

# BANKING ISSUANCE

Comptroller of the Currency  
Administrator of National Banks

Type: Banking Circular

Subject: Prompt Corrective Action

TO: Chief Executive Officers of all National Banks, Deputy Comptrollers, District Administrators, Directors, and all examining personnel.

PURPOSE:

This circular sets forth the procedures by which the OCC implements its authority under Section 38 of the Federal Deposit Insurance Act, entitled Prompt Corrective Action (PCA). Section 38 of the Federal Deposit Insurance Act (12 USC 1831o), as added by Section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), establishes a system of prompt corrective action that classifies insured depository institutions into five categories based on their relative capital levels.

The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision have adopted regulations to implement PCA. The OCC's implementing regulations are 12 CFR Part 6 and Subparts M and N of Part 19.

The purpose of PCA is to resolve the problems of insured depository institutions at the least possible long-term cost to the deposit insurance fund.

TABLE OF CONTENTS:

Page	Topic
2..	Prompt Corrective Action Capital Categories
	Prompt Corrective Action Restrictions:
6..	.... for All Banks
7..	.... for Undercapitalized Banks
9..	.... for Significantly Undercapitalized Banks
12..	for Critically Undercapitalized Banks
15..	Capital Restoration Plan
17..	Grounds for Appointment of Receiver or Conservator
19..	Prompt Corrective Action Directives
22..	Reclassification Based on Supervisory Criteria
25..	Insured Federal Branches



# BANKING ISSUANCE

Comptroller of the Currency  
 Administrator of National Banks

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## I. PROMPT CORRECTIVE ACTION (PCA) CAPITAL CATEGORIES

Section 38 establishes a framework of supervisory actions based on the capital level of a bank. The statute establishes five capital categories: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. The OCC's regulation defines the relevant capital thresholds for each capital category at 12 CFR 6.3. The following tables summarize the capital levels for each category.

PCA CAPITAL CATEGORY Designation Abbreviation	Total Risk-Based Ratio	Tier 1 Risk-Based Ratio	Tier 1 Leverage Ratio	Under a Capital Order or Directive
Well Capitalized (WCB)	≥ 10.0%	≥ 6.0%	≥ 5.0%	NO
Adequately Capitalized(ACB)	≥ 8.0%	≥ 4.0%	≥ 4.0%*	
Undercapitalized (UB)	< 8.0%	< 4.0%	< 4.0%*	
Significantly Under (SUB)	< 6.0%	< 3.0%	< 3.0%	

\* 3.0 for 1-rated banks

Critically Undercapitalized (CUB): tangible equity ≤ 2.0%

The tangible equity ratio is defined as tier 1 capital PLUS cumulative preferred stock and related surplus LESS intangibles except qualifying purchased mortgage servicing rights (PMSR) divided by total assets LESS intangibles except qualifying PMSR.

However, regardless of a bank's capital level, no bank is considered "well capitalized" if it is subject to a cease and desist order, formal agreement, capital directive or PCA directive that requires the bank to achieve or maintain a higher level of capital. Banks in compliance with such orders, agreements or directives will not be "well capitalized" unless and until the agreement, order or directive is terminated or revised to eliminate the capital requirement.

### A. Capital Adequacy and PCA

Prompt corrective action was not intended to replace existing capital adequacy guidelines. **The PCA capital category designations of "well**



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

**capitalized," "adequately capitalized," and "undercapitalized" must not be considered determinations of capital adequacy under Part 3.**

For example, a bank that is "well capitalized" for the purposes of Part 6 may be found by the OCC to have inadequate capital for the purposes of Part 3, the OCC's capital adequacy regulation. The OCC reviews capital adequacy in terms of the risks in the institution and how capably management limits those risks. Under Part 3, the OCC may require an institution to maintain a higher individual minimum capital ratio, without regard for its PCA capital category.

B. Notification of Capital Category

Supervisory restrictions under section 38 are tied to the bank's capital category. A bank becomes subject to the mandatory restrictions applicable to a given capital category as of the date it is notified of, or is deemed to have notice of, its capital category.

The OCC's regulation, at 12 CFR 6.4, establishes procedures for notifying a bank of its capital category. Under the regulation, a bank will be deemed to be aware of its capital category when it files its Call Report. No additional notice is necessary for this purpose.

When the OCC determines, through an examination or otherwise, that a bank's PCA capital category has changed, the appropriate OCC supervisory office will notify the bank of that determination in writing.

