

**CHAPTER 10. MINIMUM CAPITAL REQUIREMENTS**

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**Authority**

The provisions of this Chapter 10 issued under sections 201 and 202 of the Department of Banking and Securities Code (71 P. S. §§ 733-201 and 733-202); section 103 of the Banking Code of 1965 (7 P. S. § 103); and section 103 of the Savings Association Code of 1967 (7 P. S. § 6020-3), unless otherwise noted.

**Source**

The provisions of this Chapter 10 adopted February 3, 1995, effective February 4, 1995, 25 Pa.B. 378, unless otherwise noted.

**§ 10.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Association*—As defined in section 102(3) of the Savings Association Code of 1967 (7 P. S. § 6020-2(3)).

*Classified assets*—Assets, or portions thereof, which have a well-defined weakness or weaknesses attributable to the unfavorable condition of the obligor, insufficiency of security or other factors noted in the report of examination prepared by the Department.

*Institution*—An incorporated institution as defined in section 102(q) of the Banking Code of 1965 (7 P. S. § 102(q)).

*Leverage capital*—The ratio of Tier 1 capital to total assets.

*Qualifying capital*—As defined in 12 CFR Part 325, Appendix A (relating to statement of policy on risk based capital).

*Risk-weighted assets*—As defined in 12 CFR Part 325, Appendix A.

*Tier 1 capital*—As defined in 12 CFR 325.2(t) (relating to definitions).

*Total assets*—As defined in 12 CFR 325.2(v). Assets do not include assets held in a fiduciary capacity.

**§ 10.2. Applicability.**

This chapter applies to State-chartered institutions and savings associations. If this chapter refers to Federal requirements, those requirements will be applicable under this chapter to associations whether or not the Federal requirements otherwise apply.

**§ 10.3. Minimum leverage capital requirement.**

(a) The minimum leverage capital for an institution or association shall be a ratio of Tier 1 capital to total assets of 4%.

(b) Notwithstanding the provisions of subsection (a), the Secretary may establish for an institution or association a minimum ratio of Tier 1 capital to total assets of more than 4% based upon inadequate or substandard performance in the following categories, as determined by examination by the Department, and following an opportunity for response by the institution or association:

- (1) The financial history and condition of the institution or association.
- (2) The earnings prospects of the institution or association.
- (3) The managerial resources of the institution or association.
- (4) The liquidity ratio standards applicable to the institution or association.
- (5) The interest rate risk exposure rating applicable to the institution or association.
- (6) The concentration of assets, including limitations on or amount of loans to one borrower or group of borrowers, either related or unrelated, of the institution or association.
- (7) The volume of classified assets.

(c) If the Secretary establishes, under subsection (b), a minimum capital ratio for an institution or association, the minimum capital ratio shall be imposed under section 501 of the Department of Banking and Securities Code (71 P. S. § 733-501), section 1404 of the Savings Association Code (7 P. S. § 6020-224), or by other means agreed to by the institution or association.

**Cross References**

This section cited in 10 Pa. Code § 10.5 (relating to unsafe operations).

**§ 10.4. Minimum risk-based capital requirement.**

An institution or association shall maintain a ratio of qualifying capital to risk-weighted assets consistent with Federal law regulating risk-based capital ratios as enumerated at 12 CFR Part 325, Appendix A (relating to statement of policy on risk-based capital).

**Cross References**

This section cited in 10 Pa. Code § 10.5 (relating to unsafe operations).

**§ 10.5. Unsafe operations.**

(a) An institution or association which has leverage capital or risk-based capital below the minimum required levels with regard to § 10.3 (relating to minimum leverage capital requirement) or with regard to § 10.4 (relating to minimum risk-based capital requirement), shall be deemed to be conducting its business in an unsafe manner for the purposes of section 504 of the Department of Banking and Securities Code (71 P. S. § 733-504).

(b) An institution or association which is in full compliance with a written agreement or an order issued by the Department under section 501 of the Department of Banking and Securities Code (71 P. S. § 733-501) or section 1404 of the Savings Association Code of 1967 (7 P. S. § 6020-224), or is in full compliance with a plan approved by the Department to increase its capital ratios and to take other actions as necessary for the institution or association so as not to be conducting its business in an unsafe manner, will not be deemed to be conducting its business in an unsafe manner based upon its capital ratios.

(c) Notwithstanding the provisions of subsections (a) and (b), the Department may take action otherwise authorized against an institution or association which is in an unsafe or unsound condition, is conducting its business in an unsafe or unsound manner, or is in violation of any agreement, any order of the Department, another banking agency or a court, its charter or any provision of applicable law, or otherwise meets the jurisdictional standards for applicable action by the Department.

**§ 10.6. Unsafe and unsound condition.**

(a) An institution or association which has a ratio of Tier 1 capital to total assets of less than 2% shall be deemed to be in an unsafe and unsound condition for the purposes of section 504 of the Department of Banking and Securities Code (71 P. S. § 733-504).

(b) An institution or association which is in full compliance with a written agreement or order issued by the Department under section 501 of the Department of Banking and Securities Code (71 P. S. § 733-501) or section 1404 of the Savings Association Code of 1967 (7 P. S. § 6020-224), to increase its capital ratios to levels the Department deems appropriate and to take other actions as may be necessary for the institution or association to be operated in a safe and sound manner, will not be deemed to be in an unsafe and unsound condition based upon its capital ratios.

(c) Notwithstanding the provisions of subsections (a) and (b), the Department is not precluded from taking action against an institution or association which is in an unsafe or unsound condition, is conducting its business in an unsafe or unsound manner, or is in violation of any agreement, any order of the Department, another banking agency or a court, its charter or any provision of applicable law, or otherwise meets the jurisdictional standards for applicable action by the Department.

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