

*** DRAFT - NOT YET FILED ***

1301:1-2-01

Computation of capital.

(A) "Capital," as defined in division (E) of section 1101.01 of the Revised Code, is computed as the sum of core, or tier one, capital, as computed under paragraph (B) of this rule, and supplementary, or tier two, capital, as computed under paragraph (C) of this rule, less the deductions in paragraph (D) of this rule, subject to the following conditions:

- (1) At least fifty per cent of capital shall be tier one capital.
- (2) Voting stockholders' common equity, as described in paragraph (B) of this rule, shall be the dominant form of tier one capital; banks shall not place undue reliance on nonvoting equity, preferred stock, and minority interests in the equity capital accounts of consolidated subsidiaries.
- (3) The combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as part of tier two capital is limited to fifty per cent of tier one capital.
- (4) The superintendent of financial institutions may, if the superintendent finds a newly developed or modified capital instrument or a particular balance sheet entry or account to be the functional equivalent of a component of tier one or tier two capital, permit one or more banks to include all or a portion of the instrument, entry, or account as tier one or tier two capital, permanently, or on a temporary basis.
- (5) The superintendent may, if the superintendent finds that a particular tier one or tier two capital component or balance sheet entry or account has characteristics or terms that diminish its contribution to a bank's ability to absorb losses, require the deduction of all or a portion of the component, entry, or account from tier one or tier two capital.
- (6) To qualify as tier one or tier two capital a capital instrument must not contain or be subject to any conditions, covenants, terms, restrictions, or provisions that are inconsistent with safe and sound banking practices. A condition, covenant, term, restriction, or provision is inconsistent with safe and sound banking practices if it does any of the following:
 - (a) Unduly interferes with the ability of the issuer to conduct normal banking operations;

- (b) Results in significantly higher dividends or interest payments in the event of deterioration in the financial condition of the issuer;
- (c) Impairs the ability of the issuer to comply with statutory or regulatory requirements regarding the disposition of assets or ~~insurance~~ incurrence of additional debt;
- (d) Limits the ability of the superintendent or other regulatory authority to take any necessary action to resolve a problem bank or failing bank situation.
- (e) Other conditions and covenants not listed in paragraphs (A)(6)(a) to (A)(6)(d) of this rule also may be inconsistent with safe and sound banking practices.

(B)

- (1) Tier one capital is the sum of the core capital components listed in paragraph (B)(2) of this rule minus the elements listed in paragraph (B)(3) of this rule.
- (2) Core capital components are all of the following:
 - (a) Common stockholders' equity, which is paid in capital and surplus related to common stock, undivided profits, capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments, less net unrealized holding losses on available-for-sale equity securities with readily determinable fair values;
 - (b) Noncumulative perpetual preferred stock, which is paid-in capital and surplus related to preferred stock where the issuer has the option to waive payment of dividends and where dividends waived do not accumulate to future periods or represent a contingent claim on the issuer, but is not preferred stock where the dividend is reset periodically based, in whole or in part, on the bank's current credit standing, including, but not limited to, auction rate, money market, and remarketable preferred stock regardless of whether the dividends are cumulative or noncumulative;
 - (c) Minority interests in consolidated subsidiaries, unless the minority interests fail to provide meaningful capital support to the consolidated bank.

(3) All of the following shall be deducted from the sum of a bank's core capital components:

(a) All intangible assets except the following:

(i) Mortgage servicing assets to which both of the following apply:

(a) The carrying amounts are not excessive in relation to their market value or the level of the bank's capital accounts; and

(b) The mortgage servicing assets satisfy all of the following conditions, limitations, and restrictions:

(i) A valuation of the estimated fair market value of mortgage servicing assets shall be performed at least quarterly. The quarterly valuation shall include adjustments for any significant changes in the original valuation assumptions, including changes in pre-payment estimates or attrition rates. The superintendent, in the superintendent's discretion, may require independent market evaluations on a case-by-case basis where appropriate for safety and soundness purposes.

(ii) For purposes of calculating tier one capital, but not for financial statement purposes, the balance sheet assets for mortgage servicing assets is reduced to an amount equal to the lesser of ninety per cent of the fair market value of the intangible assets, determined in accordance with paragraph (B)(3)(a)(i)(b)(i) of this rule or one hundred per cent of the remaining unamortized book value of the intangible assets, determined in accordance with the instructions for the preparation of consolidated reports of condition and income.

