

(2) *Tier 1 capital limitations.* (i) The maximum allowable amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, will be limited to the lesser of:

(A) The amount of deferred tax assets that are dependent upon future taxable income that is expected to be realized within one year of the calendar quarter-end date, based on projected future taxable income for that year; or

(B) Ten percent of the amount of Tier 1 capital that exists before the deduction of any disallowed purchased mortgage servicing rights, any disallowed purchased credit card relationships, and any disallowed deferred tax assets.

(ii) For purposes of this limitation, all existing temporary differences should be assumed to fully reverse at the calendar quarter-end date. The recorded amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, in excess of this limitation will be deducted from assets and from equity capital for purposes of determining Tier 1 capital under this part. The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences generally would not be deducted from assets and from equity capital. However, notwithstanding the above, the amount of carryback potential that may be considered in calculating the amount of deferred tax assets that a member of a consolidated group (for tax purposes) may include in Tier 1 capital may not exceed the amount which the member could reasonably expect to have refunded by its parent.

(3) *Projected future taxable income.* Projected future taxable income should not include net operating loss carryforwards to be used within one year of the most recent calendar quarter-end date or the amount of existing temporary differences expected to reverse within that year. Projected future taxable income should include the estimated effect of tax planning strategies that are expected to be implemented to realize tax carryforwards that will otherwise expire during that year. Future taxable income projections for the current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) may be used when applying the capital limit at an interim calendar quarter-end date rather than preparing a new projection each quarter.

(4) *Unrealized holding gains and losses on available-for-sale debt securities.* The deferred tax effects of

any unrealized holding gains and losses on available-for-sale debt securities may be excluded from the determination of the amount of deferred tax assets that are dependent upon future taxable income and the calculation of the maximum allowable amount of such assets. If these deferred tax effects are excluded, this treatment must be followed consistently over time.

(5) *Intangible assets acquired in nontaxable purchase business combinations.* A deferred tax liability that is specifically related to an intangible asset (other than purchased mortgage servicing rights and purchased credit card relationships) acquired in a nontaxable purchase business combination may be netted against this intangible asset. Only the net amount of the intangible asset must be deducted from Tier 1 capital. When a deferred tax liability is netted in this manner, the taxable temporary difference that gives rise to this deferred tax liability must be excluded from existing taxable temporary differences when determining the amount of deferred tax assets that are dependent upon future taxable income and calculating the maximum allowable amount of such assets.

4. Section I.A.1. of appendix A to part 325 is amended by revising the first paragraph following the definitions of Core capital elements to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

- * * * * *
- I. * * *
- A. * * *
- 1. * * *

At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. *Core (Tier 1) capital* is defined as the sum of core capital elements³ minus all intangible assets other than mortgage servicing rights and purchased credit card relationships⁴ and minus any disallowed deferred tax assets.

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5. Section I.B. of Appendix A to part 325 is amended by adding a new paragraph (5) immediately after paragraph (4) and preceding the final undesignated paragraph of Section I.B. to read as follows:

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- I. * * *

³ In addition to the core capital elements, Tier 1 may also include certain supplementary capital elements during the transition period subject to certain limitations set forth in section III of this statement of policy.

⁴ An exception is allowed for intangible assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

B. * * *

(5) *Deferred tax assets* in excess of the limit set forth in § 325.5(g). These disallowed deferred tax assets are deducted from the core capital (Tier 1) elements.

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Appendix A to Part 325 [Amended]

6. Table I in Appendix A to part 325 is amended by redesignating footnote 3 as footnote 4, by adding a new entry at the end under "Core Capital (Tier 1)" and by adding a new footnote 3 to read as follows:

TABLE I.—DEFINITION OF QUALIFYING CAPITAL

[Note: See footnotes at end of table]

Components	Minimum requirements and limitations after transition period
Core Capital (Tier 1) * * *	
* * * * *	
Less: Certain deferred tax assets. ³	
* * * * *	

³ Deferred tax assets are subject to the capital limitations set forth in § 325.5(g).

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By order of the Board of Directors.
Dated at Washington, D.C., this 31st day of January 1995.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Acting Executive Secretary.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Statement of Policy or Interpretation; Enforcement Policy for Art Materials

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; statement of enforcement policy.

SUMMARY: In 1988, Congress enacted the Labeling of Hazardous Art Materials Act which mandated a labeling standard and certain other requirements for art materials. Based on its experience enforcing these requirements, the Commission is issuing a statement of enforcement policy to more clearly apprise the public of its intended enforcement focus.