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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064-AE91

Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations; Corrections

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Correcting amendments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is correcting an interagency final rule that appeared in the *Federal Register* on Wednesday, November 13, 2019, regarding Capital Simplification for Qualifying Community Banking Organizations. These corrections are necessary to standardize the language in the FDIC regulations with the regulations of the other agencies that issued the final rule.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION: On November 13, 2019, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and the FDIC (collectively, the agencies) published a final rule “Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations.”¹ The final rule provides for a simple measure of capital adequacy for certain community banking organizations, consistent with section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Under the final rule, depository institutions and depository institution holding companies that have less than \$10 billion in total consolidated assets and meet other qualifying criteria, including a leverage ratio of greater than 9 percent, will be eligible to opt into the community bank leverage ratio framework. Instruction 61 of the *Federal Register* document resulted in the amendment of the entirety of paragraph (b) of 12 CFR 324.403, rather than modifying only § 324.403(b)(1), consistent with the intent of the agencies. Therefore, for the reasons set out in the preamble of the *Federal Register* document for the November 13, 2019, final rule and in this document, the FDIC hereby makes the following correcting amendments to 12 CFR 324.403(b).

List of Subjects in 12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, State non-member banks, Savings associations.

Therefore, for the reasons set out in the preamble, the FDIC hereby makes the following correcting amendments to 12 CFR part 324:

PART 324 – CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

1. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371;

¹ 84 FR 61776 (Nov. 13, 2019).

5412; Pub. L. 102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, 2355, as amended by Pub. L. 103-325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102-242, 105 Stat. 2236, 2386, as amended by Pub. L. 102-550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111-203, 124 Stat. 1376, 1887 (15 U.S.C. 78o-7 note).

2. Section 324.403(b) is revised as follows:

§324.403 Capital measures and capital category definitions.

* * * * *

(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) Beginning on January 1, 2018 and thereafter, an FDIC-supervised institution that is a subsidiary of a covered BHC 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), a covered BHC means a U.S. top-tier bank holding company with 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).

(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 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 §324.11.

(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 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 §324.11.

(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.

* * * * *

Federal Deposit Insurance Corporation.
Dated at Washington, DC on January 14, 2020.

Anmmarie H. Boyd,

Assistant Executive Secretary.

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