Finally, if a "material event" occurs between Call Report periods that would cause the bank to be placed in a lower capital category, the bank is required to notify the OCC that its capital category may have changed. Examples of a material event include, but are not limited to, a large operating loss or provision to the allowance for loan and lease losses. The bank must inform the appropriate OCC supervisory office in writing of the details of the change within 15 days of the material event. The supervisory office will review the bank's submission and determine whether the bank has moved into a new PCA capital category. The supervisory office will notify the bank if its capital category has changed as a result of the material event.

If a bank's capital level improves between Call Report periods, the bank may request that the OCC redetermine its PCA capital category.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

Movement upward is not automatic and occurs only if agreed to by the OCC supervisory office.

## C. Monitoring Capital Levels

A bank must calculate, according to 12 CFR Part 3 definitions, its total capital to risk-weighted assets ratio, its tier 1 capital to risk-weighted assets ratio, and its total assets leverage ratio to determine its PCA category. To be "well capitalized" each of a bank's capital ratios must meet or exceed the levels set in Part 6. Banks with any ratios below the minimum capital requirements should also monitor their tangible equity ratio to determine if they are critically undercapitalized.

Banks are responsible for monitoring their capital levels to remain aware of their PCA capital category. Management of banks that operate with capital levels at or near the regulatory minimums must be attentive to the impact of the banks' operations on capital ratios to avoid violating the provisions of PCA.

**Certain PCA restrictions apply automatically when a bank is notified, or is deemed to have notice, of its capital category, without any action or notice by the OCC.** For example, banks that become undercapitalized must submit a capital restoration plan within 45 days of being notified or becoming aware that they are undercapitalized. A bank must file a capital restoration plan within 45 days of filing a Call Report that reports the institution to be Undercapitalized. In that case the OCC would provide no prior notification of the requirements and restrictions of PCA. An undercapitalized bank that fails to submit a capital restoration plan on time is subject to the provisions applicable to significantly undercapitalized banks.

Moreover, banks that incorrectly report their financial condition in their Call Report by deferring losses or by failing to make sufficient provisions to their loan and lease loss reserves violate the provisions of 12 USC 161. Such violations may subject the bank or its institution affiliated parties to enforcement actions, including civil money penalties.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

## D. Disclosure of Capital Category

Banks are prohibited, under the PCA regulation, from disclosing their PCA capital categories in advertisements or promotional materials, unless such disclosure is required by law or authorized by the OCC.

However, the OCC recognizes that disclosure of a bank's capital category may be appropriate in certain circumstances and under certain conditions. For example, disclosure of the PCA capital category, and related material regulatory restrictions, may be required under federal securities and banking laws in a bank's securities filings or in annual or quarterly reports.

Moreover, the restriction on disclosure in advertising is not intended to prohibit a bank from disclosing its PCA capital category in response to inquiries from investors, customers, or other third parties as long as appropriate caveats regarding the PCA capital category are given. Any bank that discloses its PCA capital category to the public (e.g., in a securities filing, in an annual report, or in response to an inquiry) should also disclose that the bank's capital category is determined solely for the purposes of applying PCA and that the capital category may not constitute an accurate representation of the bank's overall financial condition or prospects.

If a bank discloses its PCA capital category, and the capital category subsequently changes, the bank may have an obligation to disclose the change. In addition, a bank (or its holding company) that believes materially false or misleading information relating to the bank's PCA capital category exists in the marketplace should also consider whether or not it has an obligation to correct the information under applicable federal securities and banking law.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

## E. Other FDICIA Capital Category Designations

Other provisions of FDICIA, including restrictions on brokered deposits (12 USC 1831f-1 and 12 CFR 337.6), insurance limits on pass-through deposits (12 USC 1813, 1817, 1821 and 12 CFR 330), limits on exposure to interbank liabilities (12 USC 371b-2 and 12 CFR Part 206), and risk-based deposit assessment (12 USC 1817(b)(1)(C) and 12 CFR Part 327), use capital category designations similar to PCA. However, the definitions of the capital categories are, in some cases, different from the definitions in PCA. Banks and appropriate OCC supervisory offices should refer to the relevant statute and regulation to determine the appropriate capital category for each FDICIA restriction.

## II. PCA RESTRICTIONS

Banks in each capital category are subject to certain statutorily prescribed restrictions. The restrictions become increasingly severe as the bank moves downward through each successive capital category. Some of the restrictions are mandatory and apply, without any action by the OCC, when a bank is notified of its capital category. Others may be imposed by the OCC by issuance of a prompt corrective action directive.

### A. PCA Restrictions for All Banks

All banks, regardless of their capital level, are prohibited from making any "capital distribution" to shareholders or paying any "management fee" to any person with control over the bank, if after making the distribution or paying the fee, the bank would be undercapitalized.

