

fails to perform upon an event of default, including upon receivership, insolvency, liquidation, or similar proceeding.

(d) *Qualifying master netting agreement.* In order to recognize an agreement as a qualifying master netting agreement as defined in § 3.2, a national bank or Federal savings association 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 § 3.2; 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 § 3.2.

(e) *Repo-style transaction.* In order to recognize an exposure as a repo-style transaction as defined in § 3.2, a national bank or Federal savings association 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 § 3.2, 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 a national bank or Federal savings association 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 (2)(iii) of the definition of a QCCP in § 3.2, the national bank or Federal savings association 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 (2)(iii) of the definition of a QCCP continuously for a three-month period after remedying the relevant deficiency, a national bank or Federal savings association may not treat the CCP as a QCCP for the purposes of this part until after the national bank or Federal savings association has determined that the CCP has satisfied the requirements in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP for three continuous months.

#### §§ 3.4–3.9 [Reserved]

### Subpart B—Capital Ratio Requirements and Buffers

SOURCE: 78 FR 62157, 62273, Oct. 11, 2013, unless otherwise noted.

#### § 3.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) A national bank or Federal savings association must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches national banks or Federal savings associations or, for Category III OCC-regulated institutions, a supplementary leverage ratio of 3 percent.

(vi) For Federal savings associations, a tangible capital ratio of 1.5 percent.

(2) A qualifying community banking organization (as defined in § 3.12), that is subject to the community bank leverage ratio framework (as defined in § 3.12), is considered to have met the minimum capital requirements in this paragraph (a).

(b) *Standardized capital ratio calculations.* Other than as provided in paragraph (c) of this section:

(1) *Common equity tier 1 capital ratio.* A national bank's or Federal savings association's common equity tier 1 capital ratio is the ratio of the national

bank's or Federal savings association's common equity tier 1 capital to standardized total risk-weighted assets;

(2) *Tier 1 capital ratio.* A national bank's or Federal savings association's tier 1 capital ratio is the ratio of the national bank's or Federal savings association's tier 1 capital to standardized total risk-weighted assets;

(3) *Total capital ratio.* A national bank's or Federal savings association's total capital ratio is the ratio of the national bank's or Federal savings association's total capital to standardized total risk-weighted assets; and

(4) *Leverage ratio.* A national bank's or Federal savings association's leverage ratio is the ratio of the national bank's or Federal savings association's tier 1 capital to the national bank's or Federal savings association's average total consolidated assets as reported on the national bank's or Federal savings association's Call Report minus amounts deducted from tier 1 capital under § 3.22(a), (c) and (d).

(5) *Federal savings association tangible capital ratio.* A Federal savings association's tangible capital ratio is the ratio of the Federal savings association's core capital (tier 1 capital) to average total assets as calculated under this subpart B. For purposes of this paragraph (b)(5), the term "total assets" means "total assets" as defined in part 6, subpart A of this chapter, subject to subpart G of this part.

(c) *Advanced approaches and Category III capital ratio calculations.* An advanced approaches national bank or Federal savings association that has completed the parallel run process and received notification from the OCC pursuant to § 3.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches national bank or Federal savings association must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association institution meets any of the criteria in § 3.100(b)(1). A Category III national bank or Federal savings association must determine its supplementary leverage ratio

in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association is identified as a Category III national bank or Federal savings association.

(1) *Common equity tier 1 capital ratio.* The national bank's or Federal savings association's common equity tier 1 capital ratio is the lower of:

(i) The ratio of the national bank's or Federal savings association's common equity tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the national bank's or Federal savings association's common equity tier 1 capital to advanced approaches total risk-weighted assets.

(2) *Tier 1 capital ratio.* The national bank's or Federal savings association's tier 1 capital ratio is the lower of:

(i) The ratio of the national bank's or Federal savings association's tier 1 capital to standardized total risk-weighted assets; and

(ii) The ratio of the national bank's or Federal savings association's tier 1 capital to advanced approaches total risk-weighted assets.

