clearing member Enterprise and held by the CCP in a manner that is not bankruptcy remote.

(3) *Cleared transaction risk weights.* (i) A clearing member Enterprise must apply a risk weight of 2 percent to the trade exposure amount for a cleared transaction with a QCCP.

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Enterprise must apply the risk weight applicable to the CCP according to this subpart D.

(iii) Notwithstanding paragraphs (c)(3)(i) and (ii) of this section, a clearing member Enterprise may apply a risk weight of zero percent to the trade exposure amount for a cleared transaction with a QCCP where the clearing member Enterprise is acting as a financial intermediary on behalf of a clearing member client, the transaction offsets another transaction that satisfies the requirements set forth in §1240.3(a), and the clearing member Enterprise is not obligated to reimburse the clearing member client in the event of the QCCP default.

(4) *Collateral.* (i) Notwithstanding any other requirement of this section, collateral posted by a clearing member Enterprise that is held by a custodian (in its capacity as a custodian) in a manner that is bankruptcy remote from the CCP, 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 Enterprise must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

(d) *Default fund contributions*—(1) *General requirement.* A clearing member Enterprise must determine the risk-weighted asset amount for a default fund contribution to a CCP at least quarterly, or more frequently if, in the opinion of the Enterprise or FHFA, there is a material change in the financial condition of the CCP.

(2) *Risk-weighted asset amount for default fund contributions to nonqualifying CCPs.* A clearing member Enterprise's risk-weighted asset amount for default fund contributions to CCPs that are not QCCPs equals the sum of such default fund contributions multiplied by 1,250 percent, or an amount determined by FHFA, based on factors such as size, structure, and membership characteristics of the CCP and riskiness of its transactions, in cases where such default fund contributions may be unlimited.

(3) *Risk-weighted asset amount for default fund contributions to QCCPs.* A clearing member Enterprise's risk-weighted asset amount for default fund contributions to QCCPs equals the sum of its capital requirement, K_{CM} for each QCCP, as calculated under the methodology set forth in paragraph (d)(4) of this section, multiplied by 12.5.

(4) *Capital requirement for default fund contributions to a QCCP.* A clearing member Enterprise's capital requirement for its default fund contribution to a QCCP (K_{CM}) is equal to:

$$K_{CM} = \max\left\{K_{CCP} * \left(\frac{DF^{pref}}{DF_{CCP} + DF_{CCPCM}^{pref}}\right); 0.16\, percent * DF^{pref}\right\}$$

Where:

(i) K_{CCP} is the hypothetical capital requirement of the QCCP, as determined under paragraph (d)(5) of this section;

(ii) DF^{pref} is prefunded default fund contribution of the clearing member Enterprise to the QCCP;

(iii) DF_{CCP} is the QCCP's own prefunded amount that are contributed to the default waterfall and are junior or *pari passu* with prefunded default fund contributions of clearing members of the QCCP; and

(iv) $DF_{CCPCM}{}^{pref}$ is the total prefunded default fund contributions from clearing members of the QCCP to the QCCP.

(5) *Hypothetical capital requirement of a QCCP.* Where a QCCP has provided its K_{CCP}, an Enterprise must rely on such disclosed figure instead of calculating K_{CCP} under this paragraph (d)(5), unless the Enterprise determines that a more conservative figure is appropriate based on the nature, structure, or characteristics of the QCCP. The hypothetical capital requirement of a QCCP (K_{CCP}), as determined by the Enterprise, is equal to:

$$K_{CCP} = \sum_{CM_i} EAD_i * 1.6\, percent$$

Where:

(i) CM_i is each clearing member of the QCCP; and

(ii) EAD_i is the exposure amount of the QCCP to each clearing member of the QCCP, as determined under paragraph (d)(6) of this section.

(6) *EAD of a QCCP to a clearing member.* (i) The EAD of a QCCP to a clearing member is equal to the sum of the EAD for derivative contracts determined under paragraph (d)(6)(ii) of this section and the EAD for repo-style transactions determined under paragraph (d)(6)(iii) of this section.

(ii) With respect to any derivative contracts between the QCCP and the clearing member that are cleared transactions and any guarantees that the clearing member has provided to the QCCP with respect to performance of a clearing member client on a derivative contract, the EAD is equal to the exposure amount of the QCCP to the clearing member for all such derivative contracts and guarantees of derivative contracts calculated under SA–CCR in §1240.36(c) (or, with respect to a QCCP located outside the United States, under a substantially identical methodology in effect in the jurisdiction) using a value of 10 business days for purposes of §1240.36(c)(9)(iv); less the value of all collateral held by the QCCP posted by the clearing member or a client of the clearing member in connection with a derivative contract for which the clearing member has provided a guarantee to the QCCP and the amount of the prefunded default fund contribution of the clearing member to the QCCP.

(iii) With respect to any repo-style transactions between the QCCP and a clearing member that are cleared transactions, EAD is equal to:

$$EAD_i = \max\{EBRM_i - IM_i - DF_i; 0\}$$

Where:

(A) $EBRM_i$ is the exposure amount of the QCCP to each clearing member for all repo-style transactions between the QCCP and the clearing member, as determined under §1240.39(b)(2) and without recognition of the initial margin collateral posted by the clearing member to the QCCP with respect to the repo-style transactions or the prefunded default fund contribution of the clearing member institution to the QCCP;

(B) IM_i is the initial margin collateral posted by each clearing member to the QCCP with respect to the repo-style transactions; and

(C) DF_i is the prefunded default fund contribution of each clearing member to the

(D) QCCP that is not already deducted in paragraph (d)(6)(ii) of this section.

(iv) EAD must be calculated separately for each clearing member's sub-client accounts and sub-house account (*i.e.*, for the clearing member's proprietary activities). If the clearing member's collateral and its client's collateral are held in the same default fund contribution account, then the EAD of that account is the sum of the EAD for the client-related transactions within the account and the EAD of the house-related transactions within the account. For purposes of determining such EADs, the independent collateral of the clearing member and its client must be allocated in proportion to the respective total amount of independent collateral posted by the clearing member to the QCCP.

(v) If any account or sub-account contains both derivative contracts and repo-style transactions, the EAD of that account is the sum of the EAD for the derivative contracts within the account and the EAD of the repo-style transactions within the account. If independent collateral is held for an account containing both derivative contracts and repo-style transactions, then such collateral must be allocated to the derivative contracts and repo-style transactions in proportion to the respective product specific exposure amounts, calculated, excluding the effects of collateral, according to §1240.39(b) for repo-style transactions and to §1240.36(c)(5) for derivative contracts.

[88 FR 83481, Nov. 30, 2023]

§ 1240.38 Guarantees and credit derivatives: substitution treatment.

(a) *Scope*—(1) *General*. An Enterprise 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) *Applicability*. 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 Enterprise and the protection provider share losses proportionately) by an eligible guarantee or eligible credit derivative.

(3) *Tranching*. Exposures on which there is a tranching of credit risk (reflecting at least two different levels of seniority) generally are securitization exposures subject to §§1240.41 through 1240.46.

(4) *Multiple guarantees or credit derivatives*. If multiple eligible guarantees or eligible credit derivatives cover a single exposure described in this section, an Enterprise 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) *Single guarantees or credit derivatives*. If a single eligible guarantee or eligible credit derivative covers multiple hedged exposures described in paragraph (a)(2) of this section, an Enterprise 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) An Enterprise may only recognize the credit risk mitigation benefits of eligible guarantees and eligible credit derivatives.

(2) An Enterprise 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, an Enterprise 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 this subpart D for the risk weight assigned to the exposure.

(2) *Partial 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 less than the exposure amount of the hedged exposure, the Enterprise 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 Enterprise may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The Enterprise must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, 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) An Enterprise 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 fulfil its obligation on the hedged exposure. If a credit risk mitigant has embedded options that may reduce its term, the Enterprise (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 Enterprise (protection purchaser), but the terms of the arrangement at origination of the credit risk mitigant contain a positive incentive for the Enterprise 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 one year and its residual maturity is greater than three months.

(5) When a maturity mismatch exists, the Enterprise must apply the following adjustment to reduce the effective notional amount of the credit risk mitigant: $Pm = E \times (t - 0.25)/(T - 0.25)$, where:

(i) Pm = effective notional amount of the credit risk mitigant, adjusted for maturity mismatch;

(ii) E = effective notional amount of the credit risk mitigant;

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

(iv) T = the lesser of five or the residual maturity of the hedged exposure, expressed in years.

(e) *Adjustment for credit derivatives without restructuring as a credit event.* If an Enterprise 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 Enterprise must apply the following adjustment to reduce the effective notional amount of the credit derivative: $Pr = Pm \times 0.60$, where:

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

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

(f) *Currency mismatch adjustment*. (1) If an Enterprise 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 Enterprise must apply the following formula to the effective notional amount of the guarantee or credit derivative: $Pc = Pr \times (1 - H_{FX})$, where:

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

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

(iii) H_{FX} = haircut appropriate for the currency mismatch between the credit risk mitigant and the hedged exposure.

(2) An Enterprise must set H_{FX} equal to eight percent unless it qualifies for the use of and uses its own internal estimates of foreign exchange volatility based on a ten-business-day holding period. An Enterprise qualifies for the use of its own internal estimates of foreign exchange volatility if it qualifies for the use of its own-estimates haircuts in § 1240.39(c)(4).

(3) An Enterprise must adjust H_{FX} calculated in paragraph (f)(2) of this section upward if the Enterprise 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.

§ 1240.39 Collateralized transactions.

(a) *General*. (1) An Enterprise may use the following methodologies to recognize the benefits of financial collateral (other than with respect to a retained CRT exposure) in mitigating the counterparty credit risk of repo-style transactions, eligible margin loans, collateralized OTC derivative contracts and single product netting sets of such transactions:

(i) The collateral haircut approach set forth in paragraph (b)(2) of this section; and

(ii) For single product netting sets of repo-style transactions and eligible margin loans, the simple VaR methodology set forth in paragraph (b)(3) of this section.

(2) An Enterprise may use any combination of the two methodologies for collateral recognition; however, it must use the same methodology for similar exposures or transactions.

(b) *EAD for eligible margin loans and repo-style transactions*—(1) *General*. An Enterprise may recognize the credit risk mitigation benefits of financial collateral that secures an eligible margin loan, repo-style transaction, or single-product netting set of such transactions by determining the EAD of the exposure using:

(i) The collateral haircut approach described in paragraph (b)(2) of this section; or

(ii) For netting sets only, the simple VaR methodology described in paragraph (b)(3) of this section.

(2) *Collateral haircut approach*—(i) *EAD equation*. An Enterprise may determine EAD for an eligible margin loan, repo-style transaction, or netting set by setting EAD equal to

$$\max\{0, [(\Sigma E - \Sigma C) + \Sigma(E_s \times H_s) + \Sigma(E_{fx} \times H_{fx})]\},$$

Where:

(A) ΣE equals the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty under the transaction (or netting set));

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

(C) E_s equals the absolute value of the net position in a given instrument or in gold (where the net position in a given instrument or in gold equals the sum of the current fair values of the instrument or gold the Enterprise 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 Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty);

(D) H_s equals the market price volatility haircut appropriate to the instrument or gold referenced in E_s;

(E) E_{fx} equals 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 Enterprise 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 Enterprise has borrowed, purchased subject to resale, or taken as collateral from the counterparty); and

(F) H_{fx} equals the haircut appropriate to the mismatch between the currency referenced in Efx and the settlement currency.

(ii) *Standard supervisory haircuts.* Under the standard supervisory haircuts approach:

(A) An Enterprise must use the haircuts for market price volatility (H_s) in table 1 to paragraph (b)(2)(ii)(A) as adjusted in certain circumstances as provided in paragraphs (b)(2)(ii)(C) and (D) of this section;

TABLE 1 TO PARAGRAPH (b)(2)(ii)(A)—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS [1]

Residual maturity	Haircut (in percent) assigned based on:						Investment grade securitization exposures (in percent)
	Sovereign issuers risk weight under § 1240.32 [2] (in percent)			Non-sovereign issuers risk weight under § 1240.32 (in percent)			
	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	4.0	4.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0	15.0	4.0	6.0	8.0	12.0
Greater than 5 years	4.0	6.0	15.0	8.0	12.0	16.0	24.0
Main index equities (including convertible bonds) and gold	15.0						
Other publicly traded equities (including convertible bonds)	25.0						
Mutual funds	Highest haircut applicable to any security in which the fund can invest.						
Cash collateral held	Zero.						
Other exposure types	25.0						

[1] The market price volatility haircuts in table 1 are based on a 10 business-day holding period.
[2] Includes a foreign PSE that receives a zero percent risk weight.

(B) For currency mismatches, an Enterprise must use a haircut for foreign exchange rate volatility (H_{fx}) of 8 percent, as adjusted in certain circumstances as provided in paragraphs (b)(2)(ii)(C) and (D) of this section.

(C) For repo-style transactions and client-facing derivative transactions, an Enterprise may multiply the supervisory haircuts provided in paragraphs (b)(2)(ii)(A) and (B) of this section by the square root of ½ (which equals 0.707107). If the Enterprise determines that a longer holding period is appropriate for client-facing derivative transactions, then it must use a larger scaling factor to adjust for the longer holding period pursuant to paragraph (b)(2)(ii)(F) of this section.

(D) An Enterprise must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days (for eligible margin loans) or five business days (for repo-style transactions), using the formula provided in paragraph (b)(2)(ii)(F) of this section where the conditions in this paragraph (b)(2)(ii)(D) apply. If the number of trades in a netting set exceeds 5,000 at any time during a quarter, an Enterprise must adjust the supervisory haircuts upward on the basis of a minimum holding period of twenty business days for the following quarter (except when an Enterprise is calculating EAD for a cleared transaction under §1240.37). If a netting set contains one or more trades involving illiquid collateral, an Enterprise must adjust the supervisory haircuts upward on the basis of a minimum holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted longer than the holding period, then the Enterprise must adjust the supervisory haircuts upward for that netting set on the basis of a minimum holding period that is at least two times the minimum holding period for that netting set.

(E)(*1*) An Enterprise must adjust the supervisory haircuts upward on the basis of a holding period longer than ten business days for collateral associated with derivative contracts (five business days for client-facing derivative contracts) using the formula provided in paragraph (b)(2)(ii)(F) of this section where the conditions in this paragraph (b)(2)(ii)(E)(*1*) apply. For collateral associated with a derivative contract that is within a netting set that is composed of more than 5,000 derivative contracts that are not cleared transactions, an Enterprise must use a minimum holding period of twenty business days. If a netting set contains one or more trades involving illiquid collateral or a derivative contract that cannot be easily replaced, an Enterprise must use a minimum holding period of twenty business days.

(*2*) Notwithstanding paragraph (b)(2)(ii)(A) or (C) or (b)(2)(ii)(E)(*1*) of this section, for collateral associated with a derivative contract in a netting set under which more than two margin disputes that lasted longer than the holding period occurred during the two previous quarters, the minimum holding period is twice the amount provided under paragraph (b)(2)(ii)(A) or (C) or (b)(2)(ii)(E)(*1*).

