

ORIGINAL

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

**12 CFR Parts 500, 504, 510, 515, 529, 533, 543, 545
552, 556, 562, 563, 563d, 563g, 567, 571, 583 and 584**

[No. 95-160]

RIN 1550-AA85

Regulatory Review

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: Pursuant to section 303(a) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) and the Regulatory Reinvention Initiative of the Vice President's National Performance Review, the Office of Thrift Supervision (OTS) has reviewed chapter V of the Code of Federal Regulations (CFR), where ~~OTS regulations~~ are codified. OTS reviewed each regulation to determine whether it is necessary, imposes the least possible burden consistent with safety and soundness, and is written in a clear, straightforward manner.

As a result of this review, OTS has identified a number of regulations that can be eliminated as duplicative or unnecessary. The agency is today proposing to remove those sections from its regulations. OTS has also identified a number of ways in which its regulations could be streamlined or reorganized into a more user-friendly document. Before proposing such structural changes, however, the agency is today requesting comment on whether such changes would sufficiently improve the CFR to merit the effort to make the changes and the effort required from the industry to become familiar with the new structure.

DATES: Comments must be received on or before [insert date 60 days from date of publication in the Federal Register.]

ADDRESSES: Send comments to Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 95-160. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments will be available for inspection at 1700 G Street, NW., from 1:00 P.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Therese L. Monahan, Project Manager, Thrift Policy (202) 906-5740; or Valerie J. Lithotomos, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906-6439, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

I. Background

Today, the OTS is publishing the first in a series of proposals to streamline, update, and generally improve its regulations. The OTS conducted a comprehensive review of its regulations in the spring of 1995 pursuant to section 303 of CDRIA and the Administration's Reinvention Initiative.¹ In response to the Administration's mandate to create grass roots partnerships and the desire to negotiate, not dictate rules, OTS sought specific industry comments on regulatory burden through town meetings and industry roundtable meetings held by the Acting Director and Regional Directors. In addition, OTS obtained further industry input from America's Community Bankers (ACB).² The ACB surveyed some of its members and offered a summary of survey findings to the OTS. ACB's survey collected industry feedback on OTS's regulatory structure and various communication vehicles used to disseminate

¹ See the Department of Treasury's Summary Report on the President's Regulatory Reform Initiatives.

² America's Community Bankers is a trade association representing 2,000 savings associations and community financial institutions and related business firms.

OTS interpretations and guidance. ACB reported a generally favorable response to OTS's overall plan to streamline and reorganize its regulations in order to reduce regulatory burden.

OTS Staff in both the Washington and Regional Offices reviewed the regulations and policy statements contained in chapter V of the CFR to "streamline and modify those regulations and policies in order to improve efficiency, reduce unnecessary costs, ... eliminate unwarranted constraints on credit availability [and] remove inconsistencies and outmoded and duplicative requirements."³

Preliminary staff recommendations for improvements to the regulations were based on the following criteria:

- o Is the regulation current?
- o Can the regulation be eliminated without endangering safety and soundness, diminishing consumer protection, or violating statutory requirements?
- o Is the regulation's subject matter more suited for a policy statement?
- o Is the regulation consistent with the regulations of the other federal banking agencies?
- o Can the regulation be understood without consulting an attorney?

³ § 303 of CDRIA, 12 U.S.C. 4803(a)(1)(A), (B).

- o Is the regulation written as a stand-alone regulation, without confusing cross-references?
- o Is the regulation required by statute?
- o Are the regulations/parts/sections ordered in a logical fashion?

This review identified a number of ways in which OTS's regulations could be improved. The agency is undertaking a five-step process to improve its regulations. Today's proposal reflects the first two steps of that process.

First, the agency seeks public comment on a number of potential ways OTS could streamline and restructure its regulations to make them more user-friendly. These potential improvements, discussed in Section II of this preamble, have been suggested by OTS Washington and Regional staff. OTS is particularly interested in whether such reorganization and restructuring would make OTS's regulations easier for the public to use.

Second, the proposal seeks comment on the deletion of a number of specific parts and sections the agency has identified as outdated or unnecessary. These regulations are discussed more fully in Section III of this preamble. The agency also seeks comment on some technical modifications to its regulations, including changes made to update cross-references and definitions.

As a third step in this reinvention of regulations, the agency expects to issue over the next year a series of more substantive proposals to make more significant changes in a number of key areas of its regulations, including regulations governing lending, subsidiaries, charter and by-laws, insurance, preemption, and adjustable-rate mortgages. Comments received on the organizational changes proposed today will also be considered in each of those more substantive reviews.

The fourth step in this reinvention is OTS's participation in the interagency review of its regulations, along with those of the other federal banking agencies, with a view to implementing § 303(a)(2) of CDRIA by making regulations and guidance implementing common statutory provisions and supervisory policies more uniform. This review is taking place under the auspices of the Federal Financial Institutions Examination Council.