(3) *Total capital ratio.* The national bank's or Federal savings association's total capital ratio is the lower of:

(i) The ratio of the national bank's or Federal savings association's total capital to standardized total risk-weighted assets; and

(ii) The ratio of the national bank's or Federal savings association's advanced-approaches-adjusted total capital to advanced approaches total risk-weighted assets. A national bank's or Federal savings association's advanced-approaches-adjusted total capital is the national bank's or Federal savings association's total capital after being adjusted as follows:

(A) An advanced approaches national bank or Federal savings association must deduct from its total capital any allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, included in its tier 2 capital in accordance with § 3.20(d)(3); and

(B) An advanced approaches national bank or Federal savings association

must add to its total capital any eligible credit reserves that exceed the national bank's or Federal savings association's total expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of the national bank's or Federal savings association's credit risk-weighted assets.

(4) *Supplementary leverage ratio.* (i) An advanced approaches national bank's or Federal savings association's or a Category III national bank's or Federal savings association's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter of which is calculated as the sum of:

(A) The mean of the on-balance sheet assets calculated as of each day of the reporting quarter; and

(B) The mean of the off-balance sheet exposures calculated as of the last day of each of the most recent three months, minus the applicable deductions under § 3.22(a), (c), and (d).

(ii) For purposes of this part, *total leverage exposure* means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) for a clearing member national bank and Federal savings association and paragraph (c)(4)(ii)(J) for a custody bank:

(A) The balance sheet carrying value of all of the national bank or Federal savings association'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 GAAP, *less* amounts deducted from tier 1 capital under § 3.22(a), (c), and (d), and *less* the value of securities received in security-for-security repo-style transactions, where the national bank or Federal savings association 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, and, for a national bank or Federal savings association that uses the standardized approach for counterparty credit risk under § 3.132(c) for its standardized risk-weighted assets, *less* the fair value of any derivative contracts;

(B)(I) For a national bank or Federal savings association that uses the current exposure methodology under § 3.34(b) for its standardized risk-weighted assets, the potential future credit exposure (PFE) for each derivative contract or each single-product netting set of derivative contracts (including a cleared transaction except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the national bank or Federal savings association, 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), to which the national bank or Federal savings association is a counterparty as determined under § 3.34, but without regard to § 3.34(c), provided that:

(i) A national bank or Federal savings association 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 § 3.34, but without regard to § 3.34(c), provided that it does not adjust the net-to-gross ratio (NGR); and

(ii) A national bank or Federal savings association that chooses to exclude the PFE of credit derivatives or other similar instruments through which it provides credit protection pursuant to paragraph (c)(4)(ii)(B)(I) of this section must do so consistently over time for the calculation of the PFE for all such instruments; or

(2)(i) For a national bank or Federal savings association that uses the standardized approach for counterparty credit risk under section § 3.132(c) for its standardized risk-weighted assets, the PFE for each netting set to which the national bank or Federal savings association is a counterparty (including cleared transactions except as provided in paragraph (c)(4)(ii)(I) of this section and, at the discretion of the national bank or Federal savings association, 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 § 3.132(c)(7), in which the term C

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in §3.132(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 (c)(4)(ii)(B)(2)(i), a national bank or Federal savings association may set the value of the term C in §3.132(c)(7)(i) equal to the amount of collateral posted by a clearing member client of the national bank or Federal savings association in connection with the client-facing derivative transactions within the netting set; and

(ii) A national bank or Federal savings association 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 §3.132(c), provided that it does so consistently over time for the calculation of the PFE for all such instruments;

(C)(1)(i) For a national bank or Federal savings association that uses the current exposure methodology under §3.34(b) for its standardized risk-weighted assets, the amount of cash collateral that is received from a counterparty to a derivative contract and that has offset the mark-to-fair value of the derivative asset, or cash collateral that is posted to a counterparty to a derivative contract and that has reduced the national bank or Federal savings association's on-balance sheet assets, unless such cash collateral is all or part of variation margin that satisfies the conditions in paragraphs (c)(4)(ii)(C)(3) through (7) of this section; and

(ii) The variation margin is used to reduce the current credit exposure of the derivative contract, calculated as described in §3.34(b), and not the PFE; and