(F) An Enterprise must adjust the standard supervisory haircuts upward, pursuant to the adjustments provided in paragraphs (b)(2)(ii)(C) through (E) of this section, using the following formula:

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

Where:

(*1*) T_M equals a holding period of longer than 10 business days for eligible margin loans and derivative contracts other than client-facing derivative transactions or longer than 5 business days for repo-style transactions and client-facing derivative transactions; H_s equals the standard supervisory haircut; and

(*2*) T_s equals 10 business days for eligible margin loans and derivative contracts other than client-facing derivative transactions or 5 business days for repo-style transactions and client-facing derivative transactions.

(G) If the instrument an Enterprise has lent, sold subject to repurchase, or posted as collateral does not meet the definition of financial collateral, the Enterprise must use a 25.0 percent haircut for market price volatility (H_s).

(iii) *Own internal estimates for haircuts.* With the prior written notice to FHFA, an Enterprise may calculate haircuts (H_s and H_{fx}) using its own internal estimates of the volatilities of market prices and foreign exchange rates.

(A) To use its own internal estimates, an Enterprise must satisfy the following minimum quantitative standards:

(*1*) An Enterprise must use a 99th percentile one-tailed confidence interval.

(*2*) The minimum holding period for a repo-style transaction is five business days and for an eligible margin loan is ten business days except for transactions or netting sets for which paragraph (b)(2)(iii)(A)(*3*) of this section applies. When an Enterprise calculates an own-estimates haircut on a T_N-day holding period, which is different from the minimum holding period for the transaction type, the applicable haircut (H_M) is calculated using the following square root of time formula:

$$H_M = H_N \sqrt{\frac{T_M}{T_N}}$$

Where:

(*i*) T_M equals 5 for repo-style transactions and 10 for eligible margin loans;

(*ii*) T_N equals the holding period used by the Enterprise to derive H_N; and

(*iii*) H_N equals the haircut based on the holding period T_N

(*3*) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, an Enterprise must calculate the haircut using a minimum holding period of twenty business days for the following quarter (except when an Enterprise is calculating EAD for a cleared transaction under §1240.37). If a netting set contains one or more trades involving illiquid collateral or an OTC derivative that cannot be easily replaced, an Enterprise must calculate the haircut using a minimum holding period of twenty business days. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the Enterprise must calculate the haircut for transactions in that netting set on the basis of a holding period that is at least two times the minimum holding period for that netting set.

(*4*) An Enterprise is required to calculate its own internal estimates with inputs calibrated to historical data from a continuous 12-month period that reflects a period of significant financial stress appropriate to the security or category of securities.

(*5*) An Enterprise must have policies and procedures that describe how it determines the period of significant financial stress used to calculate the Enterprise's own internal estimates for haircuts under this section and must be able to provide empirical support for the period used. The Enterprise must obtain the prior approval of FHFA for, and notify FHFA if the Enterprise makes any material changes to, these policies and procedures.

(*6*) Nothing in this section prevents FHFA from requiring an Enterprise to use a different period of significant financial stress in the calculation of own internal estimates for haircuts.

(*7*) An Enterprise must update its data sets and calculate haircuts no less frequently than quarterly and must also reassess data sets and haircuts whenever market prices change materially.

(B) With respect to debt securities that are investment grade, an Enterprise may calculate haircuts for categories of securities. For a category of securities, the Enterprise must calculate the haircut on the basis of internal volatility estimates for securities in that category that are representative of the securities in that category that the Enterprise has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. In determining relevant categories, the Enterprise must at a minimum take into account:

(*1*) The type of issuer of the security;

(*2*) The credit quality of the security;

(*3*) The maturity of the security; and

(*4*) The interest rate sensitivity of the security.

(C) With respect to debt securities that are not investment grade and equity securities, an Enterprise must calculate a separate haircut for each individual security.

(D) Where an exposure or collateral (whether in the form of cash or securities) is denominated in a currency that differs from the settlement currency, the Enterprise must calculate a separate currency mismatch haircut for its net position in each mismatched currency based on estimated volatilities of foreign exchange rates between the mismatched currency and the settlement currency.

(E) An Enterprise's own estimates of market price and foreign exchange rate volatilities may not take into account the correlations among securities and foreign exchange rates on either the exposure or collateral side of a transaction (or netting set) or the correlations among securities and foreign exchange rates between the exposure and collateral sides of the transaction (or netting set).

(3) *Simple VaR methodology*. With the prior written notice to FHFA, an Enterprise may estimate EAD for a netting set using a VaR model that meets the requirements in paragraph (b)(3)(iii) of this section. In such event, the Enterprise must set EAD equal to max $\{0, [(\Sigma E - \Sigma C) + PFE]\}$, where:

(i) ΣE equals the value of the exposure (the sum of the current fair values of all instruments, gold, and cash the Enterprise has lent, sold subject to repurchase, or posted as collateral to the counterparty under the netting set);

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

(iii) PFE (potential future exposure) equals the Enterprise's empirically based best estimate of the 99th percentile, one-tailed confidence interval for an increase in the value of $(\Sigma E - \Sigma C)$ over a five-business-day holding period for repo-style transactions, or over a ten-business-day holding period for eligible margin loans except for netting sets for which paragraph (b)(3)(iv) of this section applies using a minimum one-year historical observation period of price data representing the instruments that the Enterprise has lent, sold subject to repurchase, posted as collateral, borrowed, purchased subject to resale, or taken as collateral. The Enterprise must validate its VaR model by establishing and maintaining a rigorous and regular backtesting regime.

(iv) If the number of trades in a netting set exceeds 5,000 at any time during a quarter, an Enterprise must use a twenty-business-day holding period for the following quarter (except when an Enterprise is calculating EAD for a cleared transaction under § 1240.37). If a netting set contains one or more trades involving illiquid collateral, an Enterprise must use a twenty-business-day holding period. If over the two previous quarters more than two margin disputes on a netting set have occurred that lasted more than the holding period, then the Enterprise must set its PFE for that netting set equal to an estimate over a holding period that is at least two times the minimum holding period for that

[88 FR 83481, Nov. 30, 2023]

RISK-WEIGHTED ASSETS FOR UNSETTLED TRANSACTIONS

§ 1240.40 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 market standard for the instrument underlying the transaction and equal to or less than five business days.

(4) Positive current exposure of an Enterprise for a transaction is the difference between the transaction value at the agreed settlement price and the current market price of the transaction, if the difference results in a

credit exposure of the Enterprise 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-market 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 §1240.36).

(c) *System-wide failures*. In the case of a system-wide failure of a settlement, clearing system or central counterparty, FHFA 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*. An Enterprise must hold risk-based capital against any DvP or PvP transaction with a normal settlement period if the Enterprise's counterparty has not made delivery or payment within five business days after the settlement date. The Enterprise must determine its risk-weighted asset amount for such a transaction by multiplying the positive current exposure of the transaction for the Enterprise by the appropriate risk weight in table 1 to this paragraph (d).

TABLE 1 TO PARAGRAPH (d)—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) An Enterprise must hold risk-based capital against any non-DvP/non-PvP transaction with a normal settlement period if the Enterprise 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 Enterprise must continue to hold risk-based capital against the transaction until the Enterprise has received its corresponding deliverables.

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

(3) If the Enterprise has not received its deliverables by the fifth business day after counterparty delivery was

due, the Enterprise must assign a 1,250 percent risk weight to the current fair value of the deliverables owed to the Enterprise.

(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.

RISK-WEIGHTED ASSETS FOR CRT AND OTHER SECURITIZATION EXPOSURES

§ 1240.41 Operational requirements for CRT and other securitization exposures.

(a) *Operational criteria for traditional securitizations*. An Enterprise that transfers exposures it has purchased or otherwise acquired to a securitization SPE or other 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. An Enterprise that meets these conditions must hold risk-based capital against any credit risk it retains in connection with the securitization. An Enterprise 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 common equity tier 1 capital any after-tax gain-on-sale resulting from the transaction. The conditions are:

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

(2) The Enterprise 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, an Enterprise 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 (b) is satisfied. An Enterprise that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the synthetic securitization. An Enterprise 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 as set forth in the definition of "eligible guarantee" in §1240.2, 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 §1240.2, except for the criteria in paragraph (3) of the definition of "eligible guarantee" in §1240.2.

(2) The Enterprise 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 Enterprise to alter or replace the underlying exposures to improve the credit quality of the underlying exposures;

(iii) Increase the Enterprise'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 Enterprise 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 Enterprise after the inception of the securitization;

(3) The Enterprise 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) *Operational criteria for credit risk transfers.* For credit risk transfers, an Enterprise may recognize for risk-based capital purposes, the use of a credit risk transfer only if each condition in this paragraph (c) is satisfied (or, for a credit risk transfer entered into before February 16, 2021, only if each condition in paragraphs (c)(2) and (3) of this section is satisfied). An Enterprise that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the credit risk transfer. An Enterprise that fails to meet these conditions or chooses not to recognize the credit risk transfer for purposes of this section must instead hold risk-based capital against the underlying exposures as if they had not been subject to the credit risk transfer. The conditions are:

(1) The credit risk transfer is any of the following—

(i) An eligible funded synthetic risk transfer;

(ii) An eligible reinsurance risk transfer;

(iii) An eligible single-family lender risk share;

(iv) An eligible multifamily lender risk share; or

(v) An eligible senior-subordinated structure.

(2) The credit risk transfer has been approved by FHFA as effective in transferring the credit risk of one or more mortgage exposures to another party, taking into account any counterparty, recourse, or other risk to the Enterprise and any capital, liquidity, or other requirements applicable to counterparties;

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

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

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

(iii) Increase the Enterprise'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 Enterprise 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 Enterprise after the inception of the credit risk transfer;

(4) The Enterprise obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk transfer in all relevant jurisdictions;

(5) Any clean-up calls relating to the credit risk transfer are eligible clean-up calls;

(6) Any time-based calls relating to the credit risk transfer are eligible time-based calls; and

(7) The Enterprise includes in its periodic disclosures under the Federal securities laws, or in other appropriate public disclosures, a reasonably detailed description of—

(i) The material recourse or other risks that might reduce the effectiveness of the credit risk transfer in transferring the credit risk on the underlying exposures to third parties; and

(ii) Each condition under paragraph (a) of this section (governing traditional securitizations) or paragraph (b) of this section (governing synthetic securitizations) that is not satisfied by the credit risk transfer and the reasons that each such condition is not satisfied.

(d) *Due diligence requirements for securitization exposures.* (1) Except for exposures that are deducted from common equity tier 1 capital and exposures subject to §1240.42(h), if an Enterprise is unable to demonstrate to the satisfaction of FHFA a comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure, the Enterprise must assign the securitization exposure a risk weight of 1,250 percent. The Enterprise's analysis must be commensurate with the complexity of the securitization exposure and the materiality of the exposure in relation to its capital.

(2) An Enterprise must demonstrate its comprehensive understanding of a securitization exposure under paragraph (d)(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 three 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 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 underlying the securitization exposures; and

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

[85 FR 82198, Dec. 17, 2020, as amended at 88 FR 83481, Nov. 30, 2023]

§ 1240.42 Risk-weighted assets for CRT and other securitization exposures.

(a) *Securitization risk weight approaches*. Except as provided elsewhere in this section or in § 1240.41:

(1) An Enterprise must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from a securitization and apply a 1,250 percent risk weight to the portion of a 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, an Enterprise may assign a risk weight to the securitization exposure either using the simplified supervisory formula approach (SSFA) in accordance with § 1240.43(a) through (d) for a securitization exposure that is not a retained CRT exposure or an acquired CRT exposure or using the credit risk transfer approach (CRTA) in accordance with § 1240.44 for a retained CRT exposure, and in either case, subject to the limitation under paragraph (e) of this section.

(3) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and the Enterprise cannot, or chooses not to apply the SSFA or the CRTA to the exposure, the Enterprise must assign a risk weight to the exposure as described in § 1240.45.

(4) If a securitization exposure is a derivative contract (other than protection provided by an Enterprise 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), an Enterprise 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*. An Enterprise's total risk-weighted assets for securitization exposures equals the sum of the risk-weighted asset amount for securitization exposures that the Enterprise risk weights under §1240.41(d), §1240.42(a)(1), §1240.43, §1240.44, or §1240.45, and paragraphs (e) through (h) of this section, as applicable.

(c) *Exposure amount of a CRT or other securitization exposure*—(1) *On-balance sheet securitization exposures.* Except as provided for retained CRT exposures in §1240.44(f), the exposure amount of an on-balance sheet securitization exposure (excluding a repo-style transaction, eligible margin loan, OTC derivative contract, or cleared transaction) is equal to the carrying value of the exposure.

(2) *Off-balance sheet securitization exposures.* Except as provided in paragraph (h) of this section or as provided for retained CRT exposures in §1240.44(f), the exposure amount of an off-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, cleared transaction (other than a credit derivative), or an OTC derivative contract (other than a credit derivative) is the notional amount of the exposure.

(3) *Repo-style transactions, eligible margin loans, and derivative contracts.* The exposure amount of a securitization exposure that is a repo-style transaction, eligible margin loan, or derivative contract (other than a credit derivative) is the exposure amount of the transaction as calculated under §1240.36 or §1240.39, as applicable.

(d) *Overlapping exposures.* If an Enterprise has multiple securitization exposures that provide duplicative coverage to the underlying exposures of a securitization, the Enterprise is not required to hold duplicative risk-based capital against the overlapping position. Instead, the Enterprise 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 an Enterprise provides support to a securitization (including a CRT) in excess of the Enterprise's contractual obligation to provide credit support to the securitization (implicit support):

(1) The Enterprise 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 common equity tier 1 capital any after-tax gain-on-sale resulting from the securitization; and

(2) The Enterprise must disclose publicly:

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

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

(f) *Interest-only mortgage-backed securities.* For non-credit-enhancing interest-only mortgage-backed securities that are not subject to §1240.32(c), the risk weight may not be less than 100 percent.

(g) *Nth-to-default credit derivatives*—(1) *Protection provider.* An Enterprise may assign a risk weight using the SSFA in §1240.43 to an nth-to-default credit derivative in accordance with this paragraph (g). An Enterprise must determine its exposure in the nth-to-default credit derivative as the largest notional amount of all the underlying exposures.

(2) A*ttachment and detachment points.* For purposes of determining the risk weight for an nth-to-default credit derivative using the SSFA, the Enterprise must calculate the attachment point and detachment point of its exposure as follows:

(i) The attachment point (parameter *A*) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the Enterprise's exposure to the total notional amount of all underlying exposures. The ratio is expressed as a decimal value between zero and one. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the Enterprise's exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest (n-1) notional amounts of the underlying exposure(s) are subordinated to the Enterprise's exposure.

(ii) The detachment point (parameter *D*) equals the sum of parameter *A* plus the ratio of the notional amount of the

Enterprise's exposure in the nth-to-default credit derivative to the total notional amount of all underlying exposures. The ratio is expressed as a decimal value between zero and one.

(3) *Risk weights*. An Enterprise that does not use the SSFA to determine a risk weight for its nth-to-default credit derivative must assign a risk weight of 1,250 percent to the exposure.

(4) *Protection purchaser*—(i) *First-to-default credit derivatives*. An Enterprise that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative that meets the rules of recognition of § 1240.38(b) must determine its risk-based capital requirement for the underlying exposures as if the Enterprise synthetically securitized the underlying exposure with the smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures. An Enterprise must calculate a risk-based capital requirement for counterparty credit risk according to § 1240.36 for a first-to-default credit derivative that does not meet the rules of recognition of § 1240.38(b).