Finally, the agency has identified some regulations that would require statutory changes before the regulation could be removed or updated. These include removing the liquidity regulation at part 566, which is required by section 6 of the HOLA, removing the requirement that Federal savings associations maintain membership in a Federal Home Loan Bank, which is required by section 5(f) of the HOLA, and providing additional lending flexibility under the Qualified Thrift Lender test, which is required by section 10(m) of the HOLA. The agency has submitted potential legislative changes

on these and other burdensome statutory provisions to the Congress.

II. Request for Comment on Possible Reorganization of OTS Regulations

OTS's current regulatory structure has evolved over the years in response to sweeping statutory changes and changes in policy direction based on the difference in the general condition and make up of the thrift industry. When chapter V of the CFR is viewed as a whole, some subject areas are addressed in multiple areas of the regulations. For example, a savings association considering whether to create a service corporation or an operating subsidiary would currently, at a minimum, look at §§ 545.74, 545.81, 563.37, 563.41, and 571.21. An institution considering a merger with another depository institution might have to review regulations in parts 546, 552, and 563.

Historically, OTS's predecessor agency, the Federal Home Loan Bank Board (FHLBB), looked at the source of statutory authority and charter type of affected institutions in organizing subchapters of chapter V of the CFR. Regulations in former subchapter B (12 CFR 520 et seq.) were promulgated pursuant to the FHLBB's authority under the Federal Home Loan Bank Act (FHLBA); regulations in subchapter C (12 CFR 540 et seq.) were promulgated under the FHLBB's chartering authority for federal savings associations under the Home Owner's Loan Act (HOLA); and regulations in subchapter D

(12 CFR 560 et seq.) were promulgated under the FHLBB's authority as operating head of the Federal Savings and Loan Insurance Corporation (FSLIC) under title IV of the National Housing Act (NHA) for all FSLIC-insured institutions.

The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) created the OTS in 1989 and substantially overhauled the statutes governing the regulation of savings associations. Title IV of the NHA was repealed and some authorities under which the FHLBB had issued regulations pursuant to the FHLBA and title IV of the NHA were transferred to the HOLA, which itself was revised. The HOLA now serves as the primary statutory authority for OTS regulation of all savings associations, regardless of charter.

In October, 1989, OTS, the Federal Deposit Insurance Corporation (FDIC), and the Federal Housing Finance Board divided up the regulations of the former FHLBB and FSLIC among themselves in accordance with their new statutory responsibilities. In November, 1989, OTS published a recodification of its regulations. This recodification reflected some reorganization of the regulations into a more user-friendly format, but because of time constraints did not include a total structural overhaul.

From January, 1992 until January, 1993, OTS reviewed and revised its regulations with a view to removing outdated and unnecessary regulations. It held public hearings in February, 1992 and requested industry comments on regulations that could be

removed or modified. It published a notice of proposed rulemaking in September, 1992 and adopted a final regulation in January, 1993 that removed a number of obsolete or redundant regulations. The agency did not propose as part of that process to restructure the regulations, remove regulations that duplicated statutory authority, or revise regulations setting forth certain implied powers. At that time, the agency believed that such changes could result in more confusion than benefit for those subject to OTS regulations.⁴

If the OTS were drafting its regulations on a totally clean slate, the regulations would not be organized as they are now. However, the cost of changing an existing and familiar structure could exceed the benefit derived from creating a more logical organizational structure. As part of the substantive review of major areas of OTS regulations such as lending, subsidiaries, and corporate governance, OTS is considering, and seeks public input on, how much restructuring related regulations would help CFR users. Some specific types of reorganization that would cut across subject areas are set forth below.

⁴ See 57 FR 40350 (September 3, 1992).

A. Should OTS consolidate common definitions of general applicability now in parts 541, 561, 563, and 583 in a new part 501?

1. Background

Currently, several subchapters of OTS's regulations have definitional parts. In the 1989 recodification of OTS's regulations, the agency removed duplicative definitions from parts 541 (definitional part for subchapter C) and 561 (definitional part for subchapter D) and clarified that definitions in each of those parts applied to both subchapters unless a specific regulation provided otherwise. Subchapter F, the regulations for savings and loan holding companies, has its own definitional part, part 583, with some duplicative, some unique, and some slightly different definitions.

~~Other parts and sections, such as part 564 (Appraisals), part 567 (Capital), and § 563.51 (Qualified Thrift Lender), contain definitions that generally apply only to that part or section. Recent OTS regulations have included definitions for new terms in the revised section, in part because this is the common practice at the other banking agencies. Some of these section- or part-specific regulations have themselves been cross-referenced in other sections. For example, the agency's transactions-with-affiliates regulation, 12 CFR 563.41, defines "subsidiary" by referring to § 567.1(dd), the capital regulation, but defines "savings~~

association" by referring to § 583.21, the definitions used for savings and loan holding companies.

