

**§ 324.402**

**12 CFR Ch. III (1–1–24 Edition)**

subpart H and with respect to any FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution:

(i) The definitions of leverage ratio, tangible equity, tier 1 capital, tier 1 risk-based capital, and total risk-based capital as calculated or defined under Appendix A to part 325 or Appendix B to part 325, as applicable, remain in effect for purposes of this subpart H; and

(ii) The term total assets shall have the meaning provided in 12 CFR 325.2(x).

(2) *Timing.* The calculation of the definitions of common equity tier 1 capital, the common equity tier 1 risk-based capital ratio, the leverage ratio, the supplementary leverage ratio, tangible equity, tier 1 capital, the tier 1 risk-based capital ratio, total assets, total leverage exposure, the total risk-based capital ratio, and total risk-weighted assets under this subpart H is subject to the timing provisions at 12 CFR 324.1(f) and the transitions at 12 CFR part 324, subpart G.

(g) For purposes of subpart H, as of January 1, 2015, total assets means quarterly average total assets as reported in an FDIC-supervised institution's Call Report, minus amounts deducted from tier 1 capital under §324.22(a), (c), and (d). At its discretion, the FDIC may calculate total assets using an FDIC-supervised institution's period-end assets rather than quarterly average assets.

**§ 324.402 Notice of capital category.**

(a) *Effective date of determination of capital category.* An FDIC-supervised institution shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this subpart H as of the date the FDIC-supervised institution is notified of, or is deemed to have notice of, its capital category, pursuant to paragraph (b) of this section.

(b) *Notice of capital category.* An FDIC-supervised institution shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Call Report is required to be filed with the FDIC;

(2) A final report of examination is delivered to the FDIC-supervised institution; or

(3) Written notice is provided by the FDIC to the FDIC-supervised institution of its capital category for purposes of section 38 of the FDI Act and this subpart or that the FDIC-supervised institution's capital category has changed as provided in §324.403(d).

(c) *Adjustments to reported capital levels and capital category—(1) Notice of adjustment by bank or state savings association.* An FDIC-supervised institution shall provide the appropriate FDIC regional director with written notice that an adjustment to the FDIC-supervised institution's capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the FDIC-supervised institution to be placed in a lower capital category from the category assigned to the FDIC-supervised institution for purposes of section 38 of the FDI Act and this subpart H on the basis of the FDIC-supervised institution's most recent Call Report or report of examination.

(2) *Determination by the FDIC to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the FDIC shall determine whether to change the capital category of the FDIC-supervised institution and shall notify the bank or state savings association of the FDIC's determination.

**§ 324.403 Capital measures and capital category definitions.**

(a) *Capital measures.* (1) For purposes of section 38 of the FDI Act and this subpart H, the relevant capital measures are:

(i) Total Risk-Based Capital Measure: The total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: The tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: The common equity tier 1 risk-based capital ratio; and

(iv) Leverage Measure:

(A) The leverage ratio; and  
(B) With respect to an advanced approaches FDIC-supervised institutions, on January 1, 2018, and thereafter, the supplementary leverage ratio.

(2) For a qualifying community banking organization (as defined under § 324.12), that has elected to use the community bank leverage ratio framework (as defined under § 324.12), the leverage ratio calculated in accordance with § 324.12(b) is used to determine the well capitalized capital category under paragraph (b)(1)(i)(A) through (D) of this section.

(b) *Capital categories.* For purposes of section 38 of the FDI Act and this subpart, an FDIC-supervised institution shall be deemed to be:

(1)(i) “Well capitalized” if:

(A) Total Risk-Based Capital Measure: The FDIC-supervised institution has a total risk-based capital ratio of 10.0 percent or greater; and

(B) Tier 1 Risk-Based Capital Measure: The FDIC-supervised institution has a tier 1 risk-based capital ratio of 8.0 percent or greater; and

(C) Common Equity Tier 1 Capital Measure: The FDIC-supervised institution has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater; and

(D) The FDIC-supervised institution has a leverage ratio of 5.0 percent or greater; and

(E) The FDIC-supervised institution is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the FDIC pursuant to section 8 of the FDI Act (12 U.S.C. 1818), the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or the Home Owners’ Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act (12 U.S.C. 1831o), or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) An FDIC-supervised institution that is a subsidiary of a global systemically important bank holding company will be deemed to be well capitalized if the FDIC-supervised institution satisfies paragraphs (b)(1)(i)(A) through (E) of this section and has a supplementary leverage ratio of 6.0 percent or greater. For purposes of this paragraph (b)(1)(ii), global systemically important bank holding company has the same meaning as in 12 CFR 217.402.

(iii) A qualifying community banking organization, as defined under § 324.12,

that has elected to use the community bank leverage ratio framework under § 324.12 shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraph (b)(1)(i)(A) through (D) of this section.