(ii) *Second-or-subsequent-to-default credit derivatives*. (A) An Enterprise that obtains credit protection on a group of underlying exposures through a nth-to-default credit derivative that meets the rules of recognition of § 1240.38(b) (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if:

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

(C) An Enterprise must calculate a risk-based capital requirement for counterparty credit risk according to § 1240.36 for a nth-to-default credit derivative that does not meet the rules of recognition of § 1240.38(b).

(h) *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 an Enterprise that covers the full amount or a pro rata share of a securitization exposure's principal and interest, the Enterprise must risk weight the guarantee or credit derivative as if it holds the portion of the reference exposure covered by the guarantee or credit derivative.

(2) *Protection purchaser*. (i) An Enterprise that purchases a guarantee or OTC credit derivative (other than an nth-to-default credit derivative) that is recognized under § 1240.46 as a credit risk mitigant (including via collateral recognized under § 1240.39) is not required to compute a separate counterparty credit risk capital requirement under § 1240.31, in accordance with § 1240.36(c).

(ii) If an Enterprise cannot, or chooses not to, recognize a purchased credit derivative as a credit risk mitigant under § 1240.46, the Enterprise must determine the exposure amount of the credit derivative under § 1240.36.

(A) If the Enterprise purchases credit protection from a counterparty that is not a securitization SPE, the Enterprise must determine the risk weight for the exposure according to this subpart D.

(B) If the Enterprise purchases the credit protection from a counterparty that is a securitization SPE, the Enterprise must determine the risk weight for the exposure according to § 1240.42, including § 1240.42(a)(4) 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).

[85 FR 82198, Dec. 17, 2020, as amended at 88 FR 83481, Nov. 30, 2023]

§ 1240.43 Simplified supervisory formula approach (SSFA).

(a) *General requirements for the SSFA.* To use the SSFA to determine the risk weight for a securitization exposure, an Enterprise 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 contracts governing the underlying exposures of the securitization require payments 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. An Enterprise 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, an Enterprise 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) adjusted total capital requirement of the underlying exposures calculated using this subpart. K_G is expressed as a decimal value between zero and one (that is, an average risk weight of 100 percent represents a value of K_G equal to 0.08).

(2) Parameter W is expressed as a decimal value between zero and one. Parameter W is the ratio of the sum of the dollar amounts of any underlying exposures of the securitization 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 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 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 period(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 §1240.42(g) 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 Enterprise 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 Enterprise'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 zero and one.

(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 §1240.42(g) 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 zero and one.

(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 (except p is equal to 0.5 for resecuritization exposures secured by MBS guaranteed by an Enterprise).

(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 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 (c) or 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 Enterprise 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:

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

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

$$K_A = (1 - W) * K_G + (0.5 * W)$$

$$a = -\frac{1}{\rho * K_A}$$

$$u = D - K_A$$

$$l = \max(A - K_A, 0)$$

e = 2.71828, the base of the natural logarithms.

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

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

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

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

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022]

§ 1240.44 Credit risk transfer approach (CRTA).

(a) *General requirements for the CRTA*. To use the CRTA to determine the risk weighted assets for a retained CRT exposure, an Enterprise 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 contracts governing the underlying exposures of the credit risk transfer require payments 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. An Enterprise 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 retained CRT exposure.

(b) *CRTA parameters*. To calculate the risk weighted assets for a retained CRT exposure, an Enterprise must have accurate information on the following ten inputs to the CRTA calculation.

(1) Parameter *A* is the attachment point for the exposure, which represents the threshold at which credit losses will first be allocated to the exposure. Parameter *A* equals the ratio of the current dollar amount of underlying exposures that are subordinated to the exposure of the Enterprise 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 Enterprise's 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 value between 0 and 100 percent.

(2) Parameter $AggUPB_{\$}$ is the aggregate unpaid principal balance of the underlying mortgage exposures.

(3) Parameter $CM_{\%}$ is the percentage of a tranche sold in the capital markets. $CM_{\%}$ is expressed as a value between 0 and 100 percent.

(4) Parameter $Collat_{\%RIF}$ is the amount of financial collateral posted by a counterparty under a loss sharing contract expressed as a percentage of the risk in force. For multifamily lender loss sharing transactions where an Enterprise has the contractual right to receive future lender guarantee-fee revenue, the Enterprise may include up to 12 months of estimated lender retained servicing fees in excess of servicing costs on the multifamily mortgage exposures subject to the loss sharing contract. $Collat_{\%RIF}$ is expressed as a value between 0 and 100 percent.

(5) 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. Parameter *D* equals parameter *A* plus the ratio of the current dollar amount of the 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 value between 0 and 100 percent.

(6) Parameter $EL_{\$}$ is the remaining lifetime net expected credit risk losses of the underlying mortgage exposures. $EL_{\$}$ must be calculated internally by an Enterprise. If the contractual terms of the CRT do not provide for the transfer of the counterparty credit risk associated with any loan-level credit enhancement or other loss sharing on the underlying mortgage exposures, then the Enterprise must calculate $EL_{\$}$ assuming no counterparty haircuts. Parameter $EL_{\$}$ is expressed in dollars.

(7) Parameter *HC* is the haircut for the counterparty in contractual loss sharing transactions.

(i) For a CRT with respect to single-family mortgage exposures, the counterparty haircut is set forth in table 12 to paragraph (e)(3)(ii) in § 1240.33, determined as if the counterparty to the CRT were a counterparty to loan-level credit enhancement (as defined in §1240.33(a)) and considering the counterparty rating and mortgage concentration risk of the counterparty to the CRT and the single-family segment and product of the underlying single-family mortgage exposures.

(ii) For a CRT with respect to multifamily mortgage exposures, the counterparty haircut is set forth in table 1 to this paragraph (b)(7)(ii), with counterparty rating and mortgage concentration risk having the meaning given in §1240.33(a).

TABLE 1 TO PARAGRAPH (b)(7)(ii): HAIRCUTS FOR MULTIFAMILY LOSS SHARING CRTS

Counterparty Rating	Mortgage Concentration Risk: Not High	Mortgage Concentration Risk: High
1	2.1%	3.4%
2	5.3%	8.5%
3	6.0%	9.6%
4	12.7%	19.2%
5	16.2%	22.9%
6	22.5%	28.5%
7	41.2%	45.1%
8	48.2%	48.2%

(8) Parameter $LS_{\%}$ is the percentage of a tranche that is either insured, reinsured, or afforded coverage through lender reimbursement of credit losses of principal. $LS_{\%}$ is expressed as a value between 0 and 100 percent.

(9) Parameter $LTF_{\%}$ is the loss timing factor which accounts for maturity differences between the CRT and the underlying mortgage exposures. Maturity differences arise when the maturity date of the CRT is before the maturity dates of the underlying mortgage exposures. $LTF_{\%}$ is expressed as a value between 0 and 100 percent.

(i) An Enterprise must have the following information to calculate $LTF_{\%}$ for a CRT with respect to multifamily mortgage exposures:

(A) The remaining months to the contractual maturity of the CRT (CRT_{RMM}).

(B) The UPB-weighted-average remaining months to maturity of the underlying multifamily mortgage exposures that have remaining months to maturity greater than CRT_{RMM} (MME_{RMM}). If the underlying multifamily mortgage exposures all have maturity dates less than or equal to CRT_{RMM}, MME_{RMM} should equal CRT_{RMM}.

(C) The sum of UPB on the underlying multifamily mortgage exposures that have remaining loan terms less than or equal to CRT_{RMM} expressed as a percent of total UPB on the underlying multifamily mortgage exposures $LTF_{\%}$ ($LTFUPB_{\%}$).

(D) An Enterprise must use the following method to calculate $LTF_{\%}$ for multifamily CRTs:

$$LTF_{\%} = (LTFUPB_{\%}) * 100\% + 50\% * (1 - LTFUPB_{\%})\ \frac{CRT_{RMM}}{MME_{RMM}}$$

(ii) An Enterprise must have the following information to calculate $LTF_{\%}$ for a newly issued CRT with respect to single-family mortgage exposures:

(A) The original closing date (or effective date) of the CRT and the maturity date on the CRT.

(B) UPB share of single-family mortgage exposures that have original amortization terms of less than or equal to 189 months ($CRTF15_{\%}$).

(C) UPB share of single-family mortgage exposures that have original amortization terms greater than 189 months and OLTVs of less than or equal to 80 percent($CRT80NotF15_{\%}$).

(D) The duration of seasoning.

(E) An Enterprise must use the following method to calculate $LTF_{\%}$ for single-family CRTs: Calculate CRT months to maturity (*CRTMthstoMaturity*) using one of the following methods:

(*1*) For single-family CRTs with reimbursement based upon occurrence or resolution of delinquency, *CRTMthstoMaturity* is the difference between the CRT's maturity date and original closing date, except for the following:

(*i*) If the coverage based upon delinquency is between one and three months, add 24 months to the difference between the CRT's maturity date and original closing date; and

(*ii*) If the coverage based upon delinquency is between four and six months, add 18 months to the difference between the CRT's maturity date and original closing date.

(*2*) For all other single-family CRTs, *CRTMthstoMaturity* is the difference between the CRT's maturity date and original closing date.

(*i*) If *CRTMthstoMaturity* is a multiple of 12, then an Enterprise must use the first column of Table 2 to paragraph (b)(9)(ii)(E)(*2*)(*iii*) of this section to identify the row matching *CRTMthstoMaturity* and take a weighted average of the three loss timing factors in columns 2, 3, and 4 as follows:

$$\begin{aligned} LTF_{\%} = {} & (CRTLT15 * CRTF15_{\%}) + \ (CRTLT80Not15 * CRT80NotF15_{\%}) \\ & + \ \big(CRTLTGT80Not15 * (1 - CRT80NotF15_{\%} - CRTF15_{\%})\big) \end{aligned}$$

(*ii*) If *CRTMthstoMaturity* is not a multiple of 12, an Enterprise must use the first column of Table 2 to paragraph (b)(9)(ii)(E)(*2*)(*iii*) of this section to identify the two rows that are closest to *CRTMthstoMaturity* and take a weighted average between the two rows of loss timing factors using linear interpolation, where the weights reflect *CRTMthstoMaturity*.

(*iii*) For seasoned single-family CRTs, the $LTF_{\%}$, is calculated:

$$LTF_{\%} = \left(\frac{CRTLT_M - CRTLT_s}{100\% - CRTLT_s}\right)$$

where:

$CRTLT_M$ is the loss timing factor calculated under (ii) of this subsection.

$CRTLT_S$ is the loss timing factor calculated under (ii) of this subsection replacing *CRTMthstoMaturity* with the duration of seasoning.

CRTMthstoMaturity is calculated as per (E) of this section.

*CRTLT*15 is the CRT loss timing factor for pool groups backed by single-family mortgage exposures with original amortization terms <= 189 months.

*CRTLT*80*Not*15: is the CRT loss timing factor for pool groups backed by single-family mortgage exposures with original amortization terms > 189 months and OLTVs <=80 percent.

*CRTLTGT*80*Not*15 is the CRT loss timing factor for pool groups backed by single-family mortgage exposures with original amortization terms > 189 months and OLTVs > 80 percent.

TABLE 2 TO PARAGRAPH (b)(9)(ii)(E)(*2*)(*iii*): SINGLE-FAMILY CRT LOSS TIMING FACTORS

CRTMthstoMaturity (#1)	***CRTLT*15** (#2)	***CRTLT*80*Not*15** (#3)	***CRTLTGT*80*Not*15** (#4)
0	0%	0%	0%
12	1%	0%	0%
24	6%	3%	2%
36	21%	13%	11%
48	44%	31%	26%
60	66%	49%	43%
72	82%	65%	58%
84	90%	74%	68%
96	94%	80%	76%
108	96%	85%	81%
120	98%	88%	86%
132	99%	91%	89%
144	99%	93%	92%
156	100%	94%	94%
168	100%	96%	95%
180	100%	96%	96%
192	100%	97%	97%
204	100%	98%	98%
216	100%	98%	98%
228	100%	98%	98%
240	100%	99%	99%
252	100%	99%	99%
264	100%	99%	99%
276	100%	99%	99%
288	100%	99%	99%
300	100%	100%	100%
312	100%	100%	100%
324	100%	100%	100%
336	100%	100%	100%
348	100%	100%	100%
360	100%	100%	100%

(10) Parameter $RWA_{\$}$ is the aggregate credit risk-weighted assets associated with the underlying mortgage exposures.

(11) Parameter $CntptyRWA_{\$}$ is the aggregate credit risk-weighted assets due to counterparty haircuts from loan-

level credit enhancements. $CntptyRWA_\$$ is the difference between:

(i) Parameter $RWA_\$$; and

(ii) Aggregate credit risk-weighted assets associated with the underlying mortgage exposures where the counterparty haircuts for loan-level credit enhancements are set to zero.

(c) *Mechanics of the CRTA.* The risk weight assigned to a retained CRT exposure, or portion of a retained CRT exposure, as appropriate, is the larger of $RW_\%$ determined in accordance with paragraph (d) of this section and a risk weight of 5 percent.

(1) When the detachment point, parameter D, for a retained CRT exposure is less than or equal to the sum of K_A and $AggEL_\%$, the exposure must be assigned a risk weight of 1,250 percent.

(2) When the attachment point, parameter A, for a retained CRT exposure is greater than or equal to or equal to the sum of K_A and $AggEL_\%$, determined in accordance with paragraph (d) of this section, the exposure must be assigned a risk weight of 5 percent.

(3) When parameter A is less than or equal to the sum of K_A and $AggEL_\%$, and parameter D is greater than the sum of K_A and $AggEL_\%$, the Enterprise must calculate the risk weight as the sum of:

(i) 1,250 percent multiplied by the ratio of (A) the sum of K_A and $AggEL_\%$ minus parameter A to (B) the difference between parameter D and parameter A; and

(ii) 5 percent multiplied by the ratio of (A) parameter D minus the sum of K_A and $AggEL_\%$ to (B) the difference between parameter D and parameter A.

(d) *CRTA equations.*

$$RW_{\%,Tranche} = \begin{cases} 1{,}250\%\ if\ K_A + AggEL_\% \geq D \\ 5\%\ if\ K_A + AggEL_\% \leq A \\ 1250\% * \left(\dfrac{K_A + AggEL_\% - A}{D - A}\right) + 5\% * \left(\dfrac{D - (K_A + AggEL_\%)}{D - A}\right)\ if\ A < K_A + AggEL_\% < D \end{cases}$$

$$AggEL_\% = 100\% * \frac{EL_\$}{AggUPB_\$}$$

If the contractual terms of the CRT do not provide for the transfer of the counterparty credit risk associated with any loan-level credit enhancement or other loss sharing on the underlying mortgage exposures, then the Enterprise shall calculate K_A as follows:

$$K_A = 100\% * \frac{(RWA_\$ - CntptyRWA_\$) * 8\%}{AggUPB_\$}$$

Otherwise the Enterprise shall calculate K_A as follows:

$$K_A = 100\% * \frac{RWA_\$ * 8\%}{AggUPB_\$}$$

(e) *Limitations.* Notwithstanding any other provision of this section, an Enterprise must assign an overall risk weight of not less than 5 percent to a retained CRT exposure.