2. Possible Revision

The OTS is considering consolidating all definitions used or referenced in more than one part or section into a new part 501. Definitions used only in a particular part or section would remain with that unit. Placing all common definitions in a new part 501 would significantly simplify the structure of OTS's regulations. We expect that it may save time for users searching for a definition and trying to determine the regulations to which the definition applies. It may also minimize confusion resulting from duplicative or conflicting definitions of the same term and reduce the amount of cross-referencing needed. As with any structural change, users might experience initial confusion until they became familiar with the new structure. When OTS did a similar consolidation of definitions on a smaller scale in 1989, however, no major problems were reported.

B. Should OTS consolidate the remaining safety and soundness regulations in part 545 into part 563?

1. Background

In 1989, FIRREA amended both the HOLA and the Federal Deposit Insurance Act (FDIA) in a number of ways that subjected both federally and state chartered savings associations to similar requirements. Additional statutory changes in the Federal Deposit

Insurance Corporation Improvement Act of 1991 (FDICIA) have resulted in more similar authority and safety-and-soundness-based restrictions for state and federally chartered entities. Under § 28 of the FDIA, the type and amount of activities in which state-chartered savings associations may engage without specific FDIC approval are tied more closely to the types and levels of activities permitted for federal savings associations.

As a result of these statutory changes and a general effort by OTS to remove duplicative regulations and apply regulations consistently to institutions regardless of charter type, most new safety-and-soundness-based regulations have been placed in subchapter D, usually in part 563. Additionally, over the years a number of regulations found in parts 545 and 563 have been written to include cross-references to regulations found in the other part. For example, definitional parts 541 and 561 each already cross-reference their counterpart. The real estate regulation for federal savings associations at § 545.32 cross-references the agency's general real estate lending regulations at §§ 563.35(d), 563.100, and 563.101. Similarly, the regulation on high loan-to-value loans by all savings associations found at § 563.37 cross-references restrictions found in the federal savings association regulations at § 545.38.

2. Possible Revisions

The OTS seeks input from the industry and other users of its regulations on whether its regulations would be improved by consolidating all safety-and-soundness-based regulations into part 563. The purpose of this consolidation would be to simplify and streamline the structure of OTS regulations, not to impose additional restrictions on state-chartered institutions. If institutions find the current structure familiar and workable, such a consolidation could create an unnecessary burden. The agency is also concerned that such a consolidation could be perceived as an attempt to increase the regulatory burden on state-chartered associations, rather than an attempt to consolidate requirements applicable to savings associations regardless of their charters that are currently scattered in several subchapters of chapter V.

As part of today's proposal, the agency is proposing to eliminate a number of regulations applicable to federal savings associations that merely cross-reference or duplicate requirements found in part 563. If OTS decided to consolidate the regulations further, it would first review the targeted regulations in part 545 to determine which safety-and-soundness-based regulations or portions of those regulations originally applicable to federal savings associations were appropriate for all savings associations. Any remaining restrictions found to be unnecessary would be removed

from the regulations before the regulations were consolidated into part 563.

C. Should OTS's regulations comprehensively codify thrift powers or should OTS delete regulations that only repeat statutory authority or set forth an implied power?

1. Background

Chapter V of the CFR, where OTS's regulations are codified, is inconsistent. It repeats some, but not all, statutory powers and restrictions and some, but not all, implied powers and restrictions on those powers. This has led to confusion.

In discussing regulations with OTS field personnel, some institutions have indicated that they believe that chapter V of the CFR is a self-contained document. Others, while recognizing that Chapter V is not currently the sole repository of information on thrift powers, believe that it would be more useful if it codified all implied and statutory powers. Still others believe that Chapter V should be simplified by removing all regulations that merely repeat statutory authority.

a. Statutory powers.

Over the years, the OTS and its predecessor, the FHLBB, have generally omitted or removed regulations that do no more than repeat statutory language or cite statutory authority in the course of other regulatory burden reduction projects. The agency's view has been that removing duplicative language from the regulations

can minimize necessary updating when Congress amends a statute.

Currently, OTS has specific regulations and portions of regulations that repeat statutory language (e.g., §§ 545.44 (mortgage transactions with the Federal Home Loan Mortgage Corporation) and 584.3 (transactions with affiliates)). Other regulations repeat statutory authority in one paragraph and then set limitations on that authority in succeeding paragraphs (e.g., §§ 545.39 (loans guaranteed under the Foreign Assistance Act) and 545.46 (commercial loans)).

b. Implied powers.

Some OTS regulations set forth an implied power of savings associations (a power that is incidental to the exercise of powers expressly set forth in statutes or regulations), such as §§ 545.17 (funds transfer services) and 556.12 (deposit assurance of direct deposit of Social Security payments). Other implied powers of savings associations, and interpretations of the scope of express statutory powers, have not been codified as regulations. Savings associations must look to legal opinions or regulatory handbooks for information on these powers. This reflects the factually specific manner in which issues on implied powers are usually first presented to the agency. OTS's regulations have never completely reflected all of savings associations' implied powers or restrictions on these powers.