(iii) The maximum allowable amount of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets, in the aggregate, will be limited to the lesser of one hundred per cent of the amount of tier one capital that exists before the deduction of any disallowed mortgage servicing

assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, and any disallowed deferred tax assets or the sum of the amounts of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets determined in accordance with paragraphs (B)(3)(a)(i)(b)(ii), (B)(3)(a)(ii)(b)(ii), and (B)(3)(a)(iii)(b)(ii) of this rule.

(ii) Purchased credit card servicing relationships to which both of the following apply:

(a) The carrying amounts are not excessive in relation to their market value or the level of the bank's capital accounts; and

(b) The purchased credit card servicing relationships satisfy all of the following conditions, limitations, and restrictions:

(i) A valuation of the estimated fair market value of purchased credit card relationships shall be performed at least quarterly. The quarterly valuation shall include adjustments for any significant changes in the original valuation assumptions, including changes in prepayment estimates or attrition rates. The superintendent, in the superintendent's discretion, may require independent market evaluations on a case-by-case basis where appropriate for safety and soundness purposes.

(ii) For purposes of calculating tier one capital, but not for financial statement purposes, the balance sheet assets for purchased credit card relationships is reduced to an amount equal to the lesser of ninety per cent of the fair market value of the intangible assets, determined in accordance with paragraph (B)(3)(a)(ii)(b)(i) of this rule or one hundred per cent of the remaining unamortized book value of the intangible assets, determined in accordance with the instructions for the preparation of consolidated reports of condition and income.

(iii) The maximum allowable amount of mortgage servicing assets, purchased credit card relationships, and

nonmortgage servicing assets, in the aggregate, will be limited to the lesser of one hundred per cent of the amount of tier one capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, and any disallowed deferred tax assets or the sum of the amounts of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets determined in accordance with paragraphs (B)(3)(a)(i)(b)(ii), (B)(3)(a)(ii)(b)(ii), and (B)(3)(a)(iii)(b)(ii) of this rule.

- (iv) In addition to the aggregate limitation on mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets in paragraphs (B)(3)(a)(i)(b)(iii), (B)(3)(a)(ii)(b)(iii), and (B)(3)(a)(iii)(b)(iii) of this rule, a sublimit will apply to purchased credit card relationships and nonmortgage servicing assets. The maximum allowable amount of purchased credit card relationships and nonmortgage servicing assets will be limited to the lesser of twenty-five per cent of the amount of tier one capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, and any disallowed deferred tax assets, or the sum of the amounts of purchased credit card relationships and nonmortgage servicing assets, determined in accordance with paragraphs (B)(3)(a)(ii)(b)(ii) and (B)(3)(a)(iii)(b)(ii) of this rule.

(iii) Nonmortgage servicing rights to which both of the following apply:

(a) The carrying amounts are not excessive in relation to their market value or the level of the bank's capital accounts; and

(b) The nonmortgage servicing rights satisfy all of the following conditions, limitations, and restrictions:

(i) A valuation of the estimated fair market value of nonmortgage servicing assets shall be performed at least quarterly. The quarterly valuation shall include

adjustments for any significant changes in the original valuation assumptions, including changes in prepayment estimates or attrition rates. The superintendent, in the superintendent's discretion, may require independent fair value estimates on a case-by-case basis where appropriate for safety and soundness purposes.

- (ii) For purposes of calculating tier one capital, but not for financial statement purposes, the balance sheet assets for nonmortgage servicing assets will be reduced to an amount equal to the lesser of ninety per cent of the fair market value of the intangible assets, determined in accordance with paragraph (B)(3)(a)(iii)(b)(i) of this rule or one hundred per cent of the remaining unamortized book value of the intangible assets, determined in accordance with the instructions for the preparation of the consolidated reports of condition and income.
- (iii) The maximum allowable amount of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets, in the aggregate, will be limited to the lesser of one hundred per cent of the amount of tier one capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, and any disallowed deferred tax assets or the sum of the amounts of mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets, determined in accordance with paragraphs (B)(3)(a)(i)(b)(ii), (B)(3)(a)(ii)(b)(ii) and (B)(3)(a)(iii)(b)(ii) of this rule.
- (iv) In addition to the aggregate limitation on mortgage servicing assets, purchased credit card relationships, and nonmortgage servicing assets, determined in accordance with paragraphs (B)(3)(a)(i)(b)(iii), (B)(3)(a)(ii)(b)(iii), and (B)(3)(a)(iii)(b)(iii) of this rule, a sublimit will apply to purchased credit card relationships and nonmortgage servicing assets. The maximum allowable amount of purchased credit card relationships and nonmortgage servicing assets, in the

aggregate, will be limited to the lesser of twenty-five percent of the amount of tier one capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed ~~purchased~~ purchased credit card relationships, any disallowed nonmortgage servicing assets, and any disallowed deferred tax assets, or the sum of the amount of purchased credit card relationships and nonmortgage servicing assets, determined in accordance with paragraphs (B)(3)(a)(ii)(b)(ii) and (B)(3)(a)(iii)(b)(ii) of this rule.