(f) *Adjusted exposure amount (AEA)*—(1) *In general.* The adjusted exposure amount (AEA) of a retained CRT exposure is equal to:

$$AEA_{\$,Tranche} = EAE_{\%,Tranche} * AggUPB_{\$} * (D - A) * \left(1 - \left(\frac{ELS_{\%,Tranche}}{RW_{\%,Tranche} * 8\%}\right)\right)$$

(2) *Inputs*—(i) *Enterprise adjusted exposure.* The adjusted exposure (EAE) of an Enterprise with respect to a retained CRT exposure is as follows:

$$EAE_{\%,Tranche} = 100\% - \left(CM_{\%,Tranche} * LTEA_{\%,Tranche,CM}\right) - \left(LS_{\%,Tranche} * LSEA_{\%,Tranche} * LTEA_{\%,Tranche,LS}\right),$$

Where the loss timing effectiveness adjustments (LTEA) for a retained CRT exposure are determined under paragraph (g) of this section, and the loss sharing effectiveness adjustment (LSEA) for a retained CRT exposure is determined under paragraph (h) of this section.

(ii) *Expected loss share.* The expected loss share is the share of a tranche that is covered by expected loss (ELS):

$$ELS_{\%,Tranche} = \begin{cases} 100\% \ if \ AggEL_{\%} \geq D \\ 0\% \ if \ AggEL_{\%} \leq A \\ 100\% * \left(\dfrac{AggEL_{\%} - A}{D - A}\right) \ if \ A < AggEL_{\%} < D. \end{cases}$$

(iii) *Risk weight.* The risk weight of a retained CRT exposure is determined under paragraph (d) of this section.

(g) *Loss timing effectiveness adjustments.* The loss timing effectiveness adjustments (LTEA) for a retained CRT exposure is calculated according to the following calculation:

$if\ (SLS_{\%,\mathrm{Tranche}} - ELS_{\%,\mathrm{Tranche}}) > 0\ then$
$LTEA_{\%,Tranche,CM}$

$$if\ (SLS_{\%,Tranche} - ELS_{\%,Tranche}) > 0\ then$$

$$LTEA_{\%,Tranche,CM} = \frac{100\% * \max\left(0, \min\left(1,\ \frac{LTK_{A,CM} + AggEL_{\%} - A}{D - A}\right)\right) - ELS_{\%,Tranche}}{(SLS_{\%,Tranche} - ELS_{\%,Tranche})}$$

$$LTEA_{\%,Tranche,LS} = \frac{100\% * \max\left(0, \min\left(1,\ \frac{LTK_{A,LS} + AggEL_{\%} - A}{D - A}\right)\right) - ELS_{\%,Tranche}}{(SLS_{\%,Tranche} - ELS_{\%,Tranche})}$$

$$LTEA_{\%,Tranche,LS} = \frac{100\% * \max\left(0, \min\left(1,\ \frac{LTK_{A,LS} + AggEL_{\%} - A}{D - A}\right)\right) - ELS_{\%,Tranche}}{(SLS_{\%,Tranche} - ELS_{\%,Tranche})}$$

Otherwise $LTEA_{\%,Tranche,CM} = 100\%$ *and* $LTEA_{\%,Tranche,LS} = 100\%$

where K_A adjusted for loss timing (LTK_A) is as follows:

$LTK_{A,CM} = \max\ ((K_A + AggEL_{\%}) * LTF_{\%,CM} - AggEL_{\%}, 0\%)$

$LTK_{A,LS} = \max\ ((K_A + AggEL_{\%}) * LTF_{\%,LS} - AggEL_{\%}, 0\%)$

and

$LTF_{\%,CM}$ is $LTF_{\%}$ calculated for the capital markets component of the tranche,

$LTF_{\%,LS}$ is $LTF_{\%}$ calculated for the loss sharing component of the tranche, and the share of the tranche that is covered by expected loss (ELS) and the share of the tranche that is covered by stress loss (SLS) are as follows:

$$ELS_{\%,Tranche} = \begin{cases} 100\%\ if\ AggEL_{\%} \geq D \\ 0\%\ if\ AggEL_{\%} \leq A \\ 100\% * \left(\frac{AggEL_{\%} - A}{D - A}\right)\ if\ A < AggEL_{\%} < D \end{cases}$$

$$SLS_{\%,Tranche} = \begin{cases} 100\%\ if\ K_A + AggEL_{\%} \geq D \\ 0\%\ if\ K_A + AggEL_{\%} \leq A \\ 100\% * \left(\frac{K_A + AggEL_{\%} - A}{D - A}\right)\ if\ A < K_A + AggEL_{\%} < D. \end{cases}$$

(h) *Loss sharing effectiveness adjustment.* The loss sharing effectiveness adjustment (LSEA) for a retained CRT exposure is calculated according to the following calculation:

$if\ (RW_{\%,Tranche} - ELS_{\%,Tranche} * 1250\%) > 0\ then$

$$if\ \left(RW_{\%,Tranche} - ELS_{\%,Tranche} * 1250\%\right) > 0\ then$$

$$LSEA_{\%,Tranche} = max\left(\left(1 - HC * \frac{\left(UnCollatUL_{\%,Tranche} * 1250\% + SRIF_{\%,Tranche} * 5\%\right)}{\left(RW_{\%,Tranche} - ELS_{\%,Tranche} * 1250\%\right)}\right), 0\%\right)$$

Otherwise

$LSEA_{\%,Tranche} = 100\%$

where

$UnCollatUL_{\%,Tranche} = max(0\%, SLS_{\%,Tranche} - max(Collat_{\%RIF,Tranche}, ELS_{\%,Tranche}))$

$SRIF_{\%,Tranche} = 100\% - max(SLS_{\%,Tranche}, Collat_{\%RIF,Tranche})$

and the share of the tranche that is covered by expected loss (ELS) and the share of the tranche that is covered by stress loss (SLS) are as follows:

$$ELS_{\%,Tranche} = \begin{cases} 100\%\ if\ AggEL_{\%} \geq D \\ 0\%\ if\ AggEL_{\%} \leq A \\ 100\% * \left(\dfrac{AggEL_{\%} - A}{D - A}\right)\ if\ A < AggEL_{\%} < D \end{cases}$$

$$SLS_{\%,Tranche} = \begin{cases} 100\%\ if\ K_A + AggEL_{\%} \geq D \\ 0\%\ if\ K_A + AggEL_{\%} \leq A \\ 100\% * \left(\dfrac{K_A + AggEL_{\%} - A}{D - A}\right)\ if\ A < K_A + AggEL_{\%} < D. \end{cases}$$

(i) [Reserved]

(j) *RWA supplement for retained loan-level counterparty credit risk.* If the Enterprise elects to use the CRTA for a retained CRT exposure and if the contractual terms of the CRT do not provide for the transfer of the counterparty credit risk associated with any loan-level credit enhancement or other loss sharing on the underlying mortgage exposures, then the Enterprise must add the following risk-weighted assets supplement ($RWASup_{\$}$) to risk weighted assets for the retained CRT exposure.

$RWASup_{\$,Tranche} = CntptyRWA_{\$} * (D - A)$

Otherwise the Enterprise shall add an $RWASup_{\$,Tranche}$ of \$0.

(k) *Retained CRT Exposure.* Credit risk-weighted assets for the retained CRT exposure are as follows:

$RWA_{\$,Tranche} = AEA_{\$,Tranche} * RW_{\%,Tranche} + RWASup_{\$,Tranche}$

[85 FR 82198, Dec. 17, 2020, as amended at 87 FR 14770, Mar. 16, 2022]

§ 1240.45 Securitization exposures to which the SSFA and the CRTA do not apply.

An Enterprise must assign a 1,250 percent risk weight to any acquired CRT exposure and all securitization exposures to which the Enterprise does not apply the SSFA under § 1240.43 or the CRTA under § 1240.44.

§ 1240.46 Recognition of credit risk mitigants for securitization exposures.

(a) *General.* (1) An originating Enterprise that has obtained a credit risk mitigant to hedge its exposure to a synthetic or traditional securitization that satisfies the operational criteria provided in § 1240.41 may recognize the credit risk mitigant under § 1240.38 or § 1240.39, but only as provided in this section.

(2) An investing Enterprise that has obtained a credit risk mitigant to hedge a securitization exposure may recognize the credit risk mitigant under § 1240.38 or § 1240.39, but only as provided in this section.

(b) *Mismatches.* An Enterprise must make any applicable adjustment to the protection amount of an eligible guarantee or credit derivative as required in § 1240.38(d) through (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 Enterprise must use the longest residual maturity of any of the hedged exposures as the residual maturity of all hedged exposures.

RISK-WEIGHTED ASSETS FOR EQUITY EXPOSURES

§ 1240.51 Introduction and exposure measurement.

(a) *General.* (1) To calculate its risk-weighted asset amounts for equity exposures, an Enterprise must use the Simple Risk-Weight Approach (SRWA) provided in § 1240.52.

(2) An Enterprise must treat an investment in a separate account (as defined in § 1240.2) as if it were an equity exposure to an investment fund.

(b) *Adjusted carrying value.* For purposes of §§ 1240.51 and 1240.52, the adjusted carrying value of an equity exposure is:

(1) For the on-balance sheet component of an equity exposure, the Enterprise's carrying value of the exposure;

(2) [Reserved]

(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 one year or less receive a CF of 20 percent.

(ii) Conditional equity commitments with an original maturity of over one year receive a CF of 50 percent.

(iii) Unconditional equity commitments receive a CF of 100 percent.

§ 1240.52 Simple risk-weight approach (SRWA).

(a) *General.* Under the SRWA, an Enterprise's total risk-weighted assets for equity exposures equals the sum of the risk-weighted asset amounts for each of the Enterprise's individual equity exposures as determined under this section.

(b) *SRWA computation for individual equity exposures.* An Enterprise must determine the risk-weighted asset amount for an individual equity exposure by multiplying the adjusted carrying value of the equity exposure by the lowest applicable risk weight in this section.

(1) *Community development equity exposures.* A 100 percent risk weight is assigned to an equity exposure that was acquired with the prior written approval of FHFA and is designed primarily to promote community welfare, including the welfare of low- and moderate-income communities or families, such as by providing services or employment, and excluding equity exposures to an unconsolidated small business investment company and equity exposures held through a small business investment company described in section 302 of the Small Business Investment Act of 1958 (15 U.S.C. 682).

(2) *Other equity exposures.* A 400 percent risk weight is assigned to an equity exposure to an operating company or an investment in a separate account.

§§ 1240.53–1240.60 [Reserved]

§ 1240.61 Purpose and scope.

Sections 1240.61 through 1240.63 of this subpart establish public disclosure requirements related to the capital requirements and buffers described in subpart B and subpart G.

[87 FR 33429, June 2, 2022]

§ 1240.62 Disclosure requirements.

(a) An Enterprise must provide timely public disclosures each calendar quarter of the information in the applicable tables in § 1240.63, where for the purpose of these disclosure requirements timely means no later than 10 business days after an Enterprise files its corresponding Annual Report on SEC Form 10–K at the end of a fiscal year or its corresponding Quarterly Report on SEC Form 10–Q at the end of other calendar quarters. If a material change occurs, where for the purpose of these disclosure requirements a material change means a change such that the omission or misstatement of which could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions, then an Enterprise must disclose a brief discussion of this change and its likely impact as soon as practicable thereafter, and no later than the end of the next calendar quarter. Qualitative disclosures that have not changed from the prior quarter may be omitted from the next quarterly disclosure but must be disclosed at least annually after the end of the fourth calendar quarter.

(b) Unless otherwise directed by FHFA, the Enterprise's management may provide all of the disclosures required by §§ 1240.61 through 1240.63 in one place on the Enterprise's public website or may provide the disclosures in more than one public financial report or other regulatory reports, provided that the Enterprise publicly provides a summary table specifically indicating the location(s) of all such disclosures.

(c) An Enterprise 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.

(d) The Enterprise's board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over the disclosures required by this subpart, and must ensure that appropriate review of the disclosures takes place. The Chief Risk Officer and the Chief Financial Officer of the Enterprise must attest that the disclosures meet the requirements of this subpart.

(e) If an Enterprise believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public certain information that is either proprietary or confidential in nature, the Enterprise is not required to disclose these specific items 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.

[87 FR 33429, June 2, 2022]

§ 1240.63 Disclosures.

(a) Except as provided in § 1240.62, an Enterprise must make the disclosures described in Tables 1 through 11 of this section publicly available for each of the last three years (that is, twelve quarters) or such shorter period until an Enterprise has made twelve quarterly disclosures pursuant to this part beginning with the disclosure for the quarter ending December 31, 2022.

(b) An Enterprise must publicly disclose each quarter the following:

(1) Regulatory capital ratios for common equity tier 1 capital, additional tier 1 capital, tier 1 capital, tier 2 capital, total capital, core capital, and adjusted total capital, including 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; and

(3) A reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements.

TABLE 1 TO PARAGRAPH (b)(3)—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 stock and related surplus; (2) Retained earnings; (3) AOCI (net of tax) and other reserves; and (4) Regulatory adjustments and deductions made to common equity tier 1 capital. (c) The amount of core capital, with separate disclosure of: (1) The par or stated value of outstanding common stock; (2) The par or stated value of outstanding perpetual, noncumulative preferred stock; (3) Paid-in capital; and (4) Retained earnings. (d) The amount of tier 1 capital, with separate disclosure of: (1) Additional tier 1 capital elements, including additional tier 1 capital instruments and tier 1 minority interest not included in common equity tier 1 capital; and (2) Regulatory adjustments and deductions made to tier 1 capital. (e) The amount of total capital, with separate disclosure of: (1) The general allowance for foreclosure losses; and (2) Other amounts from sources of funds available to absorb losses incurred by the Enterprise that the Director by regulation determines are appropriate to include in determining total capital. (f) The amount of adjusted total capital, with separate disclosure of: (1) Tier 2 capital elements, including tier 2 capital instruments; and (2) Regulatory adjustments and deductions made to adjusted total capital.

TABLE 2 TO PARAGRAPH (b)(3)—CAPITAL ADEQUACY

Qualitative disclosures	(a) A summary discussion of the Enterprise'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 and credit unions; (5) Exposures to PSEs; (6) Corporate exposures; (7) Aggregate single-family mortgage exposures categorized by: (i) Performing loans; (ii) Non-modified re-performing loans; (iii) Modified re-performing loans; (iv) Non-performing loans; (8) Aggregate multifamily mortgage exposures categorized by: (i) Multifamily fixed-rate exposures; (ii) Multifamily adjustable-rate exposures; (9) Past due loans;

TABLE 2 TO PARAGRAPH (b)(3)—CAPITAL ADEQUACY—Continued

	(10) Other assets; (11) Insurance assets; (12) Off-balance sheet exposures; (13) Cleared transactions; (14) Default fund contributions; (15) Unsettled transactions; (16) CRT and other securitization exposures; and (17) Equity exposures. (c) Standardized market risk-weighted assets as calculated under subpart F of this part. (d) Risk-weighted assets for operational risk. (e) Common equity tier 1, tier 1, and adjusted total risk-based capital ratios. (f) Total standardized risk-weighted assets.

TABLE 3 TO PARAGRAPH (b)(3)—CAPITAL BUFFERS

Qualitative disclosures	(a) A summary discussion of the Enterprise's capital buffers.
Quantitative disclosures	(b) At least quarterly, the Enterprise must calculate and publicly disclose the prescribed capital conservation buffer amount and all its components as described under § 1240.11. (c) At least quarterly, the Enterprise must calculate and publicly disclose the prescribed leverage buffer amount as described under § 1240.11. (d) At least quarterly, the Enterprise must calculate and publicly disclose the eligible retained income of the Enterprise, as described under § 1240.11. (e) At least quarterly, the Enterprise must calculate and publicly disclose any limitations it has on distributions and discretionary bonus payments resulting from the capital buffer framework described under § 1240.11, including the maximum payout amount for the quarter.