2. Proposed revisions

OTS is considering which of two diametrically opposed approaches might result in a more useful Chapter V.

The first alternative would be to include all statutory and implied powers of thrifts in OTS regulations. This would create a comprehensive, but significantly longer, regulatory document. A truly self-contained document that includes a complete recitation of both statutory and implied powers might be a valuable resource, but could become quickly outdated as statutes are amended. Given the evolving nature of the market for financial services, a comprehensive listing of implied powers in the regulations would definitely require frequent updating.

The second alternative would be to eliminate all regulations that merely repeat statutory powers or that list implied powers. Handbooks or legal opinions would provide a more complete discussion. This would decrease total CFR pages and streamline the regulations. A variation of this alternative might be to increase specific citations to statutory authority in the regulations but remove repetitions of statutory language. A regulation could set forth the existence of implied powers and the standards used to determine those powers.

Pending public comment on these alternatives, today's proposal takes a middle position. It suggests deletion of several regulations that merely refer to statutory authority without any

additional regulatory interpretation. Today's proposal would not, however, remove those regulations that contain paragraphs setting forth both statutory authority and regulatory restrictions on that authority because the OTS seeks public input on whether this format is more helpful than burdensome. The proposal also neither removes the regulations listing certain implied powers of savings associations nor adds regulations setting forth other implied powers.

D. Should policy statements in parts 556 and 571 be deleted and recast either as regulations or placed as guidance placed in the appropriate regulatory handbook?

1. Background

Parts 556 and 571 of the CFR contain policy statements adopted by OTS or its predecessor agency, the FHLBB, after notice and comment rulemaking. The original concept behind codifying policy statements in the CFR was to make these agency interpretations and guidance readily available to savings associations. Since 1989, however, OTS has been gradually eliminating policy statements from these parts and incorporating their substance either into regulations after notice and comment rulemaking or as guidance in regulatory handbooks. These handbooks are provided to all savings associations and are available to others by subscription. The handbooks compile information from various sources on current

agency interpretations and guidance and contain more detail than the CFR.

2. Possible revisions

One alternative is to review each of the policy statements currently appearing in the CFR and determine, after notice and comment, whether it should be adopted as a regulation. Those not adopted as regulations would be placed as guidance in the appropriate regulatory handbooks. This would streamline the CFR and aid in providing a more concise and less confusing organizational structure.

Another alternative would be to continue to include some policy statements in Chapter V of the CFR where the agency believed that this would be the best vehicle for acquainting savings associations and other CFR users of the agency's most significant interpretations. The agency seeks comments on what criteria would be most useful in choosing which policy statements to codify, if this approach were chosen.

E. What is the best method of communicating different types of information, guidance, policies, restrictions, and requirements?

1. Background

Savings associations that look only at the CFR for information on OTS interpretive rules, policies, procedures, and guidance have barely scratched the surface of available materials. New issues arise and are addressed in fact-specific situations. Some are first presented by a request for a legal opinion, others through an on-site examination, others in discussions with an interagency task force. OTS also communicates policy positions via Regulatory Handbooks, Transmittals, Thrift and Regulatory Bulletins, legal opinions, Letters to Chief Executive Officers (CEO Letters), preambles to regulations, instructions to the Thrift Financial Report, press releases, and speeches.

There are vast differences in the types and time sensitivity of information communicated. It is not likely that the agency could ever adopt just one form of communication. However, the agency is striving to keep communications as clear, simple, and timely as possible.

Because not all methods of communication reach all of OTS's audiences equally, confusion has arisen in some rapidly developing areas. For example, OTS sent CEO Letters to savings associations notifying them of delays in implementation of the interest-rate-

risk component of the capital regulation while the agency developed an appeals process. Law firms who needed that information in preparing disclosure statements discussing capital requirements for those savings associations did not receive this information directly. Some discussions on the scope of regulations appear only in the preamble accompanying those regulations when they are published in the Federal Register, not in the CFR. The agency's communications on implied powers usually take the form of legal opinions, which are available through computerized legal databases that may not be regularly accessed by some savings associations.

The agency has also heard complaints from some users that some of the more informal means of communication, such as press releases, speeches, and CEO letters are not indexed or numbered and are thus more difficult to identify and obtain after issuance.

2. Request for Comment in Developing Possible Revisions

The agency is considering, and seeks public input on, establishing standards for which means of communication would be preferred for particular types of information. Among the criteria that could be used in determining the appropriate method would be: (1) the urgency of communicating the information; (2) the audience to be reached (both primary and secondary audiences); (3) whether industry or public input must be obtained through notice and comment rulemaking; and (4) whether the situation to be addressed is evolving, increasing the likelihood for changes in the agency's

position. The agency is also considering whether there are more ways in which the agency can receive and make information available electronically.