(iv) Other types of intangible assets that are ~~explicitly~~ explicitly approved by the superintendent, on a case-by-case basis, under the terms and ~~conditions~~ conditions specifically approved.

(a) To evaluate whether other types of intangibles should be recognized, the superintendent will accord special attention to the general characteristics of the intangibles, including:

(i) The separability of the intangible asset and the ability to sell it separate and apart from the bank or the bulk of the bank's assets.

(ii) The certainty that a readily identifiable stream of cash flows associated with the intangible asset can hold its value notwithstanding the future ~~prospects~~ prospects of the bank, and

(iii) The existence of a market of sufficient depth to provide liquidity for the intangible asset.

(b) The superintendent will not give specific approval to goodwill and other unidentifiable intangible assets

(b) Deferred tax assets subject to all of the following conditions, limitations, and restrictions:

(i) Deferred tax assets that are dependent on future taxable income are both of the following:

(a) Deferred tax assets arising from deductible temporary differences that exceed the amount of taxes previously paid

that could be recovered through loss carrybacks if existing temporary differences, both deductible and taxable and regardless of where the related deferred tax effects are reported on the balance sheet, fully reverse at the calendar quarter-end date;

(b) Deferred tax assets arising from operating loss and tax credit carryforwards.

(ii)

(a) The maximum allowable amount of deferred tax assets that are dependent on future taxable income, net of any valuation allowance for deferred tax assets, is limited to the lesser of the following:

(i) The amount of deferred tax assets that are dependent on future taxable income that is expected to be realized within one year of the calendar quarter-end date, based on projected future taxable income for that year;

(ii) Ten per cent of the amount of tier one capital that exists before the deduction of any disallowed mortgage servicing assets, any disallowed purchased credit card relationships, any disallowed nonmortgage servicing assets, and any disallowed deferred tax assets.

(b) For purposes of this limitation, all existing temporary differences should be assumed to fully reverse at the calendar quarter-end date. The recorded amount of deferred tax assets that are dependent on future taxable income, net of any valuation allowance for deferred tax assets, in excess of the limitation are deducted from assets and from equity capital for purposes of determining tier one capital under this rule. The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences generally are not deducted from assets and from equity capital. However, the amount of carryback potential that may be considered in calculating the amount of deferred tax assets that a member of a consolidated group, for tax purposes, may include in tier one capital may not exceed

the amount the member could reasonably expect to have refunded by its parent.

- (c) Projected future taxable income does not include net operating loss carryforwards to be used within one year of the most recent calendar quarter-end date or the amount of existing temporary differences expected to reverse within that year. Projected future taxable income should include the estimated effect of tax planning strategies that are expected to be implemented to realize tax carryforwards that will otherwise expire during that year. Future taxable income projections for the current fiscal year, adjusted for any significant changes that have occurred or are expected to occur, may be used when applying the capital limit at an interim calendar quarter-end date rather than preparing a new projection each quarter.
 - (d) The deferred tax effects of any unrealized holding gains and losses on available-for-sale debt securities may be excluded from the determination of the amount of deferred tax assets that are dependent upon future taxable income and the calculation of the maximum allowable amount of those assets. If these deferred tax effects are excluded, this treatment must be followed consistently over time.
 - (e) A deferred tax liability that is specifically related to an intangible asset, other than mortgage servicing rights and purchased credit card relationships, acquired in a non-taxable purchase business combination may be netted against this intangible asset. Only the net amount of an intangible asset must be deducted from tier one capital. When a deferred tax liability is netted in this manner, the taxable temporary difference that gives rise to this deferred tax liability must be excluded from existing taxable temporary differences when determining the amount of deferred tax assets that are dependent on future taxable income and calculating the maximum allowable amount of those assets.
- (c) Identified losses to the extent common stockholders' equity would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the bank's books;
 - (d) Investments in securities subsidiaries that are subject to 12 C.F.R. 337.4.