This prohibition means that no undercapitalized, significantly undercapitalized or critically undercapitalized bank may make any capital distribution to shareholders or pay any management fee to a controlling person. Banks that operate with capital levels near the regulatory minimums will need to ensure that dividends or payments do not cause the bank to violate these restrictions.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

1. Capital Distributions

Capital distributions (defined broadly to include, among other things, dividends, redemptions and other repurchases of stock) are prohibited if the bank would be undercapitalized after the distribution. A limited exception is provided for stock redemptions that do not result in any decrease in the bank's capital and would improve the bank's financial condition, provided that the OCC gives its prior written approval (after consultation with the FDIC).

2. Management Fees to Controlling Owner

Management fees may not be paid to a person or company that controls a bank (or to any company controlled by that person) if the bank would be undercapitalized after payment of the fee. Management fees are defined as any payment to an individual or company for the provision of management services or advice to the bank, or related overhead expenses, including payments related to supervisory, executive, managerial, or policy making functions, other than compensation to an individual in the individual's capacity as an officer or employee of the bank. This definition does not include payments such as those for electronic data processing, trust activities, mortgage servicing, audit or accounting services, property management or similar service fees.

B. PCA Restrictions for Undercapitalized Banks

1. Mandatory Requirements

Undercapitalized banks are subject to a number of mandatory requirements when they are notified or deemed to have notice that they are undercapitalized. These requirements apply by operation of law, without any action by the OCC. Failure to comply with these requirements may subject the bank to the restrictions applicable to significantly undercapitalized banks.

a. Capital Restoration Plan Required

Any bank that fails to meet any minimum capital requirement is required to submit a capital restoration plan (CRP) within 45 days of being notified or deemed to have notice that it is undercapitalized. (See pages 15-19)



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

b. Restrictions on Asset Growth

An undercapitalized bank may not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding quarter unless:

- (i) the OCC has approved its CRP;
- (ii) the increase in total assets is consistent with the approved CRP; and
- (iii) the bank's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient to enable it to become adequately capitalized within a reasonable time.

c. Restrictions on Expansion of Activities

Each undercapitalized bank must be operating under an approved CRP and secure the prior written approval of the OCC or FDIC to acquire an interest in any company or insured depository institution, establish or acquire any additional branch office, or engage in any new line of business.

d. Close Monitoring

The OCC intends to monitor undercapitalized banks through quarterly reviews, unless the appropriate supervisory office determines that some other review schedule will provide sufficient close monitoring. The appropriate OCC supervisory office will designate an examiner to monitor the bank's financial condition each quarter using Call Reports and any other reports filed by the bank. This monitoring will include sufficient review to determine:

- (i) if the bank is in compliance with its CRP,
- (ii) if the bank is operating within any restrictions that have been placed on it, and

# BANKING ISSUANCE

Comptroller of the Currency  
Administrator of National Banks

Type: Banking Circular

Subject: Prompt Corrective Action

(iii) if the requirements placed on the bank are helping to resolve its problems at the least possible long-term cost to the FDIC.

The examiner will document the results of each quarter's review and discuss the need for any additional action with the supervisory office.

## 2. Discretionary Restrictions Applicable to Undercapitalized Banks

The OCC may impose any of the discretionary restrictions applicable to significantly undercapitalized banks (see below) by issuance of a PCA directive, if the OCC determines that such actions are necessary to help resolve the problems of the bank at the least possible long-term cost to the FDIC.

### D. PCA Restrictions for Significantly Undercapitalized Banks and Certain Undercapitalized Banks

#### 1. Mandatory Actions

Significantly undercapitalized banks are subject to each of the mandatory restrictions applicable to undercapitalized banks, including the requirement to submit an acceptable CRP. If the bank has already submitted an acceptable CRP, the OCC supervisory office should review the CRP before deciding whether or not to require a new or revised CRP.

In addition, significantly undercapitalized banks, and undercapitalized banks that have failed to submit or implement, in any material respect, an acceptable CRP, are required to obtain the prior written approval of the OCC before paying any bonus or increasing the compensation to any senior executive officer. If the bank has not submitted an acceptable CRP, the OCC may not approve such a request.

#### 2. Presumptive and Discretionary Actions

**The OCC must take at least one of the following supervisory actions (a) through (1) against each significantly undercapitalized bank, and against each undercapitalized bank that fails to submit or implement**



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

**an acceptable CRP.** While these actions are generally discretionary, PCA presumes that the OCC will take actions (a), (b), and (c) listed below in each case unless the OCC determines the actions would not further the purposes of prompt corrective action.