III. Proposed Deletions and Modifications to Regulations

Set forth below are regulations that OTS is proposing to delete because they are no longer useful. The OTS is also proposing to delete cross-references to sections that are being deleted.

A. Regulations to be Removed or Modified Because of Obsolescence or Redundancy

1. Recordkeeping

a. Statements of Condition (562.3)

The OTS is proposing to remove the regulation requiring savings associations to publish an annual statement of condition in a newspaper and to make such "counter statements" available at each home and branch office. These requirements have proven burdensome and unnecessary. The newspaper publication requirement was added to parallel a statutory requirement that national banks publish such statements of condition. That requirement for national banks was repealed in 1994. The Acting Director of OTS waived the requirement for savings associations to make such publications in December, 1994.

The agency has found that counter statements are not often used by savings association customers and duplicate information

already available. The other federal banking agencies do not impose a similar requirement on the depository institutions they regulate. A savings association customer seeking such information may ask the savings association for it, or may obtain the information from the OTS.

b. Filing and signature requirements (563g.5)

The OTS proposes to decrease the required number of copies of an offering circular filed in connection with securities offerings under part 563g to reduce the regulatory burden and associated costs. The number of required copies of offering circulars would be reduced from 25 to 9.

2. Policy Statements (556.4, 556.6, 556.8, 556.9, 556.11, 556.14, 556.15)

As discussed above in Section II, the OTS is seeking comment on whether it should remove all of its policy statements from the CFR, adopting some as regulations after notice and comment and transferring others to guidance. As part of its review, the OTS has identified a number of policy statements that are either outdated, merely reflect current business practice, or otherwise provide no meaningful guidance beyond that contained in the regulations themselves. The agency is proposing to delete those statements. Section 556.4 (Insurance) duplicates sections 571.4 and 562.25. Section 556.9 (Suretyship) duplicates section 545.102.

duplicates the contents of parts 590 and 591; section 556.11 (Prepayment penalty on mortgage loans) reiterates section 545.34(c); and section 556.14 (Chief executive officer of a branch office) duplicates information found in the model bylaws for Federal mutual associations. Section 556.6 (Savings accounts) is not totally consistent with Regulation DD,⁵ and is otherwise outdated. Section 556.15 (Drive-in and pedestrian facilities) contains some outdated provisions and otherwise merely reiterates common business practice.

3. Operational Regulations

The OTS proposes to remove a number of obsolete or duplicative regulations addressing a variety of operational issues for savings associations.

a. Electronic Fund Transfers (Part 533)

Part 533 provides that electronic fund transfers by savings associations are subject to Regulation E, 12 CFR part 205 (1995). OTS proposes to delete this part in its entirety because it is unnecessary and may cause confusion. By its terms, Regulation E applies to consumer electronic funds transfers at all financial institutions, including savings associations. Other regulations that apply to all financial or depository institutions are not separately cross-referenced in OTS's regulations.

⁵ 12 CFR Part 230 (1995).

b. Withdrawal requests (545.15)

The OTS is proposing to remove this section because it imposes unnecessary restrictions.

- c. Issuance of mutual capital certificates (545.18); Issuance of net worth certificates (545.19); Borrowing, issuing obligations and giving security (545.20); Employment contracts (545.122); Negotiable order of withdrawal accounts authorized (563.8); and Form, return and maturity of securities (563.72)

These sections are proposed for deletion because they either merely repeat that a savings association has the authority to do something that is authorized elsewhere or that the activity is subject to restrictions set forth in other regulations. Section 545.18 repeats authority found in section 5(b)(5) of the HOLA and refers to § 563.74, which governs all mutual capital certificates issued by savings associations. Section 545.19 repeats authority found in section 13 of the FDIA. Section 545.20 repeats authority found in section 5(b) of the HOLA. Section 545.122 duplicates section 563.39. Section 563.8 repeats authority found in 12 U.S.C. 1832. Section 563.72 merely reiterates that securities approved by OTS under other provisions are approved.

- d. Financial futures transactions (545.136) and Financial options transactions (545.137)

These sections are proposed for deletion because they merely reiterate that federal savings associations may engage in these types of transactions subject to the limitations set forth in 12 CFR Part 563, Subpart F. The agency is separately reviewing Subpart F for potential future updating and revision.

- e. Limitation on transaction of business (552.2-4)

This section is proposed for deletion because it merely reiterates that part 552 sets forth when companies may engage in business as a Federal stock association.

- f. Membership in a Federal Home Loan Bank (563.49)

This section expired on April 19, 1995, and, thus, should be removed. Federal savings associations are still required to maintain FHLB membership by section 5(f) of the HOLA and the FHLBA.

