

(iv) Restricting the growth of the bank's assets (section 38(e)(3)); and

(v) Requiring prior approval of certain expansion proposals (section 38(e)(4)).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in this subpart, that the bank is significantly undercapitalized, or critically undercapitalized or that the bank is subject to the provisions applicable to institutions that are significantly undercapitalized because it has failed to submit or implement, in any material respect, an acceptable capital restoration plan, the bank shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4)).

(4) *Additional provisions applicable to critically undercapitalized banks.* In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 6.3, that the bank is critically undercapitalized, the bank shall become subject to the provisions of section 38 of the FDI Act—

(i) Restricting the activities of the bank (section 38(h)(1)); and

(ii) Restricting payments on subordinated debt of the bank (section 38(h)(2)).

(b) *Discretionary supervisory actions.* In taking any action under section 38 that is within the OCC's discretion to take in connection with a bank that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized or significantly undercapitalized; an officer or director of such bank; or a company that controls such bank, the OCC shall follow the procedures for issuing directives under subpart B of this part and subpart N of part 19 of this chapter, unless otherwise provided in section 38 or this part.

Subpart B—Directives To Take Prompt Corrective Action

§ 6.20 Scope.

The rules and procedures set forth in this subpart apply to insured national banks, insured federal branches and senior executive officers and directors of banks that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) and subpart A of this part.

§ 6.21 Notice of intent to issue a directive.

(a) *Notice of intent to issue a directive—*
(1) *In general.* The OCC shall provide an undercapitalized, significantly undercapitalized, or critically undercapitalized bank prior written notice of the OCC's intention to issue a directive requiring such bank or company to take actions or to follow proscriptions described in section 38 that are within the OCC's discretion to require or impose under section 38 of the FDI Act, including section 38 (e)(5), (f)(2), (f)(3), or (f)(5). The bank shall have such time to respond to a proposed directive as provided under § 6.22.

(2) *Immediate issuance of final directive.* If the OCC finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the OCC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring a bank immediately to take actions or to follow proscriptions described in section 38 that are within the OCC's discretion to require or impose under section 38 of the FDI Act, including section 38 (e)(5), (f)(2), (f)(3), or (f)(5). A bank that is subject to such an immediately effective directive may submit a written appeal of the directive to the OCC. Such an appeal must be received by the OCC within 14 calendar days of the issuance of the directive, unless the OCC permits a longer period. The OCC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the OCC, in its sole discretion, stays the effectiveness of the directive.