(c) For each separate risk area described in Tables 4 through 9, the Enterprise must, as a general qualitative disclosure requirement, 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 and/or mitigants.

TABLE 4 TO PARAGRAPH (c) [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 5 of this section), including the: (1) Policy for determining past due or delinquency status; (2) Policy for placing loans on nonaccrual; (3) Policy for returning loans to accrual status; (4) Description of the methodology that the Enterprise uses to estimate its adjusted allowance for credit losses, including statistical methods used where applicable; (5) Policy for charging-off uncollectible amounts; and (6) Discussion of the Enterprise's credit risk management policy.

TABLE 4 TO PARAGRAPH (c)[1]—CREDIT RISK: GENERAL DISCLOSURES—Continued

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, the Enterprises 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. (c) Geographic distribution of exposures, categorized in significant areas by major types of credit exposure.[2] (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 loans not past due or past due less than 30 days; (2) Amount of loans past due 30 days but less than 90 days; (3) Amount of loans past due 90 days and on nonaccrual; (4) Amount of loans past due 90 days and still accruing;[3] (5) The balance in the adjusted allowance for credit losses at the end of each period, disaggregated on the basis of loans not past due or past due less than 30 days, loans past due 30 days but less than 90 days, loans past due 90 days and on nonaccrual, and loans past due 90 days and still accruing; and (6) Charge-offs during the period. (f) Amount of past due loans categorized by significant geographic areas including, if practical, the amounts of allowances related to each geographical area,[4] further categorized as required by GAAP. (g) Reconciliation of changes in the adjusted allowance for credit losses.[5] (h) Remaining contractual maturity delineation (for example, one year or less) of the whole portfolio, categorized by credit exposure.

[1] Table 4 does not cover equity exposures, which should be reported in Table 8 of this section.

[2] Geographical areas consist of areas within the United States and territories. An Enterprise might choose to define the geographical areas based on the way the Enterprise's portfolio is geographically managed. The criteria used to allocate the loans to geographical areas must be specified.

[3] An Enterprise may, but is not required to, also provide an analysis of the aging of past-due loans.

[4] The portion of the general allowance that is not allocated to a geographical area should be disclosed separately.

[5] 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 expected credit 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 5 TO PARAGRAPH (c)—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; (2) 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 Enterprise would have to provide given a deterioration in the Enterprise's own creditworthiness.

TABLE 5 TO PARAGRAPH (c)—GENERAL DISCLOSURE FOR COUNTERPARTY CREDIT RISK-RELATED EXPOSURES—Continued

Quantitative Disclosures	(b) Gross positive fair value of contracts, collateral held (including type, for example, cash, government securities), and net unsecured credit exposure.[1] An Enterprise 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 and sold credit derivatives, segregated between use for the Enterprise's own credit portfolio and in its intermediation activities, including the distribution of the credit derivative products used, categorized further by protection bought and sold within each product group.

[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 6 TO PARAGRAPH (c)—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; (2) A description of the main types of collateral taken by the Enterprise; (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, an Enterprise must provide the disclosures in Table 6 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this subpart. Where relevant, the Enterprises may 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 7 of this section).

TABLE 7 TO PARAGRAPH (c)—CRT AND SECURITIZATION

Qualitative disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of: (1) The Enterprise's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the Enterprise to other entities and including the type of risks assumed and retained with resecuritization activity;[1] (2) The nature of the risks (*e.g.,* liquidity risk) inherent in the securitized assets; (3) The roles played by the Enterprise in the securitization process[2] and an indication of the extent of the Enterprise'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;

TABLE 7 TO PARAGRAPH (c)—CRT AND SECURITIZATION—Continued

	(5) The Enterprise's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and (6) The risk-based capital approaches that the Enterprise follows for its securitization exposures including the type of securitization exposure to which each approach applies. (b) A list of: (1) The type of securitization SPEs that the Enterprise, as sponsor, uses to securitize third-party exposures. The Enterprise must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and (2) Affiliated entities: (i) That the Enterprise manages or advises; and (ii) That invest either in the securitization exposures that the Enterprise has securitized or in securitization SPEs that the Enterprise sponsors.[3] (c) Summary of the Enterprise's accounting policies for CRT and securitization activities, including: (1) Whether the transactions are treated as sales (*i.e.,* sale accounting has been obtained) or financings; (2) Recognition of gain-on-sale; (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 Enterprise 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 Enterprise in securitizations that meet the operational criteria provided in § 1240.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the Enterprise acts only as sponsor.[4] (f) For exposures securitized by the Enterprise in securitizations that meet the operational criteria in § 1240.41: (1) Amount of securitized assets that are past due categorized by exposure type; and (2) Losses recognized by the Enterprise during the current period categorized by exposure type.[5] (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.,* CRTA, SSFA); and (2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any:

TABLE 7 TO PARAGRAPH (c)—CRT AND SECURITIZATION—Continued

	(i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and (ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight. (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. (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] The Enterprise 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 Enterprise is active.
[2] For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.
[3] Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.
[4] "Exposures securitized" include underlying exposures originated by the Enterprise, 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 Enterprise's balance sheet and underlying exposures acquired by the Enterprise from third-party entities) in which the originating Enterprise does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. Enterprises are required to disclose exposures regardless of whether there is a capital charge under this part.
[5] For example, charge-offs/allowances (if the assets remain on the Enterprise's balance sheet) or credit-related write-off of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the Enterprise with respect to securitized assets.

TABLE 8 TO PARAGRAPH (c)—EQUITIES

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to equity risk for equities, including: (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 holdings. 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) Carrying 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) recognized on the balance sheet but not through earnings. (2) Total unrealized gains (losses) not recognized either on the balance sheet or through earnings. (3) Any amounts of the above included in tier 1 or tier 2 capital. (f) Capital requirements categorized by appropriate equity groupings, consistent with the Enterprise's methodology, as well as the aggregate amounts and the type of equity investments subject to any supervisory transition regarding regulatory capital requirements.[1]

[1] This disclosure must include a breakdown of equities that are subject to the 0 percent, 20 percent, 100 percent, 300 percent, 400 percent, and 600 percent risk weights, as applicable.

TABLE 9 TO PARAGRAPH (c)—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 frequency of measurement of interest rate risk for non-trading activities.
Quantitative disclosures	(b) The increase (decline) in earnings or economic value (or 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).

TABLE 10 TO PARAGRAPH (c)—OPERATIONAL RISK

Qualitative disclosures	(a) The general qualitative disclosure requirement for operational risk. (b) Description of the AMA, when applicable, including a discussion of relevant internal and external factors considered in the Enterprise's measurement approach. (c) A description of the use of insurance for the purpose of mitigating operational risk.

TABLE 11 TO PARAGRAPH (c)—TIER 1 LEVERAGE RATIO

	Dollar amounts in thousands			
	Tril	Bil	Mil	Thou
Part 1: Summary comparison of accounting assets and adjusted total assets				
1 Total consolidated assets as reported in published financial statements.				
2 Adjustment for fiduciary assets recognized on balance sheet but excluded from total leverage exposure.				
3 Adjustment for derivative exposures.				
4 Adjustment for repo-style transactions.				
5 Adjustment for off-balance sheet exposures (that is, conversion to credit equivalent amounts of off-balance sheet exposures).				
6 Other adjustments.				
7 Adjusted total assets (sum of lines 1 to 6).				
Part 2: Tier 1 leverage ratio				
On-balance sheet exposures				
1 On-balance sheet assets (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions).				
2 LESS: Amounts deducted from tier 1 capital.				
3 Total on-balance sheet exposures (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions) (sum of lines 1 and 2).				
Derivative exposures				
4 Current exposure for derivative exposures (that is, net of cash variation margin).				
5 Add-on amounts for potential future exposure (PFE) for derivative exposures.				
6 Gross-up for cash collateral posted if deducted from the on-balance sheet assets, except for cash variation margin.				
7 LESS: Deductions of receivable assets for cash variation margin posted in derivative transactions, if included in on-balance sheet assets.				
8 LESS: Exempted CCP leg of client-cleared transactions.				
9 Effective notional principal amount of sold credit protection.				
10 LESS: Effective notional principal amount offsets and PFE adjustments for sold credit protection.				
11 Total derivative exposures (sum of lines 4 to 10).				

TABLE 11 TO PARAGRAPH (c)—TIER 1 LEVERAGE RATIO—Continued

	Dollar amounts in thousands			
	Tril	Bil	Mil	Thou
Repo-style transactions				
12 On-balance sheet assets for repo-style transactions, except include the gross value of receivables for reverse repurchase transactions. Exclude from this item the value of securities received in a security-for-security repo-style transaction where the securities lender has not sold or re-hypothecated the securities received. Include in this item the value of securities that qualified for sales treatment that must be reversed.				
13 LESS: Reduction of the gross value of receivables in reverse repurchase transactions by cash payables in repurchase transactions under netting agreements.				
14 Counterparty credit risk for all repo-style transactions.				
15 Exposure for repo-style transactions where a banking organization acts as an agent.				
16 Total exposures for repo-style transactions (sum of lines 12 to 15).				
Other off-balance sheet exposures				
17 Off-balance sheet exposures at gross notional amounts.				
18 LESS: Adjustments for conversion to credit equivalent amounts.				
19 Off-balance sheet exposures (sum of lines 17 and 18).				
Capital and adjusted total assets				
20 Tier 1 capital.				
21 Adjusted total assets (sum of lines 3, 11, 16, and 19).				
Tier 1 leverage ratio				
22 Tier 1 leverage ratio	(in percent)			

[87 FR 33429, June 2, 2022, as amended at 87 FR 37979, June 27, 2022]

Subpart E—Risk-Weighted Assets—Internal Ratings-Based and Advanced Measurement Approaches

§ 1240.100 Purpose, applicability, and principle of conservatism.

(a) *Purpose*. This subpart establishes:

(1) Minimum requirements for using Enterprise-specific internal risk measurement and management processes for calculating risk-based capital requirements; and

(2) Methodologies for the Enterprises to calculate their advanced approaches total risk-weighted assets.

(b) *Applicability*. (1) This subpart applies to each Enterprise.

(2) An Enterprise must also include in its calculation of advanced credit risk-weighted assets under this subpart all covered positions, as defined in subpart F of this part.

(c) *Principle of conservatism.* Notwithstanding the requirements of this subpart, an Enterprise may choose not to apply a provision of this subpart to one or more exposures provided that:

(1) The Enterprise can demonstrate on an ongoing basis to the satisfaction of FHFA that not applying the provision would, in all circumstances, unambiguously generate a risk-based capital requirement for each such exposure greater than that which would otherwise be required under this subpart;

(2) The Enterprise appropriately manages the risk of each such exposure;

(3) The Enterprise notifies FHFA in writing prior to applying this principle to each such exposure; and

(4) The exposures to which the Enterprise applies this principle are not, in the aggregate, material to the Enterprise.

§ 1240.101 Definitions.

(a) Terms that are set forth in § 1240.2 and used in this subpart have the definitions assigned thereto in § 1240.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Advanced internal ratings-based (IRB) systems means an Enterprise's internal risk rating and segmentation system; risk parameter quantification system; data management and maintenance system; and control, oversight, and validation system for credit risk of exposures.

Advanced systems means an Enterprise's advanced IRB systems, operational risk management processes, operational risk data and assessment systems, operational risk quantification systems, and, to the extent used by the Enterprise, the internal models methodology, advanced CVA approach, double default excessive correlation detection process, and internal models approach (IMA) for equity exposures.

Backtesting means the comparison of an Enterprise's internal estimates with actual outcomes during a sample period not used in model development. In this context, backtesting is one form of out-of-sample testing.

Benchmarking means the comparison of an Enterprise's internal estimates with relevant internal and external data or with estimates based on other estimation techniques.

Business environment and internal control factors means the indicators of an Enterprise's operational risk profile that reflect a current and forward-looking assessment of the Enterprise's underlying business risk factors and internal control environment.

Dependence means a measure of the association among operational losses across and within units of measure.

Economic downturn conditions means, with respect to an exposure held by the Enterprise, those conditions in which the aggregate default rates for that exposure's exposure subcategory (or subdivision of such subcategory selected by the Enterprise) in the exposure's jurisdiction (or subdivision of such jurisdiction selected by the Enterprise) are significantly higher than average.

Eligible operational risk offsets means amounts, not to exceed expected operational loss, that:

(i) Are generated by internal business practices to absorb highly predictable and reasonably stable operational losses, including reserves calculated consistent with GAAP; and

(ii) Are available to cover expected operational losses with a high degree of certainty over a one-year horizon.

Expected operational loss (EOL) means the expected value of the distribution of potential aggregate operational losses, as generated by the Enterprise's operational risk quantification system using a one-year horizon.

External operational loss event data means, with respect to an Enterprise, gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at organizations other than the Enterprise.

Internal operational loss event data means, with respect to an Enterprise, gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at the Enterprise.

Operational loss means a loss (excluding insurance or tax effects) resulting from an operational loss event. Operational loss includes all expenses associated with an operational loss event except for opportunity costs, forgone revenue, and costs related to risk management and control enhancements implemented to prevent future operational losses.

Operational loss event means an event that results in loss and is associated with any of the following seven operational loss event type categories:

(i) Internal fraud, which means the operational loss event type category that comprises operational losses resulting from an act involving at least one internal party of a type intended to defraud, misappropriate property, or circumvent regulations, the law, or company policy excluding diversity- and discrimination-type events.

(ii) External fraud, which means the operational loss event type category that comprises operational losses resulting from an act by a third party of a type intended to defraud, misappropriate property, or circumvent the law. All third-party-initiated credit losses are to be treated as credit risk losses.

(iii) Employment practices and workplace safety, which means the operational loss event type category that comprises operational losses resulting from an act inconsistent with employment, health, or safety laws or agreements, payment of personal injury claims, or payment arising from diversity- and discrimination-type events.

(iv) Clients, products, and business practices, which means the operational loss event type category that comprises operational losses resulting from the nature or design of a product or from an unintentional or negligent failure to meet a professional obligation to specific clients (including fiduciary and suitability requirements).

(v) Damage to physical assets, which means the operational loss event type category that comprises operational losses resulting from the loss of or damage to physical assets from natural disaster or other events.

(vi) Business disruption and system failures, which means the operational loss event type category that comprises operational losses resulting from disruption of business or system failures.

(vii) Execution, delivery, and process management, which means the operational loss event type category that comprises operational losses resulting from failed transaction processing or process management or losses arising from relations with trade counterparties and vendors.

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events (including legal risk but excluding strategic and reputational risk).

Operational risk exposure means the 99.9th percentile of the distribution of potential aggregate operational losses, as generated by the Enterprise's operational risk quantification system over a one-year horizon (and not incorporating eligible operational risk offsets or qualifying operational risk mitigants).

Risk parameter means a variable used in determining risk-based capital requirements for exposures, such as probability of default, loss given default, exposure at default, or effective maturity.

Scenario analysis means a systematic process of obtaining expert opinions from business managers and risk management experts to derive reasoned assessments of the likelihood and loss impact of plausible high-severity operational losses. Scenario analysis may include the well-reasoned evaluation and use of external operational loss event data, adjusted as appropriate to ensure relevance to an Enterprise's operational risk profile and control structure.