(2) “Adequately capitalized” if it:

(i) Has a total risk-based capital ratio of 8.0 percent or greater; and

(ii) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(iii) Has a common equity tier 1 capital ratio of 4.5 percent or greater; and

(iv) Has a leverage ratio of 4.0 percent or greater; and

(v) Does not meet the definition of “well capitalized” in this section.

(vi) Beginning January 1, 2018, an advanced approaches or Category III FDIC-supervised institution will be deemed to be “adequately capitalized” if it satisfies paragraphs (b)(2)(i) through (v) of this section and has a supplementary leverage ratio of 3.0 percent or greater, as calculated in accordance with § 324.10.

(3) “Undercapitalized” if it:

(i) Has a total risk-based capital ratio that is less than 8.0 percent; or

(ii) Has a Tier 1 risk-based capital ratio that is less than 6.0 percent; or

(iii) Has a common equity tier 1 capital ratio that is less than 4.5 percent; or

(iv) Has a leverage ratio that is less than 4.0 percent.

(v) Beginning January 1, 2018, an advanced approaches or Category III FDIC-supervised institution will be deemed to be “undercapitalized” if it has a supplementary leverage ratio of less than 3.0 percent, as calculated in accordance with § 324.10.

(4) “Significantly undercapitalized” if it has:

(i) A total risk-based capital ratio that is less than 6.0 percent; or

(ii) A Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(iii) A common equity tier 1 capital ratio that is less than 3.0 percent; or

(iv) A leverage ratio that is less than 3.0 percent.

(5) “Critically undercapitalized” if the insured depository institution has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

§ 324.404

12 CFR Ch. III (1–1–24 Edition)

(c) *Capital categories for insured branches of foreign banks.* For purposes of the provisions of section 38 of the FDI Act and this subpart H, an insured branch of a foreign bank shall be deemed to be:

(1) “Well capitalized” if the insured branch:

(i) Maintains the pledge of assets required under §347.209 of this chapter; and

(ii) Maintains the eligible assets prescribed under §347.210 of this chapter at 108 percent or more of the preceding quarter’s average book value of the insured branch’s third-party liabilities; and

(iii) Has not received written notification from:

(A) The OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.15, or to comply with asset maintenance requirements pursuant to 12 CFR 28.20; or

(B) The FDIC to pledge additional assets pursuant to §347.209 of this chapter or to maintain a higher ratio of eligible assets pursuant to §347.210 of this chapter.

(2) “Adequately capitalized” if the insured branch:

(i) Maintains the pledge of assets required under §347.209 of this chapter; and

(ii) Maintains the eligible assets prescribed under §347.210 of this chapter at 106 percent or more of the preceding quarter’s average book value of the insured branch’s third-party liabilities; and

(iii) Does not meet the definition of a well capitalized insured branch.

(3) “Undercapitalized” if the insured branch:

(i) Fails to maintain the pledge of assets required under §347.209 of this chapter; or

(ii) Fails to maintain the eligible assets prescribed under §347.210 of this chapter at 106 percent or more of the preceding quarter’s average book value of the insured branch’s third-party liabilities.

(4) “Significantly undercapitalized” if it fails to maintain the eligible assets prescribed under §347.210 of this chapter at 104 percent or more of the preceding quarter’s average book value

of the insured branch’s third-party liabilities.

(5) “Critically undercapitalized” if it fails to maintain the eligible assets prescribed under §347.210 of this chapter at 102 percent or more of the preceding quarter’s average book value of the insured branch’s third-party liabilities.

(d) *Reclassifications based on supervisory criteria other than capital.* The FDIC may reclassify a well capitalized FDIC-supervised institution as adequately capitalized and may require an adequately capitalized FDIC-supervised institution or an undercapitalized FDIC-supervised institution to comply with certain mandatory or discretionary supervisory actions as if the FDIC-supervised institution were in the next lower capital category (except that the FDIC may not reclassify a significantly undercapitalized FDIC-supervised institution as critically undercapitalized) (each of these actions are hereinafter referred to generally as “reclassifications”) in the following circumstances:

(1) *Unsafe or unsound condition.* The FDIC has determined, after notice and opportunity for hearing pursuant to §308.202(a) of this chapter, that the FDIC-supervised institution is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The FDIC has determined, after notice and opportunity for hearing pursuant to §308.202(a) of this chapter, that, in the most recent examination of the FDIC-supervised institution, the FDIC-supervised institution received and has not corrected a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

[81 FR 22173, Apr. 15, 2016, as amended at 79 FR 24541, May 1, 2014; 83 FR 17617, Apr. 23, 2018; 84 FR 61803, Nov. 13, 2019; 85 FR 5303, Jan. 30, 2020; 85 FR 32990, June 1, 2020; 85 FR 74259, Nov. 20, 2020]

§ 324.404 Capital restoration plans.

(a) *Schedule for filing plan—(1) In general.* An FDIC-supervised institution shall file a written capital restoration plan with the appropriate FDIC regional director within 45 days of the date that the FDIC-supervised institution receives notice or is deemed to