determination or the earliest date permissible under applicable law or regulation, whichever is later.

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

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

[78 FR 55471, Sept. 10, 2013, as amended at 79 FR 20758, Apr. 14, 2014; 81 FR 71354, Oct. 17, 2016; 84 FR 35270, July 22, 2019; 84 FR 59278, Nov. 1, 2019; 85 FR 15916, Mar. 20, 2020]

§ 324.12 Community bank leverage ratio framework.

(a) *Community bank leverage ratio framework*. (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 324.10, the capital ratio requirements for the well capitalized capital category under § 324.403(b)(1) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 9 percent.

(2) For purposes of this section, a qualifying community banking organization means an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that satisfies all of the following criteria:

(i) Has a leverage ratio of greater than 9 percent;

(ii) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to the Call Report as of the end of the most recent calendar quarter;

(iii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(iii)(A) through (I) of this section, divided by total consolidated assets, each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

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

(D) Sold credit protection through guarantees and credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to the Call Report;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures; and

(iv) Has total trading assets and trading liabilities, calculated in accordance with the reporting instructions to the Call Report of 5 percent or less of the FDIC-supervised institution's total consolidated assets, each as of the end of the most recent calendar quarter.

(3)(i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) For purposes of this paragraph (a)(3), a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the applicable reporting requirements of its Call Report.

(iii)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio framework may opt out of the community bank leverage ratio framework by completing the applicable risk-based and leverage ratio reporting requirements necessary to demonstrate compliance with § 324.10(a)(1) in its Call Report or by otherwise providing the information to the FDIC.

(B) A qualifying community banking organization that opts out of the community bank leverage ratio framework pursuant to paragraph (a)(3)(iii)(A) of this section must comply with § 324.10(a)(1) immediately.

(4)(i) *Temporary relief*—From December 2, 2020 through December 31, 2021, for purposes of determining whether an FDIC-supervised institution satisfies the criterion in paragraph (a)(2)(ii) of this section, except as provided in paragraph (a)(4)(ii) of this section, the total consolidated assets of an FDIC-supervised institution for purposes of paragraph (a)(2)(ii) of this section shall be determined based on the lesser of:

(A) The total consolidated assets reported by the institution in the Call Report as of December 31, 2019; and

(B) The total consolidated assets calculated in accordance with the reporting instructions to the Call Report as of the end of the most recent calendar quarter.

(ii) *Reservation of authority*—The temporary relief provided under this paragraph (a)(4)(i) of this section does not apply to an FDIC-supervised institution if the FDIC determines that permitting the FDIC-supervised institution to determine its assets in accordance with that paragraph would not be commensurate with the risk posed by the institution. When making this determination, the FDIC will consider all relevant factors, including the extent of asset growth of the FDIC-supervised institution since December 31, 2019; the causes of such growth, including whether growth occurred as a result of mergers or acquisitions; whether such growth is likely to be temporary or permanent; whether the FDIC-supervised institution has become involved in any additional activities since December 31, 2019; and the type of assets held by the FDIC-supervised institution. The FDIC will notify an FDIC-supervised institution of a determination under this paragraph. An FDIC-supervised institution may, not later than 30 days after the date of a determination by the FDIC, inform the FDIC, in writing, of why the FDIC-supervised institution should be eligible for the temporary relief. The FDIC will make a final determination after reviewing any response.

(b) *Calculation of the leverage ratio*. A qualifying community banking organization's leverage ratio is calculated in accordance to § 324.10(b)(4), except that a qualifying community banking organization is not required to:

(1) Make adjustments and deductions from tier 2 capital for purposes of § 324.22(c); or

(2) Calculate and deduct from tier 1 capital an amount resulting from insufficient tier 2 capital under § 324.22(f).

(c) *Treatment when ceasing to meet the qualifying community banking organization requirements*. (1) Except as provided in paragraphs (c)(5) and (6) of this section, if an FDIC-supervised institution ceases to meet the definition of a qualifying community banking organization, the FDIC-supervised institution has two reporting periods under its Call Report (grace period) either to satisfy the requirements to be a qualifying community banking organization or to comply with § 324.10(a)(1) and report the required capital measures under § 324.10(a)(1) on its Call Report.

(2) The grace period begins as of the end of the calendar quarter in which the FDIC-supervised institution ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the FDIC-supervised institution continues to be treated as a qualifying community banking organization for the purpose of this part and must continue calculating and reporting its leverage ratio under this section unless the FDIC-supervised institution has opted out of using the community bank leverage ratio framework under paragraph (a)(3) of this section.

(4) During the grace period, the qualifying community banking organization continues to be considered to have met the minimum capital requirements

under § 324.10(a)(1), the capital ratio requirements for the well capitalized capital category under § 324.403(b)(1)(i)(A) through (D) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject and must continue calculating and reporting its leverage ratio under this section.

(5) Notwithstanding paragraphs (c)(1) through (4) of this section, an FDIC-supervised institution that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such an FDIC-supervised institution must comply with the minimum capital requirements under § 324.10(a)(1) and must report the required capital measures under § 324.10(a)(1) for the quarter in which it ceases to be a qualifying community banking organization.

(6) Notwithstanding paragraphs (c)(1) through (4) of this section, an FDIC-supervised institution that has a leverage ratio of 8 percent or less does not have a grace period and must comply with the minimum capital requirements under § 324.10(a)(1) and must report the required capital measures under § 324.10(a)(1) for the quarter in which it reports a leverage ratio of 8 percent or less.

[84 FR 61802, Nov. 13, 2019, as amended at 85 FR 77363, Dec. 2, 2020]

§§ 324.13–324.19 [Reserved]

Subpart C—Definition of Capital

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

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

(1) Common equity tier 1 capital;

(2) Additional tier 1 capital; and

(3) Tier 2 capital.

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

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

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

(ii) The holder of the instrument is entitled to a claim on the residual assets of the FDIC-supervised institution that is proportional with the holder's share of the FDIC-supervised institution's issued capital after all senior 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 the FDIC, and does not contain any term or feature that creates an incentive to redeem;

(iv) The FDIC-supervised institution 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 FDIC-supervised institution's net income and retained earnings and are not subject to a limit imposed by the contractual terms governing the instrument. An FDIC-supervised institution must obtain prior FDIC approval for any dividend payment involving a reduction or retirement of capital stock in accordance with 12 CFR 303.241;

(vi) The FDIC-supervised institution 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 FDIC-supervised institution;

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