Unexpected operational loss (UOL) means the difference between the Enterprise's operational risk exposure and the Enterprise's expected operational loss.

Unit of measure means the level (for example, organizational unit or operational loss event type) at which the Enterprise's operational risk quantification system generates a separate distribution of potential operational losses.

§ 1240.121 Minimum requirements.

(a) *Process and systems requirements.* (1) An Enterprise must have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

(2) The systems and processes used by an Enterprise for risk-based capital purposes under this subpart must be consistent with the Enterprise's internal risk management processes and management information reporting systems.

(3) Each Enterprise must have an appropriate infrastructure with risk measurement and management processes that meet the requirements of this section and are appropriate given the Enterprise's size and level of complexity. The Enterprise must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of long run experience with respect to its credit risk and operational risk exposures.

(b) *Risk rating and segmentation systems for exposures.* (1) An Enterprise must have an internal risk rating and segmentation system that accurately, reliably, and meaningfully differentiates among degrees of credit risk for the Enterprise's exposures. When assigning an internal risk rating, an Enterprise may consider a third-party assessment of credit risk, provided that the Enterprise's internal risk rating assignment does not rely solely on the external assessment.

(2) If an Enterprise uses multiple rating or segmentation systems, the Enterprise's rationale for assigning an exposure to a particular system must be documented and applied in a manner that best reflects the obligor or exposure's level of risk. An Enterprise must not inappropriately allocate exposures across systems to minimize regulatory capital requirements.

(3) In assigning ratings to exposures, an Enterprise must use all relevant and material information and ensure that the information is current.

(c) *Quantification of risk parameters for exposures.* (1) The Enterprise must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters on a consistent basis for the Enterprise's exposures.

(2) An Enterprise's estimates of risk parameters must incorporate all relevant, material, and available data that is reflective of the Enterprise's actual exposures and of sufficient quality to support the determination of risk-based capital requirements for the exposures. In particular, the population of exposures in the data used for estimation purposes, the underwriting standards in use when the data were generated, and other relevant characteristics, should closely match or be comparable to the Enterprise's exposures and standards. In addition, an Enterprise must:

(i) Demonstrate that its estimates are representative of long run experience, including periods of economic downturn conditions, whether internal or external data are used;

(ii) Take into account any changes in underwriting practice or the process for pursuing recoveries over the observation period;

(iii) Promptly reflect technical advances, new data, and other information as they become available;

(iv) Demonstrate that the data used to estimate risk parameters support the accuracy and robustness of those estimates; and

(v) Demonstrate that its estimation technique performs well in out-of-sample tests whenever possible.

(3) The Enterprise's risk parameter quantification process must produce appropriately conservative risk parameter estimates where the Enterprise has limited relevant data, and any adjustments that are part of the quantification process must not result in a pattern of bias toward lower risk parameter estimates.

(4) The Enterprise's risk parameter estimation process should not rely on the possibility of U.S. government financial assistance.

(5) Default, loss severity, and exposure amount data must include periods of economic downturn conditions, or the Enterprise must adjust its estimates of risk parameters to compensate for the lack of data from periods of economic downturn conditions.

(6) If an Enterprise uses internal data obtained prior to becoming subject to this subpart or external data to arrive at risk parameter estimates, the Enterprise must demonstrate to FHFA that the Enterprise has made appropriate adjustments if necessary to be consistent with the Enterprise's definition of default. Internal data obtained after the Enterprise becomes subject to this subpart must be consistent with the Enterprise's definition of default.

(7) The Enterprise must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

(8) The Enterprise must, at least annually, conduct a comprehensive review and analysis of reference data to determine relevance of the reference data to the Enterprise's exposures, quality of reference data to support risk parameter estimates, and consistency of reference data to the Enterprise's definition of default.

(d) *Operational risk*—(1) *Operational risk management processes.* An Enterprise must:

(i) Have an operational risk management function that:

(A) Is independent of business line management; and

(B) Is responsible for designing, implementing, and overseeing the Enterprise's operational risk data and assessment systems, operational risk quantification systems, and related processes;

(ii) Have and document a process (which must capture business environment and internal control factors affecting the Enterprise's operational risk profile) to identify, measure, monitor, and control operational risk in the Enterprise's products, activities, processes, and systems; and

(iii) Report operational risk exposures, operational loss events, and other relevant operational risk information to business unit management, senior management, and the board of directors (or a designated committee of the board).

(2) *Operational risk data and assessment systems.* An Enterprise must have operational risk data and assessment systems that capture operational risks to which the Enterprise is exposed. The Enterprise's operational risk data and assessment systems must:

(i) Be structured in a manner consistent with the Enterprise's current business activities, risk profile, technological processes, and risk management processes; and

(ii) Include credible, transparent, systematic, and verifiable processes that incorporate the following elements on an ongoing basis:

(A) *Internal operational loss event data.* The Enterprise must have a systematic process for capturing and using internal operational loss event data in its operational risk data and assessment systems.

(*1*) The Enterprise's operational risk data and assessment systems must include a historical observation period of at least five years for internal operational loss event data (or such shorter period approved by FHFA to address transitional situations, such as integrating a new business line).

(*2*) The Enterprise must be able to map its internal operational loss event data into the seven operational loss event type categories.

(*3*) The Enterprise may refrain from collecting internal operational loss event data for individual operational losses below established dollar threshold amounts if the Enterprise can demonstrate to the satisfaction of FHFA that the thresholds are reasonable, do not exclude important internal operational loss event data, and permit the Enterprise to capture substantially all the dollar value of the Enterprise's operational losses.

(B) *External operational loss event data.* The Enterprise must have a systematic process for determining its methodologies for incorporating external operational loss event data into its operational risk data and assessment systems.

(C) *Scenario analysis.* The Enterprise must have a systematic process for determining its methodologies for incorporating scenario analysis into its operational risk data and assessment systems.

(D) *Business environment and internal control factors.* The Enterprise must incorporate business environment and internal control factors into its operational risk data and assessment systems. The Enterprise must also periodically compare the results of its prior business environment and internal control factor assessments against its actual operational losses incurred in the intervening period.

(3) *Operational risk quantification systems.* The Enterprise's operational risk quantification systems:

(i) Must generate estimates of the Enterprise's operational risk exposure using its operational risk data and assessment systems;

(ii) Must employ a unit of measure that is appropriate for the Enterprise's range of business activities and the variety of operational loss events to which it is exposed, and that does not combine business activities or operational loss events with demonstrably different risk profiles within the same loss distribution;

(iii) Must include a credible, transparent, systematic, and verifiable approach for weighting each of the four elements, described in paragraph (d)(2)(ii) of this section, that an Enterprise is required to incorporate into its operational risk data and assessment systems;

(iv) May use internal estimates of dependence among operational losses across and within units of measure if the Enterprise can demonstrate to the satisfaction of FHFA that its process for estimating dependence is sound, robust to a variety of scenarios, and implemented with integrity, and allows for uncertainty surrounding the estimates. If the Enterprise has not made such a demonstration, it must sum operational risk exposure estimates across units of measure to calculate its total operational risk exposure; and

(v) Must be reviewed and updated (as appropriate) whenever the Enterprise becomes aware of information that may have a material effect on the Enterprise's estimate of operational risk exposure, but the review and update must occur no less frequently than annually.

(e) *Data management and maintenance*. (1) An Enterprise must have data management and maintenance systems that adequately support all aspects of its advanced systems and the timely and accurate reporting of risk-based capital requirements.

(2) An Enterprise must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

(3) An Enterprise must retain sufficient data elements related to key risk drivers to permit adequate monitoring, validation, and refinement of its advanced systems.

(f) *Control, oversight, and validation mechanisms*. (1) The Enterprise's senior management must ensure that all components of the Enterprise's advanced systems function effectively and comply with the minimum requirements in this section.

(2) The Enterprise's board of directors (or a designated committee of the board) must at least annually review the effectiveness of, and approve, the Enterprise's advanced systems.

(3) An Enterprise must have an effective system of controls and oversight that:

(i) Ensures ongoing compliance with the minimum requirements in this section;

(ii) Maintains the integrity, reliability, and accuracy of the Enterprise's advanced systems; and

(iii) Includes adequate governance and project management processes.

(4) The Enterprise must validate, on an ongoing basis, its advanced systems. The Enterprise's validation process must be independent of the advanced systems' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the advanced systems;

(ii) An ongoing monitoring process that includes verification of processes and benchmarking; and

(iii) An outcomes analysis process that includes backtesting.

(5) The Enterprise must have an internal audit function or equivalent function that is independent of business-line management that at least annually:

(i) Reviews the Enterprise's advanced systems and associated operations, including the operations of its credit function and estimations of risk parameters;

(ii) Assesses the effectiveness of the controls supporting the Enterprise's advanced systems; and

(iii) Documents and reports its findings to the Enterprise's board of directors (or a committee thereof).

(6) The Enterprise must periodically stress test its advanced systems. The stress testing must include a consideration of how economic cycles, especially downturns, affect risk-based capital requirements (including migration across rating grades and segments and the credit risk mitigation benefits of double default treatment).

(g) *Documentation*. The Enterprise must adequately document all material aspects of its advanced systems.

§ 1240.122 Ongoing qualification.

(a) *Changes to advanced systems*. An Enterprise must meet all the minimum requirements in § 1240.121 on an ongoing basis. An Enterprise must notify FHFA when the Enterprise makes any change to an advanced system that would result in a material change in the Enterprise's advanced approaches total risk-weighted asset amount for an exposure type or when the Enterprise makes any significant change to its modeling assumptions.

(b) *Failure to comply with qualification requirements.* (1) If FHFA determines that an Enterprise fails to comply with the requirements in §1240.121, FHFA will notify the Enterprise in writing of the Enterprise's failure to comply.

(2) The Enterprise must establish and submit a plan satisfactory to FHFA to return to compliance with the qualification requirements.

(3) In addition, if FHFA determines that the Enterprise's advanced approaches total risk-weighted assets are not commensurate with the Enterprise's credit, market, operational, or other risks, FHFA may require such an Enterprise to calculate its advanced approaches total risk-weighted assets with any modifications provided by FHFA.

§ 1240.123 Advanced approaches credit risk-weighted asset calculations.

(a) An Enterprise must use its advanced systems to determine its credit risk capital requirements for each of the following exposures:

(1) General credit risk (including for mortgage exposures);

(2) Cleared transactions;

(3) Default fund contributions;

(4) Unsettled transactions;

(5) Securitization exposures;

(6) Equity exposures; and

(7) The fair value adjustment to reflect counterparty credit risk in valuation of OTC derivative contracts.

(b) The credit-risk-weighted assets calculated under this subpart E equals the aggregate credit risk capital requirement under paragraph (a) of this section multiplied by 12.5.

§§ 1240.124—1240.160 [Reserved]

§ 1240.161 Qualification requirements for incorporation of operational risk mitigants.

(a) *Qualification to use operational risk mitigants.* An Enterprise may adjust its estimate of operational risk exposure to reflect qualifying operational risk mitigants if:

(1) The Enterprise's operational risk quantification system is able to generate an estimate of the Enterprise's operational risk exposure (which does not incorporate qualifying operational risk mitigants) and an estimate of the Enterprise's operational risk exposure adjusted to incorporate qualifying operational risk mitigants; and

(2) The Enterprise's methodology for incorporating the effects of insurance, if the Enterprise uses insurance as an operational risk mitigant, captures through appropriate discounts to the amount of risk mitigation:

(i) The residual term of the policy, where less than one year;

(ii) The cancelation terms of the policy, where less than one year;

(iii) The policy's timeliness of payment;

(iv) The uncertainty of payment by the provider of the policy; and

(v) Mismatches in coverage between the policy and the hedged operational loss event.

(b) *Qualifying operational risk mitigants.* Qualifying operational risk mitigants are:

(1) Insurance that:

(i) Is provided by an unaffiliated company that the Enterprise deems to have strong capacity to meet its claims payment obligations and the Enterprise assigns the company a probability of default equal to or less than 10 basis points;

(ii) Has an initial term of at least one year and a residual term of more than 90 days;

(iii) Has a minimum notice period for cancellation by the provider of 90 days;

(iv) Has no exclusions or limitations based upon regulatory action or for the receiver or liquidator of a failed depository institution; and

(v) Is explicitly mapped to a potential operational loss event;

(2) In evaluating an operational risk mitigant other than insurance, FHFA will consider whether the operational risk mitigant covers potential operational losses in a manner equivalent to holding total capital.

§ 1240.162 Mechanics of operational risk risk-weighted asset calculation.

(a) If an Enterprise does not qualify to use or does not have qualifying operational risk mitigants, the Enterprise's dollar risk-based capital requirement for operational risk is its operational risk exposure minus eligible operational risk offsets (if any).

(b) If an Enterprise qualifies to use operational risk mitigants and has qualifying operational risk mitigants, the Enterprise's dollar risk-based capital requirement for operational risk is the greater of:

(1) The Enterprise's operational risk exposure adjusted for qualifying operational risk mitigants minus eligible operational risk offsets (if any); or

(2) 0.8 multiplied by the difference between:

(i) The Enterprise's operational risk exposure; and

(ii) Eligible operational risk offsets (if any).

(c) The Enterprise's risk-weighted asset amount for operational risk equals the greater of:

(1) The Enterprise's dollar risk-based capital requirement for operational risk determined under paragraphs (a) or (b) multiplied by 12.5; and

(2) The Enterprise's adjusted total assets multiplied by 0.0015 multiplied by 12.5.

(d) After January 1, 2022, and until the compliance date for this section under §1240.4, the Enterprise's risk weighted amount for operational risk will equal the Enterprise's adjusted total assets multiplied by 0.0015 multiplied by 12.5.

Subpart F—Risk-weighted Assets—Market Risk

§1240.201 Purpose, applicability, and reservation of authority.

(a) *Purpose*. This subpart F establishes risk-based capital requirements for spread risk and provides methods for the Enterprises to calculate their measure for spread risk.

(b) *Applicability*. This subpart applies to each Enterprise.

(c) *Reservation of authority*. Subject to applicable provisions of the Safety and Soundness Act:

(1) FHFA may require an Enterprise to hold an amount of capital greater than otherwise required under this subpart if FHFA determines that the Enterprise's capital requirement for spread risk as calculated under this subpart is not commensurate with the spread risk of the Enterprise's covered positions.

(2) If FHFA determines that the risk-based capital requirement calculated under this subpart by the Enterprise for one or more covered positions or portfolios of covered positions is not commensurate with the risks associated with those positions or portfolios, FHFA may require the Enterprise to assign a different risk-based capital requirement to the positions or portfolios that more accurately reflects the risk of the positions or portfolios.

(3) In addition to calculating risk-based capital requirements for specific positions or portfolios under this subpart, the Enterprise must also calculate risk-based capital requirements for covered positions under subpart D or subpart E of this part, as appropriate.

(4) Nothing in this subpart limits the authority of FHFA under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law.

§1240.202 Definitions.

(a) Terms set forth in §1240.2 and used in this subpart have the definitions assigned in §1240.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Backtesting means the comparison of an Enterprise's internal estimates with actual outcomes during a sample period not used in model development. For purposes of this subpart, backtesting is one form of out-of-sample testing.