- a. Require recapitalization through:
  - (i) the sale of enough stock to make the bank adequately capitalized; or
  - (ii) acquisition of the bank by a holding company or the combination of the bank with another insured bank, if one or more grounds exist for appointment of a conservator or receiver (See 12 USC 191 and 203);
- b. Restrict affiliate transactions: restrict transactions between affiliates, including sister banks (banks that are 80 percent or more owned and controlled by the same bank holding company), notwithstanding 12 USC 371c(d);
- c. Restrict interest rates: restrict interest rates paid on deposits collected by the institution to the prevailing rates in the region where the institution is located;
- d. Require sale of voting shares: require that the shares sold under (a)(i) be voting shares;
- e. Further restrict asset growth: restrict the bank's asset growth or require reduction in total assets;
- f. Restrict activities: require that the bank or its subsidiaries alter, reduce or terminate any activity that the OCC determines poses excessive risk to the bank
- g. Require new election of board: require that the bank hold a new election of its board of directors;
- h. Require dismissal of directors and officers: require that the bank dismiss directors or senior executive officers, who held office for more than 180 days immediately before the institution became undercapitalized, if the OCC deems the dismissal to be appropriate (dismissal is not an 12 USC 1818 removal action);

# BANKING ISSUANCE

Comptroller of the Currency  
Administrator of National Banks

Type: Banking Circular

Subject: Prompt Corrective Action

- i. Require new senior executive officers: require that the bank hire qualified senior executive officers subject to OCC approval;
- j. Prohibit deposits from correspondent banks: require that the bank limit or not accept deposits from correspondent banks;
- k. Require divestiture of subsidiaries: require that the bank divest or liquidate any subsidiary that is in danger of becoming insolvent and poses a significant risk to the bank, or that is likely to cause significant dissipation of the bank's assets or earnings;
- l. Any other action: require any other action that the OCC determines will better resolve the problems of the bank at the least possible long-term cost to the deposit insurance fund.

Moreover, if the OCC determines that such action is necessary to resolve the problems of the bank at the least possible long-term cost to the deposit insurance fund, the OCC may issue a PCA directive that imposes any of the restrictions on activities that the FDIC imposes on critically undercapitalized banks (See page 14).

### 3. Federal Reserve Actions

In addition to the discretionary actions that may be imposed by the OCC, the Federal Reserve may impose the following restrictions against the holding company of significantly undercapitalized banks (and certain undercapitalized banks):

- a. Prohibit holding company dividends: Prohibit any bank holding company that controls the bank from making any dividend payment without the prior approval of the Federal Reserve Board;
- b. Require divestiture of holding company affiliate: Require any company that controls the bank to divest or liquidate any affiliate (other than an insured depository institution) if the Federal Reserve Board determines that the affiliate is in danger of becoming insolvent and poses



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

a significant risk to the institution or is likely to cause significant dissipation of the bank's assets or earnings;

- c. Require divestiture of the bank: Require any company that controls the bank to divest itself of the institution if the Federal Reserve Board determines that divestiture would improve the bank's financial condition and future prospects.

If the OCC determines that such actions would improve the bank's condition, the appropriate supervisory office should contact the Board of Governors of the Federal Reserve System.

#### 4. Required Determinations

Most of the discretionary actions may be taken on the basis of the bank's capital category and therefore require no additional showing of cause. However, the OCC is required to make specific determinations before taking certain discretionary actions. For example, before ordering a bank to terminate activities, the OCC must determine that the activity poses an excessive risk to the bank. In addition, the OCC may only order the bank to divest a subsidiary if the OCC determines that the subsidiary is in danger of becoming insolvent and poses a significant risk to the bank, or that the subsidiary is likely to cause substantial dissipation of the bank's assets or earnings. These determinations by the OCC supervisory office must be made in writing.

#### D. PCA Restrictions for Critically Undercapitalized Banks

Critically undercapitalized banks are subject to all the mandatory and discretionary restrictions applicable to undercapitalized and significantly undercapitalized banks. In addition, critically undercapitalized banks are subject to several additional actions.

#### 1. Appointment of Receiver or Conservator

Critically undercapitalized banks are required to be placed in receivership or conservatorship within 90 days of becoming critically undercapitalized unless the OCC and FDIC agree that some other action would better achieve the purposes of prompt corrective action.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

Except in rare circumstances, the OCC will appoint the FDIC receiver within 90 days of a bank's becoming critically undercapitalized. However, in some cases, the OCC may consider appointing a conservator instead of a receiver. The FDIC must agree in writing before a conservator, rather than a receiver, may be appointed.