(iii) For the purpose of the calculation of the NGR described in §3.34(b)(2)(ii)(B), variation margin described in paragraph (c)(4)(ii)(C)(1)(i) of this section may not reduce the net current credit exposure or the gross current credit exposure; or

(2)(i) For a national bank or Federal savings association that uses the standardized approach for counterparty credit risk under §3.132(c) for its standardized risk-weighted assets, the replacement cost of each derivative contract or single product netting set of

derivative contracts to which the national bank or Federal savings association is a counterparty, calculated according to the following formula, and, for any counterparty that is not a commercial end-user, multiplied by 1.4:

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

Where:

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 (c)(4)(ii)(I) of this section and, at the discretion of the national bank or Federal savings association, 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);

CVM<sub>r</sub> equals the amount of cash collateral received from a counterparty to a derivative contract and that satisfies the conditions in paragraphs (c)(4)(ii)(C)(3) through (7) of this section, or, in the case of a client-facing derivative transaction, the amount of collateral received from the clearing member client; and

CVM<sub>p</sub> 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 (c)(4)(ii)(C)(3) through (7) of this section, or, in the case of a client-facing derivative transaction, the amount of collateral posted to the clearing member client;

(ii) Notwithstanding paragraph (c)(4)(ii)(C)(2)(i) of this section, where multiple netting sets are subject to a single variation margin agreement, a national bank or Federal savings association must apply the formula for replacement cost provided in §3.132(c)(10)(i), in which the term C<sub>MA</sub> may only include cash collateral that satisfies the conditions in paragraphs (c)(4)(ii)(C)(3) through (7) of this section; and

(iii) For purposes of paragraph (c)(4)(ii)(C)(2)(i), a national bank or Federal savings association 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 national bank or Federal savings association elected to treat the derivative contract

as multiple derivative contracts under § 3.132(c)(5)(vi);

(3) 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);

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

(5) 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;

(6) 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 (c)(4)(ii)(C)(6), 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

(7) 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;

(D) 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 national bank or Federal savings association provides credit protection, provided that:

(1) The national bank or Federal savings association 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;

(2) The national bank or Federal savings association 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 national bank or Federal savings association provides credit protection and that:

(i) 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 national bank or Federal savings association provides credit protection; or

(ii) 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 national bank or Federal savings association 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 national bank or Federal savings association provides credit protection;

(iii) Where a national bank or Federal savings association has reduced the effective notional amount of a credit derivative through which the national bank or Federal savings association provides credit protection in accordance with paragraph (c)(4)(ii)(D)(1) of this section, the national bank or Federal savings association must also reduce the effective notional principal

amount of a purchased credit derivative used to offset the credit derivative through which the national bank or Federal savings association 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

(iv) Where the national bank or Federal savings association purchases credit protection through a total return swap and records the net payments received on a credit derivative through which the national bank or Federal savings association 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 national bank or Federal savings association provides credit protection in net income (either through reductions in fair value or by additions to reserves), the national bank or Federal savings association may not use the purchased credit protection to offset the effective notional principal amount of the related credit derivative through which the national bank or Federal savings association provides credit protection;

(E) Where a national bank or Federal savings association 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 (c)(4)(ii)(A) of this section, unless the following criteria are met:

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

(2) 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

(3) 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;

(F) The counterparty credit risk of a repo-style transaction, including where the national bank or Federal savings association 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:

(1) 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  $E_i$  is the fair value of the instruments, gold, or cash that the national bank or Federal savings association has lent, sold subject to repurchase, or provided as collateral to the counterparty, and  $C_i$  is the fair value of the instruments, gold, or cash that the national bank or Federal savings association has borrowed, purchased subject to resale, or received as collateral from the counterparty:

$E_i^* = \max \{0, [E_i - C_i]\}$ ; and

(2) 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 national bank or Federal savings association has lent, sold subject to repurchase or provided as collateral to a counterparty for all transactions included in the qualifying

