

Comptroller of the Currency, Treasury

§ 6.4

Federal savings association to compute and maintain its capital ratios on the basis of actual, rather than average, total assets when computing tangible equity.

Total leverage exposure means the total leverage exposure, as calculated in accordance with subpart B of part 3 of this chapter.

Total risk-based capital ratio means the ratio of total capital to total risk-weighted assets, as calculated in accordance with subpart B of part 3 of this chapter.

Total risk-weighted assets means standardized total risk-weighted assets, and for an advanced approaches national bank or advanced approaches Federal savings association also includes advanced approaches total risk-weighted assets, as defined in subpart B of part 3 of this chapter.

[78 FR 62275, Oct. 11, 2013, as amended at 84 FR 56374, Oct. 22, 2019]

§ 6.3 Notice of capital category.

(a) *Effective date of determination of capital category.* A national bank or Federal savings association shall be deemed to be within a given capital category for purposes of section 38 of the FDI Act and this part as of the date the national bank or Federal savings association 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.* A national bank or Federal savings association shall be deemed to have been notified of its capital levels and its capital category as of the most recent date:

(1) A Consolidated Reports of Condition and Income (Call Report) is required to be filed with the OCC;

(2) A final report of examination is delivered to the national bank or Federal savings association; or

(3) Written notice is provided by the OCC to the national bank or Federal savings association of its capital category for purposes of section 38 of the FDI Act and this part or that the national bank's or Federal savings association's capital category has changed pursuant to paragraph (c) of this section, or § 6.4(e) and with respect to national banks, subpart M of part 19 of this chapter, and with respect to Fed-

eral savings associations § 165.8 of this chapter.

(c) *Adjustments to reported capital levels and capital category*—(1) *Notice of adjustment by national bank or Federal savings association.* A national bank or Federal savings association shall provide the OCC with written notice that an adjustment to the national bank's or Federal savings association'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 national bank or Federal savings association to be placed in a lower capital category from the category assigned to the national bank or Federal savings association for purposes of section 38 and this part on the basis of the national bank's or Federal savings association's most recent Call Report or report of examination.

(2) *Determination to change capital category.* After receiving notice pursuant to paragraph (c)(1) of this section, the OCC shall determine whether to change the capital category of the national bank or Federal savings association and shall notify the national bank or Federal savings association of the OCC's determination.

§ 6.4 Capital measures and capital categories.

(a) *Capital measures.* (1) For purposes of section 38 of the FDI Act and this part, the relevant capital measures shall be:

(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;

(iv) The Leverage Measure:

(A) The leverage ratio; and

(B) With respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018, and thereafter, the supplementary leverage ratio; and

(2) For a qualifying community banking organization (as defined in § 3.12 of this chapter), that has elected to use the community bank leverage ratio framework (as defined in § 3.12 of this chapter), the leverage ratio calculated

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in accordance with § 3.12(b) of this chapter 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 part, a national bank or Federal savings association shall be deemed to be:

(1)(i) Well capitalized if:

(A) Total Risk-Based Capital Measure: The national bank or Federal savings association has a total risk-based capital ratio of 10.0 percent or greater;

(B) Tier 1 Risk-Based Capital Measure: The national bank or Federal savings association has a tier 1 risk-based capital ratio of 8.0 percent or greater;

(C) Common Equity Tier 1 Capital Measure: The national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater;

(D) Leverage Measure:

(1) The national bank or Federal savings association has a leverage ratio of 5.0 percent or greater; and

(2) With respect to a national bank or Federal savings association that is a subsidiary of a U.S. top-tier bank holding company that has more than \$700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (Form FR Y-9C) or more than \$10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (Form FR Y-15), on January 1, 2018, and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of 6.0 percent or greater; and

(E) The national bank or Federal savings association is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) Qualifying community banking organization: A qualifying community banking organization, as defined under

§ 3.12 of this chapter, that has elected to use the community bank leverage ratio framework under § 3.12 of this chapter, 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:*

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of 8.0 percent or greater;

(ii) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of 6.0 percent or greater;

(iii) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of 4.5 percent or greater;

(iv) Leverage Measure:

(A) The national bank or Federal savings association has a leverage ratio of 4.0 percent or greater; and

(B) With respect to an advanced approaches or Category III national bank or advanced approaches or Category III Federal savings association, the national bank or Federal savings association has a supplementary leverage ratio of 3.0 percent or greater; and

(v) The national bank or Federal savings association does not meet the definition of a "well capitalized" national bank or Federal savings association.

(3) *Undercapitalized if:*

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of less than 8.0 percent;

(ii) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of less than 6.0 percent;

(iii) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of less than 4.5 percent; or

(iv) Leverage Measure:

(A) The national bank or Federal savings association has a leverage ratio of less than 4.0 percent; or

(B) With respect to an advanced approaches or Category III national bank or advanced approaches or Category III

Federal savings association, on January 1, 2018, and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of less than 3.0 percent.

(4) *Significantly undercapitalized* if:

(i) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of less than 6.0 percent;

(ii) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of less than 4.0 percent;

(iii) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of less than 3.0 percent; or

(iv) Leverage Ratio: the national bank or Federal savings association has a leverage ratio of less than 3.0 percent.