If the supervisory office and the Washington Supervision Review Committee (WSRC) agree that the bank should not be placed into receivership or conservatorship, the OCC will notify the FDIC that an alternate action is being considered. If the FDIC concurs in writing with the OCC's determination that the alternate action will better serve to resolve the problems of the bank at the least possible long-term loss to the deposit insurance fund, no receiver or conservator need be appointed within 90 days. The reasons for taking the alternate action must be documented by the OCC. The determination to defer placing a bank in receivership or conservatorship must be reviewed every 90 days.

The OCC is required to appoint a receiver within four calendar quarters (or 270 days after the bank is notified that it is critically undercapitalized). A limited exception to this requirement is possible when the OCC and the FDIC concur in writing that:

- a. the bank has positive net worth;
- b. the bank has been in substantial compliance with an approved CRP that has required consistent improvement in the bank's capital since the approval date;
- c. the bank is profitable or has an upward trend in earnings that the OCC projects as sustainable; and
- d. the bank is reducing its ratio of nonperforming loans to total loans.

In addition, the Comptroller of the Currency and the Chairperson of the FDIC must certify, in writing, that the bank is viable and is not expected to fail.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

## 2. Restriction on Payment of Subordinated Debt

Critically undercapitalized banks are also prohibited from making any payments of principal or interest on the bank's subordinated debt (without the prior approval of the FDIC) beginning 60 days after becoming critically undercapitalized.

## 3. FDIC Restrictions on Activities

The FDIC may, by regulation or order, restrict the activities of a critically undercapitalized bank. The FDIC's regulations are found at 12 CFR 325.105(a)(4). Specifically, unless given prior written approval by the FDIC, critically undercapitalized banks are prohibited from the following:

- a. entering into any material transaction, other than in the usual course of business, that would normally require prior notice to the OCC;
- b. extending credit for any highly leveraged transaction;
- c. amending the bank's charter or bylaws, except to the extent necessary to carry out any other requirements of law, regulation, or order;
- d. making any material change in accounting methods;
- e. engaging in any "covered transaction," as that term is defined in 12 USC 371c(b)(7);
- f. paying excessive compensation or bonuses; or
- g. paying rates of interest on new or renewed liabilities at a rate that would increase the bank's weighted average cost of funds to a level significantly above the prevailing rates of interest on insured deposits in the bank's normal market areas.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

### III. CAPITAL RESTORATION PLAN

#### A. Schedule for Submitting CRP

A bank must submit a CRP to the appropriate OCC supervisory office within 45 days after the bank has notice, or is deemed to have notice (by filing its Call Report), that it is undercapitalized, significantly undercapitalized, or critically undercapitalized.

The bank may ask the supervisory office in writing for 15 additional days to submit its CRP. The OCC will grant such requests only under exigent conditions.

If a bank is operating under an approved capital restoration plan and its capital category changes, it must file a new or revised CRP only when required to do so in writing by the OCC.

#### B. Content of Capital Restoration Plan

To prepare an acceptable CRP, a bank's board of directors and management must analyze the current condition and future prospects of the bank to determine the most efficient and expedient way to return the bank to the adequately capitalized category. The bank's CRP should fully document the results of that analysis. Elements of this analysis should include: current and pro forma balance sheets, current and long-term budgets, a strategic plan for the bank, the market analysis used to derive the appropriate means to raise capital, and any other relevant information. The CRP should clearly detail the assumptions used in the analysis.

The CRP must address:

1. the steps the bank will take to become adequately capitalized;
2. the levels of capital to be attained during each quarter of each year of the plan;
3. the types and levels of activities in which the bank will engage;



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

4. how management will comply with the restrictions against asset growth (See 12 USC 1831o(e)(3)) and acquisitions, branching, and new lines of business (See 12 USC 1831o(e)(4)); and
  5. any other information the OCC may require.
- C. Guarantee of CRP by Controlling Company

The OCC may not approve any CRP unless each company that controls the bank submits a written guarantee of the plan. The guarantee should, at a minimum, include a commitment to take actions required by the capital plan, including, for example, assuring that competent management will be selected, restricting transactions between the bank and the company, and discontinuing certain risky activities within the bank or an affiliate. The guarantee should also include assurances that the bank or the holding company will fulfill any commitments to raise capital made in the plan.

The company's aggregate liability under the guarantee is limited to the lesser of:

1. Five percent of the bank's total assets at the time the bank became undercapitalized, or
2. the amount necessary to restore the capital of the bank to the applicable minimum capital levels as those levels were defined at the time the bank initially failed to comply with its CRP.

The OCC supervisory office may consult with the Federal Reserve analyst at the appropriate Federal Reserve bank to discuss provisions of the guarantee. The adequacy of such guarantees and assurances of performance will be determined on a case by case basis by the OCC supervisory office.