(C)

(1) Subject to the limitations of paragraph (C)(2) of this rule, tier two capital is the sum of the following, not including revaluation reserves or hidden reserves that represent unrealized appreciation on assets such as bank premises and equity securities:

(a) Allowances for loan and lease losses, which are reserves that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables excluding allocated transfer risk reserves and reserves created against identified losses;

(b)

(i) Subject to the conditions of paragraph (C)(1)(b)(ii) of this rule, paid in capital and related surplus for all of the following kinds of preferred stock:

(a) Perpetual preferred stock that does not have a maturity date, cannot be redeemed at the option of the holder, and has no other provisions that will require future redemption of the issue;

(b) Long-term preferred stock, including limited life preferred stock with an original maturity of twenty years or more, if the stock cannot be redeemed at the option of the holder prior to maturity except with the prior approval of the superintendent;

(c) Noncumulative perpetual preferred stock for which the dividend is reset periodically based, in whole or in part, on the bank's current credit standing, including auction rate, money market, or remarketable preferred stock.

(ii) To be included in tier two capital, preferred stock of the kinds listed in paragraph (C)(2)(a) of this rule, both of the following must apply to the preferred stock:

(a) The preferred stock can absorb losses while the issuer operates as a going concern.

- (b) The issuer has the option to defer payment of dividends on preferred stock.
- (c) Hybrid capital instruments, other than mandatory convertible debt securities, that are all of the following:
- (i) Unsecured, subordinated to the claims of depositors and general creditors, and fully paid-up;
 - (ii) Not redeemable at the option of the holder prior to maturity, except with the prior approval of the superintendent;
 - (iii) Available to participate in losses while the issuer is operating as a going concern by converting to common or perpetual preferred stock if the sum of the issuing bank's undivided profits and surplus accounts results in a negative balance;
 - (iv) Provide the option for the issuing bank to defer principal and interest payments if the issuing bank both does not report a profit in the preceding annual period and eliminates cash dividends on its common and preferred stock.
- (d) Mandatory convertible debt securities, which are subordinated debt instruments that require the issuing bank to convert them to common or perpetual preferred stock by a date at or before their maturity, if their maturity is twelve years or less and they have the characteristics in paragraphs (C)(1)(e)(i), (C)(1)(e)(iii), (C)(1)(e)(iv), (C)(1)(e)(v), and (C)(1)(e)(vi) of this rule for term subordinated debt.
- (e) Term subordinated debt, excluding mandatory convertible debt securities, and intermediate-term preferred stock, including related surplus, having an original average maturity of at least five years and not redeemable at the option of the holder prior to maturity except with the prior approval of the superintendent, in an aggregate amount not exceeding fifty per cent of tier one capital. A term subordinated debt instrument is an obligation other than a deposit obligation that has all of the following characteristics:
- (i) The instrument bears on its face, in boldface type, the following:
This obligation is not a deposit and is not insured by the federal deposit insurance corporation.

- (ii) The instrument has a maturity of at least five years or, in the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least five years, although the superintendent may permit the issuance of an obligation or issuance with a shorter maturity or average maturity if the superintendent determines exigent circumstances require the issuance of the obligation or issue.
- (iii) The instrument states expressly that the obligation is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's obligations to its general and secured creditors and is ineligible as collateral for a loan by the issuing bank.
- (iv) The instrument is unsecured.
- (v) The instrument states expressly that the issuing bank may not retire any part of its obligations without any prior written consent of the superintendent.
- (vi) The instrument includes, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.

(2)

- (a) The combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as part of tier two capital is limited to fifty percent of tier one capital.
- (b) The outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in tier two capital is discounted by reducing the outstanding amount of the capital instrument eligible for inclusion in tier two capital by a fifth of the original amount, less redemptions, each year during the instrument's last five years before maturity, and the capital instruments have no capital value when they have a remaining maturity of less than a year.

(D)

- (1) All intangible assets other than mortgage servicing rights and purchased credit

card relationships are deducted from the tier one capital elements unless specifically allowed for capital purposes by the superintendent on a specific case basis.

- (2) Investments in unconsolidated banking and finance subsidiaries, including equity and debt capital securities and any other instruments or commitments that are considered capital of the subsidiary, are deducted from the sum of the bank's tier one and tier two capital.
- (3) The superintendent may also deduct investments in other subsidiaries, either on a case-by-case basis or, as with securities subsidiaries, based on the general characteristics or functional nature of the subsidiaries.
- (4) Reciprocal holdings of capital instruments of banks that represent intentional cross-holdings by the banks are deducted from the sum of tier one and tier two capital.
- (5) Deferred tax assets in excess of the limit in paragraph (B)(3)(b) of this rule are deducted from the tier one capital elements.
- (6) On a case-by-case basis, and in conjunction with examinations, the superintendent may also require other deductions from capital, including adjustments the superintendent finds appropriate for assets classified as loss and investments in associated companies and joint ventures, or the superintendent may apply an appropriate capital charge against a bank's proportionate interest in the assets of associated companies and joint ventures.

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