4. Regulations on Savings and Loan Holding Companies and Affiliates

- a. Loans and other transactions with affiliates and subsidiaries (563.41(d)(1))

The statutory provisions limiting thrifts' full use of the sister bank and thrift exemption provisions of sections 23A and 23B of the Federal Reserve Act expired on December 31, 1994. OTS therefore proposes to remove this parallel regulatory provision.

b. Transactions with affiliates (584.3)

This section is proposed for deletion because it merely sets forth a statutory restriction without any regulatory interpretation or guidance.

c. Penalty for loss of QTL status (584.6)

This section is proposed for deletion because it duplicates the penalties stated in section 563.52, which OTS proposes to amend to refer to the statutory penalties.

5. Organizational Revisions (Parts 500, 504, 515, and 529; Sections 510.1, 510.3, 543.12, 563d.200.30, and 584.11)

a. Simplification of Part 500

The OTS is proposing today to simplify part 500, which sets forth its statutory authority and organizational structure. The OTS proposes to delete sections 500.3, 500.4, and 500.5 and incorporate them into the general statement of authority at § 500.1. Because the current recitation of OTS's structure is out of date, the OTS proposes to delete sections 500.11 through 500.17 and to modify section 500.10 accordingly. The OTS will publish a notice setting forth its current organizational structure. As that structure is modified in the future, revised notices will be published.

b. National Security Information (Part 504)

The OTS proposes to delete part 504 in its entirety. Part 504 was issued by the FHLBB, predecessor to the OTS, pursuant to the

requirements of subpart E of Executive Order 12356, April 2, 1982 (Order). The Order applies to the Department of the Treasury, which has issued implementing regulations. These regulations apply to the OTS as a component part of the Treasury Department. Thus, the OTS proposes to delete this part because it is unnecessary.

c. Use of Penalty Mail in the Location and Recovery of Missing Children (Part 515)

The Department of Justice's Office of Juvenile Justice and Delinquency Prevention guidelines are promulgated pursuant to the authority of § 3220(a)(1) of title 39 of the United States Code. Pursuant to § 3220(a)(2), each "executive department and independent establishment of the Government of the United States shall prescribe regulations under which penalty mail sent by such department or establishment may be used in conformance with the guidelines prescribed under paragraph (1)." As a component of the Treasury Department, rather than itself an executive department or independent establishment, the OTS is subject to any regulations Treasury may adopt on this topic. Accordingly, OTS proposes to remove part 515.

d. Nondiscrimination in Federally Assisted Programs (Part 529)

The purpose of part 529 was to effectuate the provisions of title VI of the Civil Rights Act of 1964, which prohibits, among other things, discrimination in programs and activities receiving

federal assistance. The OTS is not authorized to extend any federal financial assistance to any program or activity.

This part was initially adopted by the FHLBB. The FHLBB established a Housing Opportunity Allowance Program in the early 1970's that provided federal assistance through the Federal Home Loan Banks to provide housing for low- and middle-income families. That program effectively ceased to exist in 1978. Thus, part 529 is unnecessary and the OTS proposes to delete it.

e. Miscellaneous Organizational Regulations (Sections 510.1, 510.3)

Section 510.1 sets forth agency policy on ex parte communications in contested applications. Section 510.1 is proposed for deletion because it is confusing, not consistent with the Administrative Procedure Act (APA), and does not reflect current agency policy. This proposed deletion would not affect ex parte communications in adjudicative proceedings under the APA, which are governed by part 509. OTS will review the procedures currently contained in § 510.1 and transfer any remaining relevant provisions to the Applications Processing Handbook. The OTS also proposes to delete section 510.3 because it is unnecessary. The section simply repeats the obvious: organizational regulations of the OTS are to be read as a whole with other regulations of the agency.

f. Bank Insurance Fund-insured Federal savings banks
(543.12)

This regulation merely repeats OTS's statutory authority under section 5(o) of the HOLA to issue a Federal charter to a former state-chartered savings bank that will maintain its deposit insurance by the Bank Insurance Fund. OTS proposes to delete the regulation.

g. Delegation of authority to the Chief Counsel (563d.200-30
and 563g.22)

In order to provide greater organizational flexibility, the OTS has been removing specific delegations of authority from its regulations. Delegations of authority are now contained in Director's Orders and do not need to be codified in regulation. Therefore, OTS proposes to remove these regulations and issue the appropriate delegations in Director's Orders.

h. Hearings (584.11)

This regulation applies to hearings on applications to the OTS regarding savings and loan holding companies. The OTS is preparing a Thrift Bulletin setting forth the agency's current procedures for hearings or other appeals on all types of applications. Accordingly, the OTS proposes to remove section 584.11.

B. Other Technical Amendments**1. Definition of Unimpaired Capital and Unimpaired Surplus**
(563.41 and 563.43)

In March, 1995, the OTS revised its definition of "unimpaired capital and unimpaired surplus" for purposes of its loans-to-one-borrower regulation⁶, 12 CFR 563.93, to follow the newly revised definition of "capital and surplus" promulgated by the Office of the Comptroller of the Currency (OCC)⁷ for its lending limits regulation. Recently, the Board of Governors of the Federal Reserve System has proposed to adopt the OCC definition of capital and surplus for its insider lending regulations at Regulation O.⁸ To reduce confusion, OTS is today proposing to adopt the same definition of "unimpaired capital and surplus" for transactions with affiliates and insider lending regulations as it adopted for the loans-to-one-borrower regulation. This will make these regulations consistent with the proposed change to the Federal Reserve Board definition.