D. Review and Approval of CRP

The OCC will not accept a CRP unless the plan contains the information required by statute, is based on realistic assumptions, is likely to succeed in restoring the bank's capital, and will not increase the risk to the bank. In addition, the OCC will not accept a



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

CRP that is not guaranteed by the company or companies that control the bank.

E. Notification of Acceptability

The OCC will notify the bank in writing of the CRP's acceptability within 60 days of receipt or must notify the bank in writing of the delay and the reason for the delay. The OCC supervisory office must submit a copy of each approved CRP to the FDIC's regional office within 45 days of approval.

F. Failure to Submit or Implement an Acceptable CRP

An undercapitalized bank that fails to submit or implement, in any material respect, an acceptable CRP is subject to the same restrictions that apply to significantly undercapitalized banks (See 12 CFR 6.6(a)(3)).

G. Capital Restoration Plans and Part 3

Capital plans required under Part 3 do not automatically constitute capital restoration plans required under PCA. The OCC has historically required banks that do not meet the regulatory capital minimums to submit capital plans (See 12 CFR 3.7). The OCC intends to retain its authority to require banks not in compliance with minimum capital ratios, or higher individual minimum capital ratios established pursuant to Subpart C of Part 3, to submit capital plans. A capital plan submitted under Part 3 is not acceptable as a CRP unless the statutory requirements in 12 USC 1831o(e) are addressed.

H. Grounds for Appointment of Receiver or Conservator

In reviewing the bank's CRP, the OCC will also assess the bank's long-term viability, including an assessment of whether grounds exist for the appointment of a receiver. Section 133 of FDICIA added a number of new grounds for appointment of a receiver for a national bank (12 USC 1821(c)(5) and 12 USC 191). The OCC may appoint the FDIC receiver if one or more of these grounds exists:

1. The bank's assets are less than its obligations to its creditors.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

2. There is substantial dissipation of assets or earnings due to any violation of any statute or regulation, or any unsafe or unsound practice.
3. The bank is in an unsafe or unsound condition to conduct business.
4. There is willful violation of a final order to cease and desist.
5. There is concealment of the bank's books, papers, records or assets, or refusal to submit the bank's books, papers, records or affairs for inspection to any examiner or to any lawful agent of the OCC.
6. The bank is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.
7. The bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the bank to become adequately capitalized without federal assistance.
8. There are violations of any law or regulation, or an unsafe or unsound practice or condition that is likely to cause insolvency or substantial dissipation of assets or earnings; weaken the bank's condition; or otherwise seriously prejudice the interests of the bank's depositors or the deposit insurance fund.
9. The bank, by resolution of its board of directors or its shareholders, consents to the appointment.
10. The bank has ceased being an insured institution.
11.
  - a. The bank is undercapitalized with no reasonable prospects of becoming adequately capitalized;
  - b. the bank has failed to become adequately capitalized when required to do so;
  - c. the bank has failed to submit an acceptable capital restoration plan within the time prescribed; or



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

d. the bank has materially failed to implement a capital restoration plan.

12. The bank is critically undercapitalized, or otherwise has substantially insufficient capital.

13. The bank's board of directors has fewer than five members.

A bank that meets one or more of these grounds may not be viable. Either Multinational Banking or Special Supervision in Washington is the supervisory office for nonviable banks.

#### IV. PROMPT CORRECTIVE ACTION DIRECTIVES

The discretionary actions applicable to undercapitalized, significantly undercapitalized, and critically undercapitalized banks may be imposed by issuing a PCA directive. The OCC's regulation at 12 CFR Part 6, Subpart B, establishes the procedures for issuing PCA directives.

##### A. Notice of Intent to Issue PCA Directive

Before issuing a PCA directive, the OCC provides the bank with notice and opportunity to comment on the proposed action (See 12 CFR 6.21). The examiner recommends issuance of a directive based on an examination or on other information. This recommendation must discuss the discretionary actions the OCC should consider taking, the presumptive actions the OCC will usually take, and the mandatory actions the OCC must take because of the bank's capital category. The supervisory office reviews this information and prepares a notice of intent to issue a PCA directive that includes:

1. notice of the OCC's intention to issue a directive;
2. a statement of the bank's capital measures and capital levels;
3. a description of the restrictions, prohibitions or affirmative actions that the OCC proposes to impose or require;



# BANKING ISSUANCE

Comptroller of the Currency  
Administrator of National Banks

Type: Banking Circular

Subject: Prompt Corrective Action

4. the proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions;
5. the statutory and regulatory basis for the OCC's authority to issue a directive;
6. a statement informing the bank of its right to respond to the letter within 14 days of its receipt of the letter; and
7. a statement informing the bank that failure to file a written response with the OCC within the specified time period constitutes a waiver of the opportunity to respond and consent to the issuance of the directive.