(5) *Critically undercapitalized* if the national bank or Federal savings association has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

(c) *Capital categories for insured Federal branches.* For purposes of the provisions of section 38 of the FDI Act and this part, an insured Federal branch shall be deemed to be:

(1) *Well capitalized* if the insured Federal branch:

(i) Maintains the pledge of assets required under 12 CFR 347.209; and

(ii) Maintains the eligible assets prescribed under 12 CFR 347.210 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 § 28.15 of this chapter, or to comply with asset maintenance requirements pursuant to § 28.20 of this chapter; or

(B) The FDIC to pledge additional assets pursuant to 12 CFR 347.209 or to maintain a higher ratio of eligible assets pursuant to 12 CFR 347.210.

(2) *Adequately capitalized* if the insured Federal branch:

(i) Maintains the pledge of assets prescribed under 12 CFR 347.209;

(ii) Maintains the eligible assets prescribed under 12 CFR 347.210 at 106 per-

cent 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 Federal branch.

(3) *Undercapitalized* if the insured Federal branch:

(i) Fails to maintain the pledge of assets required under 12 CFR 347.209; or

(ii) Fails to maintain the eligible assets prescribed under 12 CFR 347.210 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 12 CFR 347.210 at 104 percent or more of the preceding quarter's average book value of the insured Federal branch's third-party liabilities.

(5) *Critically undercapitalized* if it fails to maintain the eligible assets prescribed under 12 CFR 347.210 at 102 percent or more of the preceding quarter's average book value of the insured Federal branch's third-party liabilities.

(d) *Reclassification based on supervisory criteria other than capital.* The OCC may reclassify a well capitalized national bank or Federal savings association as adequately capitalized and may require an adequately capitalized or an undercapitalized national bank or Federal savings association to comply with certain mandatory or discretionary supervisory actions as if the national bank or Federal savings association were in the next lower capital category (except that the OCC may not reclassify a significantly undercapitalized national bank or Federal savings association as critically undercapitalized) (each of these actions are hereinafter referred to generally as reclassifications) in the following circumstances:

(1) *Unsafe or unsound condition.* The OCC has determined, after notice and opportunity for hearing pursuant to subpart M of part 19 of this chapter with respect to national banks and § 165.8 of this chapter with respect to Federal savings associations, that the national bank or Federal savings association is in unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The OCC has determined, after notice and

opportunity for hearing pursuant to subpart M of part 19 of this chapter with respect to national banks and §165.8 of this chapter with respect to Federal savings associations, that in the most recent examination of the national bank or Federal savings association, the national bank or Federal savings association received, and has not corrected a less-than-satisfactory rating for any of the categories of asset quality, management, earnings, or liquidity.

[78 FR 62275, Oct. 11, 2013, as amended at 79 FR 24539, May 1, 2014; 84 FR 61794, Nov. 13, 2019; 85 FR 10968, Feb. 26, 2020; 85 FR 32989, June 1, 2020]

§ 6.5 Capital restoration plan.

(a) *Schedule for filing plan*—(1) *In general*. A national bank or Federal savings association shall file a written capital restoration plan with the OCC within 45 days of the date that the national bank or Federal savings association receives notice or is deemed to have notice that the national bank or Federal savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized, unless the OCC notifies the national bank or Federal savings association in writing that the plan is to be filed within a different period. An adequately capitalized national bank or Federal savings association that has been required, pursuant to §6.4 and subpart M of part 19 of this chapter with respect to national banks, and §§6.4 and 165.8 of this chapter with respect to Federal savings associations, to comply with supervisory actions as if the national bank or Federal savings association were undercapitalized is not required to submit a capital restoration plan solely by virtue of the reclassification.

(2) *Additional capital restoration plans*. Notwithstanding paragraph (a)(1) of this section, a national bank or Federal savings association that has already submitted and is operating under a capital restoration plan approved under section 38 and this subpart is not required to submit an additional capital restoration plan based on a revised calculation of its capital measures or a reclassification of the institution pursuant to §6.4 and subpart M of part 19 of this chapter with respect to national

banks and §§6.4 and 165.8 of this chapter with respect to Federal savings associations, unless the OCC notifies the national bank or Federal savings association that it must submit a new or revised capital plan. A national bank or Federal savings association that is notified that it must submit a new or revised capital restoration plan shall file the plan in writing with the OCC within 45 days of receiving such notice, unless the OCC notifies the national bank or Federal savings association in writing that the plan must be filed within a different period.

(b) *Contents of plan*. All financial data submitted in connection with a capital restoration plan shall be prepared in accordance with the instructions provided on the Call Report, unless the OCC instructs otherwise. The capital restoration plan shall include all of the information required to be filed under section 38(e)(2) of the FDI Act. A national bank or Federal savings association that is required to submit a capital restoration plan as the result of a reclassification of the national bank or Federal savings association, pursuant to §6.4 and subpart M of part 19 of this chapter with respect to national banks, and §§6.4 and 165.8 of this chapter with respect to Federal savings associations, shall include a description of the steps the national bank or Federal savings association will take to correct the unsafe or unsound condition or practice. No plan shall be accepted unless it includes any performance guarantee described in section 38(e)(2)(C) of that Act by each company that controls the national bank or Federal savings association.

(c) *Review of capital restoration plans*. Within 60 days after receiving a capital restoration plan under this subpart, the OCC shall provide written notice to the national bank or Federal savings association of whether the plan has been approved. The OCC may extend the time within which notice regarding approval of a plan shall be provided.

(d) *Disapproval of capital restoration plan*. If a capital restoration plan is not approved by the OCC, the national bank or Federal savings association shall submit a revised capital restoration plan within the time specified by the OCC. Upon receiving notice that its