⁶ 60 FR 15861 (March 28, 1995), amending 12 CFR 563.93(b)(11).

⁷ See 60 FR 8526 (February 15, 1995).

⁸ 60 FR 19869 (April 20, 1995).

2. Definition of Organization of Economic Cooperation and Development (OECD) -based country (567.1(p))

The other federal banking agencies have proposed to modify the definition of "OECD-based country" in their capital regulations and guidelines to reflect a new standard for when the sovereign debt of a country would qualify for the lowest risk-weight category under the risk-based capital regulations.⁹ This proposed change is identical to that proposed by the other agencies. It would add a requirement that in order to qualify for the lowest risk weight category, such sovereign debt must not have been restructured in the previous five years. For purposes of this rule, an event of restructuring of external sovereign debt generally would include renegotiations of terms arising from the country's inability or unwillingness to meet its external debt service obligations. Renegotiations of debt in the normal course of business generally do not indicate transfer risk of the kind that would preclude an OECD-based country from qualifying for lower risk-weight treatment. One example of such a routine renegotiation would be a renegotiation to allow the borrower to take advantage of a change in market conditions, such as a decline in interest rates.

Executive Order 12866

⁹ For a more complete discussion of the background for this proposed change, see the proposed rule published by the OCC at 54 FR 45243 (September 1, 1994).

The Director of the OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal does not impose any additional burdens or requirements upon small entities and lowers several paperwork and other burdens on all savings associations.

Unfunded Mandates Act of 1995

The OTS has determined that the requirements of this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects

12 CFR Part 500

Organization and functions (Government agencies).

12 CFR Part 504

Classified information.

12 CFR Part 510

Administrative practice and procedure.

12 CFR Part 515

Infants and children, Postal service.

12 CFR Part 529

Administrative practice and procedure, Civil rights.

12 CFR Part 533

Consumer protection, Electronic funds transfers, Savings associations.

12 CFR Part 543

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 556

Savings associations.

12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563d

Authority delegations (Government agencies), Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 567

Capital, Savings associations.

12 CFR Part 571

Accounting, Conflicts of interest, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 583

Holding companies, Savings associations.

12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER A -- ORGANIZATION AND PROCEDURES

PART 500 - ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

§§ 500.3 - 500.5 [Redesignated]

2. The section designations for sections 500.3, 500.4, and 500.5 are removed and the text of these sections is added to existing section 500.1, forming one section.

3. Section 500.10 is amended by adding fourth and fifth sentences to read as follows:

§ 500.10 The OTS or the Office.

...The Director directs and carries out the mission of the OTS with the assistance of offices reporting directly to him. One of these offices oversees the direct examination and supervision of savings associations by regulatory staff to ensure the safety and soundness of the industry.

§§ 500.11 - 500.17 [Removed]

4. Sections 500.11 through 500.17 are removed.

PART 504 - NATIONAL SECURITY INFORMATION [REMOVED]

5. Part 504 is removed.

PART 510 - MISCELLANEOUS ORGANIZATIONAL REGULATIONS

6. The authority citation for part 510 continues to read as follows:

Authority: 5 U.S.C. 301; 21 U.S.C. 1462a, 1463, 1464.

§ 510.3 [Removed]

7. Section 510.3 is removed.

**PART 515 - USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF
MISSING CHILDREN [REMOVED]**

8. Part 515 is removed.

SUBCHAPTER B - CONSUMER-RELATED REGULATIONS

**PART 529 - NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS
[REMOVED]**

9. Part 529 is removed.

PART 533 - ELECTRONIC FUND TRANSFERS [REMOVED]

10. Part 533 is removed.

**PART 543 - INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL
MUTUAL ASSOCIATIONS**

11. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 et seq.

§§ 543.12 - 543.13 [Removed]

12. Sections 543.12 and 543.13 are removed.

PART 545 - OPERATIONS

13. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

**§§ 545.15, 545.18 - 545.20, 545.44, 545.122, 545.136 - 545.137
[Removed]**

14. Sections 545.15, 545.18 through 545.20, 545.44, 545.122, 545.136 and 545.137 are removed.

**PART 552 - INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL
STOCK ASSOCIATIONS**

15. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.2-4 [Removed]

16. Section 552.2-4 is removed.

§ 552.6-2 [Amended]

17. Section 552.6-2 is amended by removing the phrase "§ 545.122 of this subchapter" in paragraph (b), and by adding in lieu thereof the phrase "§ 563.39 of this chapter".