The supervisory office forwards the proposed notice to WSRC. An Enforcement and Compliance Division attorney and a Multinational Banking or Special Supervision analyst will be assigned to present the case to WSRC. WSRC reviews the case and makes a recommended decision to the Senior Deputy Comptroller for Bank Supervision Operations (SDC-BSOP). The SDC-BSOP must approve sending any notice of intent to issue a PCA directive.

The OCC may require the bank to respond in fewer than 14 days if the OCC determines that a shorter time period is appropriate in light of the financial condition of the bank or other relevant circumstances.

## B. Response to Directive

A bank's response to a letter of intent to issue a directive may include:

1. reasons why the issuance of a PCA directive proposed by the OCC is not an appropriate exercise of discretion under Section 38;
2. any recommended modification of the proposed directive; and
3. any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed directive.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

Failure to respond to the notice within the specified time period constitutes a waiver of the bank's opportunity to respond and consent to the issuance of the PCA directive.

C. Issuance of Directive

Immediately upon receiving the bank's response, the supervisory office forwards the following information to WSRC:

1. the notice of intent sent to the bank;
2. the bank's response to the notice;
3. reasons why the PCA directive should or should not be issued; and
4. the proposed PCA directive (if recommended).

WSRC recommends to the SDC-BSOP whether to issue a PCA directive based on review of this material. Following the SDC-BSOP's decision that a directive be issued, the Enforcement and Compliance Division sends the PCA directive to the bank. The cover letter to the bank may address issues raised by the bank's response to the OCC's letter of intent to issue a Directive.

D. Effective Date of Directive

A PCA directive is effective upon service to the bank, or at a later date if specified in the directive. It remains in effect until amended, suspended or terminated by the OCC.

E. PCA Directives that are Immediately Effective

WSRC may recommend to the SDC-BSOP that a PCA directive be issued and made effective immediately (without giving a notice and 14 day comment period) when the circumstances of a particular case warrant. Such directives may be issued when immediate action is necessary to serve the purpose of prompt corrective action. In these cases, the bank may file a written appeal within 14 days of receiving the PCA directive. The bank may ask in the appeal that the OCC modify or rescind the directive. The WSRC will consider such appeals within 60 days of receipt.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

F. Publication of PCA Directives

PCA directives are made public in the same manner as orders to cease and desist and formal agreements. OCC supervisory offices should forward disclosure copies of PCA directives to the Communications Division when they become effective.

G. Enforcement of Directive

A PCA directive is enforceable as a final order in federal district court in the same manner and to the same extent as a final cease and desist order. Also, civil money penalties may be assessed for violation of a PCA directive.

V. RECLASSIFICATION BASED ON SUPERVISORY CRITERIA

PCA capital categories are based on a bank's capital level. However, the OCC may, under certain circumstances, reclassify a well capitalized bank as adequately capitalized based on safety and soundness.

In addition, the OCC may require an adequately capitalized or undercapitalized bank to comply with the supervisory provisions applicable to banks in the next lower capital category if the bank is in an unsafe or unsound condition or engaged in an unsafe or unsound practice. (While not technically a "reclassification," this procedure is also referred to in this document and in the regulation as a "reclassification.")

A. Grounds for Reclassification

A bank may be reclassified if the OCC determines, after notice and opportunity for an informal agency hearing, that the bank is in an unsafe or unsound condition or is engaged in an unsafe or unsound practice.

A bank may be deemed to be engaged in an unsafe and unsound practice if the bank has received a less-than-satisfactory rating in its most recent report of examination for assets, management, earnings or liquidity and the bank has not corrected the deficiency.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

## B. Reclassification Procedures

An examiner may recommend that the OCC seek to reclassify the bank's PCA capital category because of an unsafe or unsound condition, or because the bank is engaging in an unsafe or unsound practice. The supervisory office forwards the recommendation to WSRC. An Enforcement and Compliance Division attorney and a Multinational Banking or Special Supervision analyst will be assigned to the case by WSRC. WSRC reviews the case and makes a recommended decision to the SDC-BSOP. The SDC-BSOP must approve sending any notice of intent to reclassify, although the notice of intent is sent by the supervisory office.

### 1. Notice of Intent to Reclassify

A bank must be provided with prior written notice of any intention by the OCC to reclassify. Notice of an intention to reclassify should include:

- a. an explanation of the reasons for the proposed reclassification;
- b. statement of the bank's capital measures and capital levels and the category to which the bank would be reclassified; and
- c. the date by which the bank may respond and request a hearing.