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master netting agreement ( $\Sigma E_i$ ), less the total fair value of the instruments, gold, or cash that the national bank or Federal savings association borrowed, purchased subject to resale or received as collateral from the counterparty for those transactions ( $\Sigma C_i$ ), in accordance with the following formula:

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

(G) If a national bank or Federal savings association 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;

(H) The credit equivalent amount of all off-balance sheet exposures of the national bank or Federal savings association, 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 § 3.33(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

(I) For a national bank or Federal savings association that is a clearing member:

(1) A clearing member national bank or Federal savings association 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 total leverage exposure;

(2) A clearing member national bank or Federal savings association 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 total leverage exposure;

(3) A clearing member national bank or Federal savings association 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 total leverage exposure;

(4) A national bank or Federal savings association that is a clearing member may exclude from its total leverage exposure 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 part (c)(4)(ii)(D); and

(5) Notwithstanding paragraphs (c)(4)(ii)(I)(1) through (3) of this section, a national bank or Federal savings association may exclude from its total leverage exposure 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 national bank's or Federal savings association's balance sheet.

(J) A custodial bank shall exclude from its total leverage exposure the lesser of:

(1) The amount of funds that the custody bank has on deposit at a qualifying central bank; and

(2) The amount of funds that the custody bank's clients have on deposit at the custody bank that are linked to fiduciary or custodial and safekeeping accounts. For purposes of this paragraph (c)(4)(ii)(J), a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custody bank, and the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account.

(5) *Federal savings association tangible capital ratio.* A Federal savings association's tangible capital ratio is the ratio of the Federal savings association's

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core capital (tier 1 capital) to average total assets as calculated under this subpart B. For purposes of this paragraph (c)(5), the term “total assets” means “total assets” as defined in part 6, subpart A of this chapter, subject to subpart G of this part.

(d) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, a national bank or Federal savings association must maintain capital commensurate with the level and nature of all risks to which the national bank or Federal savings association is exposed. The supervisory evaluation of a national bank’s or Federal savings association’s capital adequacy is based on an individual assessment of numerous factors, including those listed at this section (national banks), 12 CFR 167.3(c) (Federal savings associations).

(2) A national bank or Federal savings association 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.

[78 FR 62157, 62273, Oct. 11, 2013, as amended at 79 FR 57740, Sept. 26, 2014; 80 FR 41415, July 15, 2015; 84 FR 4238, Feb. 14, 2019; 84 FR 35248, July 22, 2019; 84 FR 59264, Nov. 1, 2019; 84 FR 61792, Nov. 13, 2019; 85 FR 4401, Jan. 24, 2020; 85 FR 4577, Jan. 27, 2020; 85 FR 57959, Sept. 17, 2020]

#### **§3.11 Capital conservation buffer and countercyclical capital buffer amount.**

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

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

(i) *Eligible retained income.* The eligible retained income of a national bank or Federal savings association is the greater of:

(A) The national bank’s or Federal savings association’s net income, calculated in accordance with the instructions to the Call Report, 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

(B) The average of the national bank’s or Federal savings association’s net income, calculated in accordance with the instructions to the Call Report, for the four calendar quarters preceding the current calendar quarter.

(ii) *Maximum payout ratio.* The maximum payout ratio is the percentage of eligible retained income that a national bank or Federal savings association can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is based on the national bank’s or Federal savings association’s capital conservation buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to §3.11.

(iii) *Maximum payout amount.* A national bank’s or Federal savings association’s maximum payout amount for the current calendar quarter is equal to the national bank’s or Federal savings association’s eligible retained income, multiplied by the applicable maximum payout ratio, as set forth in Table 1 to §3.11.

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability Mechanism, the European Financial Stability Facility, the International Monetary Fund, a MDB, a PSE, or a GSE.

(3) *Calculation of capital conservation buffer.* (i) A national bank’s or Federal savings association’s capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The national bank or Federal savings association’s common equity tier 1 capital ratio minus the national bank or Federal savings association’s minimum common equity tier 1 capital ratio requirement under §3.10;

(B) The national bank or Federal savings association’s tier 1 capital ratio minus the national bank or Federal savings association’s minimum tier 1 capital ratio requirement under §3.10; and