PART 556 - STATEMENTS OF POLICY

18. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j-3; 15 U.S.C. 1693-1693r.

§§ 556.4, 556.6 - 556.9, 556.11, 556.14 - 556.15 [Removed]

19. Sections 556.4, 556.6 through 556.9, 556.11, and 556.14 through 556.15 are removed.

PART 562 - REGULATORY REPORTING STANDARDS

20. The authority citation for part 562 continues to read as follows:

Authority: 12 U.S.C. 1463.

§ 562.3 [Removed]

21. Section 562.3 is removed.

PART 563 - OPERATIONS

22. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

§§ 563.8, 563.49, 563.72 [Removed]

23. Sections 563.8, 563.49 and 563.72 are removed.

24. Section 563.41 is amended by adding paragraph (b)(11) to read as follows, by removing paragraph (d)(1), by redesignating paragraphs (d)(2) through (d)(7) as paragraphs (d)(1) through (d)(6), respectively, and by removing the phrase "After January 1, 1995," in the introductory text of newly designated paragraph (d)(1):

§ 563.41 Loans and other transactions with affiliates and subsidiaries.

* * * * *

(b) * * *

(11) The term capital stock and surplus of the savings association means "unimpaired capital and unimpaired surplus" as defined at § 563.93(b)(11) of this part.

* * * * *

§ 563.42 [Amended]

25. Section 563.42 is amended by removing the phrase "§ 563.41, any bank, any savings association in a structure qualifying under § 563.41(d)(1) of this part or, after January 1, 1995," in paragraph (d)(1), and by adding in lieu thereof the phrase "§ 563.41 of this part, any bank, or".

26. Section 563.43 is amended by adding paragraph (f) to read as follows:

§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

* * * * *

(f) References to the term "unimpaired capital and unimpaired surplus" shall be deemed to refer to "unimpaired capital and unimpaired surplus as defined at § 563.93(b)(11)" of this part.

§ 563.52 [Amended]

27. Section 563.52 is amended by removing the phrase "§ 584.6 of this chapter" in paragraph (b), and by adding in lieu thereof the phrase "12 U.S.C. 1467a(m)".

PART 563d - SECURITIES OF SAVINGS ASSOCIATIONS

28. The authority citation for part 563d is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, m, n, w, 78d-1.

§ 563d.200-30 [Removed]

29. Section 563d.200-30 is removed.

PART 563g - SECURITIES OFFERINGS

30. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

31. Section 563g.5 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 563g.5 Filing and signature requirements.

* * *

(b) Number of copies. (1) Unless otherwise required, any filing under this part shall include nine copies of the document to be filed with the OTS, as follows:

(i) Seven copies, which shall include one manually signed copy with exhibits, three conformed copies with exhibits, and three conformed copies without exhibits, to the Dissemination Branch, Records Management and Information Policy; and

(ii) Two copies, which shall include one manually signed copy with exhibits and one conformed copy, without exhibits, to the Regional Director.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, nine copies of the offering circular used shall be filed with the OTS, as follows: seven copies to the Dissemination Branch, Records Management and Information Policy, and two copies to the Regional Director.

* * * * *

§ 563g.22 [Removed]

32. Section 563g.22 is removed.

PART 567 - CAPITAL

33. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828
(note).

34. Section 567.1 is amended by revising the first two sentences of paragraph (p) to read as follows:

§ 567.1 Definitions.

* * * * *

(p) The term OECD-based country means a member of the grouping of countries that are full members of the Organization of Economic Cooperation and Development, plus countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any OECD country which has rescheduled its external sovereign debt in the previous five years. These countries are hereinafter referred to as OECD countries. * * *

* * * * *

PART 571 - STATEMENTS OF POLICY

35. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.24 [Amended]

36. Section 571.24 is amended by removing the phrase "parts 528 and 529" in paragraph (a), and by adding in lieu thereof the phrase "part 528".

PART 583 - DEFINITIONS

37. The authority citation for part 583 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 583.17 [Amended]

38. Section 583.17 is amended by removing the phrase "§ 584.6 of this subchapter", and by adding in lieu thereof the phrase "12 U.S.C. 1467a(m)".

PART 584 - REGULATED ACTIVITIES

39. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 584.2a [Amended]

40. Section 584.2a is amended by removing the phrase "§ 584.6 of this subchapter" in paragraph (a)(2), and by adding in lieu thereof the phrase "12 U.S.C. 1467a(m)".

§ 584.2-1 [Amended]


41. Section 584.2-1 is amended by removing the phrase "§ 584.3 of this part" where it appears in paragraphs (b)(2) and (b)(3), and by adding in lieu thereof the phrase "12 U.S.C. 1467a(m)".

§§ 584.3, 584.6, 584.11 [Removed]

42. Sections 584.3, 584.6 and 584.11 are removed.

DATED: August 21, 1995

By the Office of Thrift Supervision.



Jonathan L. Fiechter
Acting Director