Covered position means, any asset that has more than *de minimis* spread risk (other than any intangible asset, such as any servicing asset), including:

(i) Any NPL, RPL, reverse mortgage loan, or other mortgage exposure that, in any case, does not secure an MBS guaranteed by the Enterprise;

(ii) Any MBS guaranteed by an Enterprise, MBS guaranteed by Ginnie Mae, reverse mortgage security, PLS, commercial MBS, CRT exposure, or other securitization exposure, regardless of whether the position is held by the Enterprise for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits; and

(iii) Any other trading asset or trading liability (whether on- or off-balance sheet).[1]

Market risk means the risk of loss on a position that could result from movements in market prices, including spread risk.

Private label security (PLS) means any MBS that is collateralized by a pool or pools of single-family mortgage exposures and that is not guaranteed by an Enterprise or by Ginnie Mae.

Reverse mortgage means a mortgage loan secured by a residential property in which a homeowner relinquishes equity in their home in exchange for regular payments.

Reverse mortgage security means a security collateralized by reverse mortgages.

Spread risk means the risk of loss on a position that could result from a change in the bid or offer price of such position relative to a risk free or funding benchmark, including when due to a change in perceptions of performance or liquidity of the position.

§ 1240.203 Requirements for managing market risk.

(a) *Management of covered positions*—(1) *Active management.* An Enterprise must have clearly defined policies and procedures for actively managing all covered positions. At a minimum, these policies and procedures must require:

(i) Marking covered positions to market or to model on a daily basis;

(ii) Daily assessment of the Enterprise's ability to hedge position and portfolio risks, and of the extent of market liquidity;

(iii) Establishment and daily monitoring of limits on covered positions by a risk control unit independent of the business unit;

(iv) Routine monitoring by senior management of information described in paragraphs (a)(1)(i) through (iii) of this section;

(v) At least annual reassessment of established limits on positions by senior management; and

(vi) At least annual assessments by qualified personnel of the quality of market inputs to the valuation process, the soundness of key assumptions, the reliability of parameter estimation in pricing models, and the stability and accuracy of model calibration under alternative market scenarios.

(2) *Valuation of covered positions.* The Enterprise must have a process for prudent valuation of its covered positions that includes policies and procedures on the valuation of positions, marking positions to market or to model, independent price verification, and valuation adjustments or reserves. The valuation process must consider, as appropriate, unearned credit spreads, close-out costs, early termination costs, investing and funding costs, liquidity, and model risk.

(b) *Requirements for internal models.* (1) A risk control unit independent of the business unit must approve any internal model to calculate its risk-based capital requirement under this subpart.

(2) An Enterprise must meet all of the requirements of this section on an ongoing basis. The Enterprise must promptly notify FHFA when:

(i) The Enterprise plans to extend the use of a model to an additional business line or product type;

(ii) The Enterprise makes any change to an internal model that would result in a material change in the Enterprise's risk-weighted asset amount for a portfolio of covered positions; or

(iii) The Enterprise makes any material change to its modeling assumptions.

(3) FHFA may determine an appropriate capital requirement for the covered positions to which a model would apply, if FHFA determines that the model no longer complies with this subpart or fails to reflect accurately the risks of the Enterprise's covered positions.

(4) The Enterprise must periodically, but no less frequently than annually, review its internal models in light of developments in financial markets and modeling technologies, and enhance those models as appropriate to ensure

[1] Securities subject to repurchase and lending agreements are included as if they are still owned by the Enterprise.

that they continue to meet the Enterprise's standards for model approval and employ risk measurement methodologies that are most appropriate for the Enterprise's covered positions.

(5) The Enterprise must incorporate its internal models into its risk management process and integrate the internal models used for calculating its market risk measure into its daily risk management process.

(6) The level of sophistication of an Enterprise's internal models must be commensurate with the complexity and amount of its covered positions. An Enterprise's internal models may use any of the generally accepted approaches, including variance-covariance models, historical simulations, or Monte Carlo simulations, to measure market risk.

(7) The Enterprise's internal models must properly measure all the material risks in the covered positions to which they are applied.

(8) The Enterprise's internal models must conservatively assess the risks arising from less liquid positions and positions with limited price transparency under realistic market scenarios.

(9) The Enterprise must have a rigorous and well-defined process for re-estimating, re-evaluating, and updating its internal models to ensure continued applicability and relevance.

(c) *Control, oversight, and validation mechanisms.* (1) The Enterprise must have a risk control unit that reports directly to senior management and is independent from the business units.

(2) The Enterprise must validate its internal models initially and on an ongoing basis. The Enterprise's validation process must be independent of the internal models' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the internal models;

(ii) An ongoing monitoring process that includes verification of processes and the comparison of the Enterprise's model outputs with relevant internal and external data sources or estimation techniques; and

(iii) An outcomes analysis process that includes backtesting.

(3) The Enterprise must stress test the market risk of its covered positions at a frequency appropriate to each portfolio, and in no case less frequently than quarterly. The stress tests must take into account concentration risk (including concentrations in single issuers, industries, sectors, or markets), illiquidity under stressed market conditions, and risks arising from the Enterprise's trading activities that may not be adequately captured in its internal models.

(4) The Enterprise must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the Enterprise's market risk measurement systems, including the activities of the business units and independent risk control unit, compliance with policies and procedures, and calculation of the Enterprise's measures for spread risk under this subpart. At least annually, the internal audit function must report its findings to the Enterprise's board of directors (or a committee thereof).

(d) *Internal assessment of capital adequacy.* The Enterprise must have a rigorous process for assessing its overall capital adequacy in relation to its market risk.

(e) *Documentation.* The Enterprise must adequately document all material aspects of its internal models, management and valuation of covered positions, control, oversight, validation and review processes and results, and internal assessment of capital adequacy.

§ 1240.204 Measure for spread risk.

(a) *General requirement*—(1) *In general.* An Enterprise must calculate its standardized measure for spread risk by following the steps described in paragraph (a)(2) of this section. An Enterprise also must calculate an advanced measure for spread risk by following the steps in paragraph (a)(2) of this section.

(2) *Measure for spread risk.* An Enterprise must calculate the standardized measure for spread risk, which equals

the sum of the spread risk capital requirements of all covered positions using one or more of its internal models except as contemplated by paragraphs (b) or (c) of this section. An Enterprise also must calculate the advanced measure for spread risk, which equals the sum of the spread risk capital requirements of all covered positions calculated using one or more of its internal models.

(b) *Single point approach*—(1) *General*. For purposes of the standardized measure for spread risk, the spread risk capital requirement for a covered position that is an RPL, an NPL, a reverse mortgage loan, or a reverse mortgage security is the amount equal to:

(i) The market value of the covered position; multiplied by

(ii) The applicable single point shock assumption for the covered position under paragraph (b)(2) of this section.

(2) *Applicable single point shock assumption*. The applicable single point shock assumption is:

(i) 0.0475 for an RPL or an NPL;

(ii) 0.0160 for a reverse mortgage loan; and

(iii) 0.0410 for a reverse mortgage security.

(c) *Spread duration approach*—(1) *General*. For purposes of the standardized measure for spread risk, the spread risk capital requirement for a covered position that is a multifamily mortgage exposure, a PLS, or an MBS guaranteed by an Enterprise or Ginnie Mae and secured by multifamily mortgage exposures is the amount equal to:

(i) The market value of the covered position; multiplied by

(ii) The spread duration of the covered position determined by the Enterprise using one or more of its internal models; multiplied by

(iii) The applicable spread shock assumption under paragraph (c)(2) of this section.

(2) *Applicable spread shock assumption*. The applicable spread shock is:

(i) 0.0015 for a multifamily mortgage exposure;

(ii) 0.0265 for a PLS; and

(iii) 0.0100 for an MBS guaranteed by an Enterprise or by Ginnie Mae and secured by multifamily mortgage exposures (other than IO securities guaranteed by an Enterprise or Ginnie Mae).

§ 1240.205 Market risk disclosures.

(a) *Scope*. An Enterprise must make timely public disclosures each calendar quarter, where for the purpose of these disclosure requirements timely means no later than 10 business days after an Enterprise files its corresponding Annual Report on SEC Form 10–K at the end of a fiscal year or its corresponding Quarterly Report on SEC Form 10–Q at the end of other calendar quarters. If a significant change occurs, such that the most recent reporting amounts are no longer reflective of the Enterprise's capital adequacy and risk profile, then a brief discussion of this change and its likely impact must be provided as soon as practicable thereafter. Qualitative disclosures that typically do not change each quarter may be disclosed annually, provided any material changes are disclosed as soon as practicable thereafter, and no later than the end of the next calendar quarter, where for the purpose of these disclosure requirements a material change means a change such that the omission or misstatement of which could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions. If an Enterprise believes that disclosure of specific commercial or financial information would prejudice seriously its position by making public certain information that is either proprietary or confidential in nature, the Enterprise is not required to disclose these specific items 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.

(b) *Location*. The Enterprise's management may provide all of the disclosures required by this section in one place on the Enterprise's public website or may provide the disclosures in more than one public financial report or other regulatory reports, provided that the Enterprise publicly provides a summary table specifically indicating the location(s) of all such disclosures.

(c) *Disclosure policy*. The Enterprise must have a formal disclosure policy approved by the board of directors that addresses the Enterprise's approach for determining its market risk disclosures. The policy must address the associated internal controls and disclosure controls and procedures. The board of directors and senior management must ensure that appropriate verification of the disclosures takes place and that effective internal controls and disclosure controls and procedures are maintained. The Chief Risk Officer and the Chief Financial Officer of the Enterprise must attest that the disclosures meet the requirements of this subpart, and the board of directors and senior management are responsible for establishing and maintaining an effective internal control structure over the disclosures required by this section.

(d) *Quantitative disclosures.* (1) For each material portfolio of covered positions, the Enterprise must provide timely public disclosures of the following information at least quarterly:

(i) Exposure amounts for each product type included in covered positions as described in §1240.202; and

(ii) Risk-weighted assets for each product type included in covered positions as described in §1240.202.

(2) In addition, the Enterprise must disclose publicly the aggregate amount of on-balance sheet and off-balance sheet securitization positions by exposure type at least quarterly.

(e) *Qualitative disclosures.* For each material portfolio of covered positions as identified using the definitions in §1240.202, the Enterprise must provide timely public disclosures of the following information at least annually after the end of the fourth calendar quarter, or more frequently in the event of material changes for each portfolio:

(1) The composition of material portfolios of covered positions;

(2) The Enterprise's valuation policies, procedures, and methodologies for covered positions including, for securitization positions, the methods and key assumptions used for valuing such positions, any significant changes since the last reporting period, and the impact of such change;

(3) The characteristics of the internal models used for purposes of this subpart;

(4) A description of the approaches used for validating and evaluating the accuracy of internal models and modeling processes for purposes of this subpart;

(5) For each market risk category (that is, interest rate risk, credit spread risk, equity price risk, foreign exchange risk, and commodity price risk), a description of the stress tests applied to the positions subject to the factor;

(6) The results of the comparison of the Enterprise's internal estimates for purposes of this subpart with actual outcomes during a sample period not used in model development; and

(7) A description of the Enterprise's processes for monitoring changes in the market risk of securitization positions, including how those processes differ for resecuritization positions.

[87 FR 33434, June 2, 2022]

Subpart G—Stability Capital Buffer

§ 1240.400 Stability capital buffer.

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

(1) *Mortgage assets* means, with respect to an Enterprise, the dollar amount equal to the sum of:

(i) The unpaid principal balance of its single-family mortgage exposures, including any single-family loans that secure MBS guaranteed by the Enterprise;

(ii) The unpaid principal balance of its multifamily mortgage exposures, including any multifamily mortgage exposures that secure MBS guaranteed by the Enterprise;

(iii) The carrying value of its MBS guaranteed by an Enterprise, MBS guaranteed by Ginnie Mae, PLS, and other securitization exposures (other than its retained CRT exposures); and

(iv) The exposure amount of any other mortgage assets.

(2) *Residential mortgage debt outstanding* means the dollar amount of mortgage debt outstanding secured by one- to four-family residences or multifamily residences that are located in the United States (and excluding any mortgage debt outstanding secured by commercial or farm properties).

(b) *Amount.* An Enterprise must calculate its stability capital buffer under this section on an annual basis by December 31 of each year. The stability capital buffer of an Enterprise is equal to:

(1) The ratio of:

(i) The mortgage assets of the Enterprise as of December 31 of the previous calendar year; to

(ii) The residential mortgage debt outstanding as of December 31 of the previous calendar year, as published by FHFA;

(2) Minus 0.05;

(3) Multiplied by 5;

(4) Divided by 100; and

(5) Multiplied by the adjusted total assets of the Enterprise, as of December 31 of the previous calendar year.

(c) *Effective date of an adjusted stability capital buffer*—(1) *Increase in stability capital buffer*. An increase in the stability capital buffer of an Enterprise under this section will take effect (*i.e.*, be incorporated into the maximum payout ratio under table 1 to paragraph (b)(5) in § 1240.11) on January 1 of the year that is one full calendar year after the increased stability capital buffer was calculated, provided that where a stability capital buffer under paragraph (c)(2) of this section is calculated to be a decrease in the stability capital buffer from the previously calculated scheduled increase applicable on the same January 1, the decreased stability capital buffer under paragraph (c)(2) shall take effect.

(2) *Decrease in stability capital buffer*. A decrease in the stability capital buffer of an Enterprise will take effect (*i.e.*, be incorporated into the maximum payout ratio under table 1 to paragraph (b)(5) in § 1240.11) on January 1 of the year immediately following the calendar year in which the decreased stability capital buffer was calculated.

[85 FR 82198, Dec. 17, 2020, as amended at 88 FR 83481, Nov. 30, 2023]

Subpart H—Capital Planning and Stress Capital Buffer Determination

SOURCE: 87 FR 33617, June 3, 2022, unless otherwise noted.

§ 1240.500 Capital planning and stress capital buffer determination.

(a) *Purpose*. This section establishes capital planning and prior notice and approval requirements for capital distributions by the Enterprises. This section also establishes FHFA's process for determining the stress capital buffer applicable to the Enterprises.

(b) *Scope and reservation of authority*—(1) *Applicability*. This section applies to the Enterprises.

(2) *Reservation of authority*. Nothing in this section shall limit the authority of FHFA to issue or enforce a capital directive or take any other supervisory or enforcement action, including an action to address unsafe or unsound practices or conditions or violations of law.

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

Adjusted total assets has the same meaning as under subpart A of this part.

Advanced approaches means the risk-weighted assets calculation methodologies as set forth in subpart E of this part.

Capital action means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that FHFA determines could impact an Enterprise's consolidated capital.

Capital distribution means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that FHFA determines to be in substance a distribution of capital.

Capital plan means a written presentation of an Enterprise's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (d)(2) of this section.

Capital plan cycle means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

Capital policy means an Enterprise's written principles and guidelines used for capital planning, capital issuance, capital usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for capital distributions; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

Common equity tier 1 capital has the same meaning as under subpart C of this part.

Effective capital distribution limitations means any limitations on capital distributions established by FHFA by order or regulation, provided that, for any limitations based on risk-weighted assets, such limitations must be calculated using the standardized approach, as set forth in subpart D of this part.

Final planned capital distributions means the planned capital distributions included in a capital plan that include the adjustments made pursuant to paragraph (g) of this section, if any.

Internal baseline scenario means a scenario that reflects the Enterprise's expectation of the economic and financial outlook, including expectations related to the Enterprise's capital adequacy and financial condition.