The bank's response and request for hearing must generally be made within 14 days of receiving notice of the intent to reclassify. The OCC may shorten the period for response if it determines that a shorter time period is appropriate in light of the financial condition of the bank or other relevant circumstances.

Failure to respond within the specified time period constitutes a waiver of the bank's opportunity to respond and constitutes consent to the reclassification.



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

## 2. Request for Informal Hearing

The bank has the right to an informal agency hearing on the proposed reclassification. The request must be made within 14 days of receiving notice of intent to reclassify. The informal hearing may include written evidence, oral arguments, and oral testimony if authorized by the presiding officer. In its request for a hearing, the bank should include any request to present oral testimony or witnesses at the hearing and should list the names of witnesses and the expected nature of their testimony.

## 3. Order for Informal Hearing

After receiving a request for an informal hearing the OCC must issue an order directing that the hearing commence within 30 days of the request. The OCC may allow additional time if requested by the bank.

## 4. Informal Hearing

The hearing is conducted by an agency official who must not have been involved in the initial recommendation to reclassify the bank.

## 5. Recommendation of Hearing Official

Within 20 days after the hearing, the agency official makes a reclassification recommendation to the SDC-BSOP. The OCC's final decision on whether to reclassify the bank must be issued by the SDC-BSOP, or his designee, within 60 calendar days after the hearing record is closed.

## C. Restrictions Applicable to Reclassified Banks

A well capitalized bank that is reclassified as adequately capitalized will not be subject to any additional restrictions under PCA. However, other provisions of FDICIA may apply to such reclassified banks.

The OCC may require an adequately capitalized or undercapitalized bank to comply with one or more of the provisions applicable to banks in the next lower capital category (except the requirement to file a CRP). However, the mandatory restrictions that apply without any action by the OCC to undercapitalized and significantly

# BANKING ISSUANCE

Comptroller of the Currency  
Administrator of National Banks

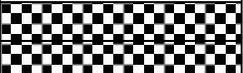
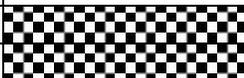
Type: Banking Circular

Subject: Prompt Corrective Action

undercapitalized banks do not automatically apply to reclassified banks. Such restrictions only apply if ordered by the OCC. For example, an adequately capitalized bank that is "reclassified" as undercapitalized may be prohibited from making capital distributions or subjected to asset growth restrictions, but only if the OCC expressly orders it. Other provisions of FDICIA may also apply to some reclassified banks.

## VI. INSURED FEDERAL BRANCHES

Section 38 applies to all "insured depository institutions," including insured federal branches of foreign banks. Insured federal branches, however, are not subject to minimum capital requirements applicable to insured national banks. Instead, the OCC requires insured federal branches to comply with the FDIC's regulations governing pledge of assets and the level of eligible assets to determine the insured federal branch's capital category. The FDIC's asset pledge and asset maintenance requirements are found in 12 CFR 346.19 and 20. The following table summarizes those ratios:

PCA CAPITAL CATEGORY FOR INSURED FEDERAL BRANCHES	Pledged Assets Ratio	Asset Maintenance Ratio	Under a Capital Order or Directive
Well Capitalized	≥ 5.0%	≥ 108%	NO
Adequately Capitalized	≥ 5.0%	≥ 106%	
Undercapitalized	< 5.0%	< 106%	
Significantly Undercapitalized		< 104%	
Critically Undercapitalized		< 102%	

It is the intent of the OCC to apply to insured federal branches as many of the prompt corrective measures and restrictions as practical and appropriate, given the unique characteristics of these institutions and the individual circumstances in any given case. Where appropriate, PCA directives taken against insured federal branches will be comparable to those taken against insured national banks.

NOTE: this issuance uses the term "bank" to mean both insured national banks and insured federal branches, although it is



# BANKING ISSUANCE

---

Comptroller of the Currency  
Administrator of National Banks

---

Type: Banking Circular

Subject: Prompt Corrective Action

---

recognized that some of the prescribed measures and applicable restrictions may not be practical or appropriate in dealing with insured federal branches.

REFERENCES: The prompt corrective action statute and the OCC's implementing regulation were distributed to all national banks and all OCC examining personnel with Banking Bulletin 92-52 dated October 1, 1992. Part 6 and the implementing regulations of the other federal banking agencies were published in the 57 Federal Register 44866 (September 29, 1992).

ORIGINATING OFFICE: Questions about implementation of prompt corrective action should be directed to the Special Supervision Division at 202-874-4450.

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