Internal stress scenario means a scenario designed by an Enterprise that stresses the specific vulnerabilities of the Enterprise's risk profile and operations, including those related to the Enterprise's capital adequacy and financial condition.

Planning horizon means the period of at least nine consecutive quarters for the FHFA scenarios and at least five years for the Internal scenarios, beginning with the quarter preceding the quarter in which the Enterprise submits its capital plan, over which the relevant projections extend, unless otherwise directed by FHFA.

Regulatory capital ratio means a capital ratio for which FHFA has established minimum requirements for the Enterprise by regulation or order, including, as applicable, the Enterprise's regulatory capital ratios calculated under subpart B of this part; except that the Enterprise shall not use the advanced approaches to calculate its regulatory capital ratios.

Severely adverse scenario has the same meaning as under 12 CFR part 1238.

Stability capital buffer has the same meaning as under subpart G of this part.

Stress capital buffer means the amount calculated under paragraph (e) of this section.

Supervisory stress test means a stress test conducted by FHFA using a severely adverse scenario and the assumptions contained in 12 CFR part 1238.

(d) *Capital planning requirements and procedures*—(1) *Annual capital planning*. (i) An Enterprise must develop and maintain a capital plan.

(ii) An Enterprise must submit its complete capital plan to FHFA by May 20 of each calendar year, or such later date as directed by FHFA.

(iii) The Enterprise's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (d)(1)(ii) of this section:

(A) Review the robustness of the Enterprise's process for assessing capital adequacy;

(B) Ensure that any deficiencies in the Enterprise's process for assessing capital adequacy are appropriately remedied; and

(C) Approve the Enterprise's capital plan.

(2) *Mandatory elements of capital plan*. A capital plan must contain at least the following elements:

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the Enterprise's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Estimates of projected revenues, expenses, losses, reserves, and pro forma capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the Enterprise, over the planning horizon under a range of scenarios, including the Internal baseline scenario and at least one Internal stress scenario, as well as any additional scenarios that FHFA may provide the Enterprise after giving notice to the Enterprise;

(B) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(C) A description of all planned capital actions over the planning horizon. Planned capital actions must be consistent with any effective capital distribution limitations, except as may be adjusted pursuant to paragraph (g) of this section. In determining whether an Enterprise's planned capital distributions are consistent with effective capital distribution limitations, an Enterprise must assume that:

(*1*) Any countercyclical capital buffer amount currently applicable to the Enterprise remains at the same level, except that the Enterprise must reflect any increases or decreases in the countercyclical capital buffer amount that have been announced by FHFA at the times indicated by FHFA's announcement for when such increases or decreases will take effect; and

(*2*) Any stability capital buffer currently applicable to the Enterprise when the capital plan is submitted remains at the same level, except that the Enterprise must reflect any increase in its stability capital buffer pursuant to § 1240.400(c)(1), beginning in the fifth quarter of the planning horizon.

(ii) A detailed description of the Enterprise's process for assessing capital adequacy, including:

(A) A discussion of how the Enterprise will, under expected and stressful conditions, maintain capital commensurate with its risks, and maintain capital above the regulatory capital ratios;

(B) A discussion of how the Enterprise will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) The Enterprise's capital policy; and

(iv) A discussion of any expected changes to the Enterprise's business plan that are likely to have a material impact on the Enterprise's capital adequacy or liquidity.

(3) *Data collection.* Upon the request of FHFA, the Enterprise shall provide FHFA with information regarding:

(i) The Enterprise's financial condition, including its capital;

(ii) The Enterprise's structure;

(iii) Amount and risk characteristics of the Enterprise's on- and off-balance sheet exposures, including exposures within the Enterprise's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions to changes in market rates and prices;

(iv) The Enterprise's relevant policies and procedures, including risk management policies and procedures;

(v) The Enterprise's liquidity profile and management;

(vi) The loss, revenue, and expense estimation models used by the Enterprise for stress scenario analysis, including supporting documentation regarding each model's development and validation; and

(vii) Any other relevant qualitative or quantitative information requested by FHFA to facilitate review of the Enterprise's capital plan under this section.

(4) *Resubmission of a capital plan.* (i) An Enterprise must update and resubmit its capital plan to FHFA within 30 calendar days of the occurrence of one of the following events:

(A) The Enterprise determines there has been or will be a material change in the Enterprise's risk profile, financial condition, or corporate structure since the Enterprise last submitted the capital plan to FHFA; or

(B) FHFA instructs the Enterprise in writing to revise and resubmit its capital plan, as necessary to monitor risks to capital adequacy, for reasons including, but not limited to:

(*1*) *The* capital plan is incomplete or the capital plan, or the Enterprise's internal capital adequacy process, contains material weaknesses;

(*2*) There has been, or will likely be, a material change in the Enterprise's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(*3*) The Internal stress scenario(s) are not appropriate for the Enterprise's business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on an Enterprise's risk profile and financial condition require the use of updated scenarios; or

(ii) FHFA may extend the 30-day period in paragraph (d)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as FHFA determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, an Enterprise may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(5) *Confidential treatment of information submitted.* The confidentiality of information submitted to FHFA under this section and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and FHFA's rule in 12 CFR part 1214—Availability of Non-Public Information.

(e) *Calculation of the stress capital buffer*—(1) *General.* FHFA will determine the stress capital buffer that applies under §1240.11 pursuant to this paragraph (e). FHFA will calculate the Enterprise's stress capital buffer requirement annually.

(2) *Stress capital buffer calculation.* An Enterprise's stress capital buffer isequal to the Enterprise's adjusted total assets, as of the last day of the previous calendar quarter, multiplied by the greater of:

(i) The following calculation:

(A) The ratio of an Enterprise's common equity tier 1 capital to adjusted total assets, as of the final quarter of the previous capital plan cycle, unless otherwise determined by FHFA; minus

(B) The lowest projected ratio of the Enterprise's common equity tier 1 capital to adjusted total assets, in any quarter of the planning horizon under a supervisory stress test; plus

(C) The ratio of:

(*1*) The sum of the Enterprise's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon; to

(*2*) The adjusted total assets of the Enterprise in the quarter in which the Enterprise had its lowest projected ratio of common equity tier 1 capital to adjusted total assets, in any quarter of the planning horizon under a supervisory stress test; and(ii) 0.75 percent.

(3) *Recalculation of stress capital buffer.* If an Enterprise resubmits its capital plan pursuant to paragraph (d)(4) of this section, FHFA may recalculate the Enterprise's stress capital buffer. FHFA will provide notice of whether the Enterprise's stress capital buffer will be recalculated within 75 calendar days after the date on which the capital plan is resubmitted, unless FHFA provides notice to the Enterprise that it is extending the time period.

(f) *Review of capital plans by FHFA.* FHFA will consider the following factors in reviewing an Enterprise's capital plan:

(1) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming from activities across the Enterprise and the Enterprise's capital policy;

(2) The reasonableness of the Enterprise's capital plan, the assumptions and analysis underlying the capital plan, and the robustness of its capital adequacy process;

(3) Relevant supervisory information about the Enterprise and its subsidiaries;

(4) The Enterprise's regulatory and financial reports, as well as supporting data that would allow for an analysis of the Enterprise's loss, revenue, and reserve projections;

(5) The results of any stress tests conducted by the Enterprise or FHFA; and

(6) Other information requested or required by FHFA, as well as any other information relevant, or related, to the Enterprise's capital adequacy.

(g) *FHFA notice of stress capital buffer; final planned capital distributions*—(1) *Notice*. FHFA will provide an Enterprise with notice of its stress capital buffer and an explanation of the results of the supervisory stress test. Unless otherwise determined by FHFA, notice will be provided by August 15 of the calendar year in which the capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section or within 90 calendar days of receiving notice that FHFA will recalculate the Enterprise's stress capital buffer pursuant to paragraph (e)(3) of this section.

(2) *Response to notice*—(i) *Request for reconsideration of stress capital buffer*. An Enterprise may request reconsideration of a stress capital buffer provided under paragraph (g)(1) of this section. To request reconsideration of a stress capital buffer, an Enterprise must submit to FHFA a request pursuant to paragraph (h) of this section.

(ii) *Adjustments to planned capital distributions*. Within two business days of receipt of notice of a stress capital buffer under paragraph (g)(1) or (h)(5) of this section, as applicable, an Enterprise must:

(A) Determine whether the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect; and

(*1*) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would not be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect, the Enterprise must adjust its planned capital distributions such that its planned capital distributions would be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect; or

(*2*) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable, in place of any stress capital buffer in effect, the Enterprise may adjust its planned capital distributions. An Enterprise may not adjust its planned capital distributions to be inconsistent with the effective capital distribution limitations assuming the stress capital buffer provided by FHFA under paragraph (g)(1) or (h)(5) of this section, as applicable; and

(B) Notify FHFA of any adjustments made to planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario.

(3) *Final planned capital distributions*. FHFA will consider the planned capital distributions, including any adjustments made pursuant to paragraph (g)(2)(ii) of this section, to be the Enterprise's final planned capital distributions on the later of:

(i) The expiration of the time for requesting reconsideration under paragraph (i) of this section; and

(ii) The expiration of the time for adjusting planned capital distributions pursuant to paragraph (g)(2)(ii) of this section.

(4) *Effective date of final stress capital buffer*. (i) FHFA will provide an Enterprise with its final stress capital buffer and confirmation of the Enterprise's final planned capital distributions by August 31 of the calendar year that a capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section, unless otherwise determined by FHFA. A stress capital buffer will not be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704 during the pendency of a request for reconsideration made pursuant to paragraph (h) of this section or before the time for requesting reconsideration has expired.

(ii) Unless otherwise determined by FHFA, an Enterprise's final planned capital distributions and final stress capital buffer shall:

(A) Be effective on October 1 of the calendar year in which a capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section; and

(B) Remain in effect until superseded.

(5) *Publication.* With respect to an Enterprise subject to this section, FHFA may disclose publicly any or all of the following:

(i) The stress capital buffer provided to an Enterprise under paragraph (g)(1) or (h)(5) of this section;

(ii) Adjustments made pursuant to paragraph (g)(2)(ii) of this section;

(iii) A summary of the results of the supervisory stress test; and

(iv) Other information.

(h) *Administrative remedies; request for reconsideration.* The following requirements and procedures apply to any request under this paragraph (h):

(1) *General.* To request reconsideration of a stress capital buffer, provided under paragraph (g) of this section, an Enterprise must submit a written request for reconsideration.

(2) *Timing of request.* A request for reconsideration of a stress capital buffer, provided under paragraph (g) of this section, must be received within 15 calendar days of receipt of a notice of an Enterprise's stress capital buffer.

(3) *Contents of request.* (i) A request for reconsideration must include a detailed explanation of why reconsideration should be granted (that is, why a stress capital buffer should be reconsidered). With respect to any information that was notpreviously provided to FHFA in the Enterprise's capital plan, the request should include an explanation of why the information should be considered.

(ii) A request for reconsideration may include a request for an informal hearing on the Enterprise's request for reconsideration.

(4) *Hearing.* (i) FHFA may, in its sole discretion, order an informal hearing if FHFA finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

(ii) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that FHFA may extend this period upon notice to the requesting party.

(5) *Response to request.* Within 30 calendar days of receipt of the Enterprise's request for reconsideration of its stress capital buffer submitted under paragraph (h)(2) of this section or within 30 days of the conclusion of an informal hearing conducted under paragraph (h)(4) of this section, FHFA will notify the Enterprise of its decision to affirm or modify the Enterprise's stress capital buffer, provided that FHFA may extend this period upon notice to the Enterprise.

(6) *Distributions during the pendency of a request for reconsideration.* During the pendency of FHFA's decision under paragraph (h)(5) of this section, the Enterprise may make capital distributions that are consistent with effective distribution limitations, unless prior approval is required under paragraph (i)(1) of this section.

(i) *Approval requirements for certain capital actions*—(1) *Circumstances requiring approval—resubmission of a capital plan.* Unless it receives prior approval pursuant to paragraph (i)(3) of this section, an Enterprise may not make a capital distribution (excluding any capital distribution arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio) if the capital distribution would occur after the occurrence of an event requiring resubmission under paragraph (d)(4)(i)(A) or (B) of this section.

(2) *Contents of request.* A request for a capital distribution under this section must contain the following information:

(i) The Enterprise's capital plan or a discussion of changes to the Enterprise's capital plan since it was last submitted to FHFA;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by FHFA (which may include, among other things, an assessment of the Enterprise's capital adequacy under a severely adverse scenario, a revised capital plan, and supporting data).

(3) *Approval of certain capital distributions.* (i) FHFA will act on a request for prior approval of a capital distribution within 30 calendar days after the receipt of all the information required under paragraph (i)(2) of this section.

(ii) In acting on a request for prior approval of a capital distribution, FHFA will apply the considerations and principles in paragraph (f) of this section, as appropriate. In addition, FHFA may disapprove the transaction if the Enterprise does not provide all of the information required to be submitted under paragraph (i)(2) of this section.

(4) *Disapproval and hearing.* (i) FHFA will notify the Enterprise in writingof the reasons for a decision to disapprove any proposed capital distribution. Within 15 calendar days after receipt of a disapproval by FHFA, the Enterprise may submit a written request for a hearing.

(ii) FHFA may, in its sole discretion, order an informal hearing if FHFA finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact. An informal hearing shall be held within 30 calendar days of a request, if granted, provided that FHFA may extend this period upon notice to the requesting party.

(iii) Written notice of the final decision of FHFA shall be given to the Enterprise within 60 calendar days of the conclusion of any informal hearing ordered by FHFA, provided that FHFA may extend this period upon notice to the requesting party.

(iv) While FHFA's decision is pending and until such time as FHFA approves the capital distribution at issue, the Enterprise may not make such capital distribution.

(j) *Post notice requirement.* An Enterprise must notify FHFA within 15 days of making a capital distribution if:

(1) The capital distribution was approved pursuant to paragraph (i)(3) of this section; or

(2) The dollar amount of the capital distribution will exceed the dollar amount of the Enterprise's final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue.

§§ 1240.501–1240.502 [Reserved]

PART 1242—RESOLUTION PLANNING

Sec.

AUTHORITY: 12 U.S.C. 4511; 12 U.S.C. 4513; 12 U.S.C. 4513b; 12 U.S.C. 4514; 12 U.S.C. 4517; 12 U.S.C. 4526; and 12 U.S.C. 4617.

SOURCE: 86 FR 23587, May 4, 2021, unless otherwise noted.

§ 1242.1 Purpose; identification as a prudential standard.

(a) *Purpose.* The purpose of this part is to require each Enterprise to develop a plan for submission to FHFA that would assist FHFA in planning for the rapid and orderly resolution of an Enterprise using FHFA's receivership authority at 12 U.S.C. 4617, in a manner that:

(1) Minimizes disruption in the national housing finance markets by providing for the continued operation of the core business lines of an Enterprise in receivership by a newly constituted limited-life regulated entity;

(2) Preserves the value of an Enterprise's franchise and assets;

(3) Facilitates the division of assets and liabilities between the limited-life regulated entity and the receivership estate;

(4) Ensures that investors in mortgage-backed securities guaranteed by the Enterprises and in Enterprise unsecured debt bear losses in accordance with the priority of payments established in the Safety and Soundness Act while minimizing unnecessary losses and costs to these investors; and