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Department of the Treasury

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Final Rule making technical and conforming amendments to various regulations.

Attachment

— Ellen Seidman
Director
Office of Thrift Supervision

66260 **Federal Register** / Vol. 62, No. 243 / Thursday, December 18, 1997 / Rules and Regulations

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 544, 545, 552, 559, 560, 561, 563, 565, 567, 575

[No. 97–126]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. The OTS is amending its capital rules to remove transition periods that are outdated, making technical revisions to final rules issued during December, 1996 pursuant to the regulatory reinvention initiative, and making other miscellaneous technical changes to existing regulations.

EFFECTIVE DATE: December 18, 1998.

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SUPPLEMENTARY INFORMATION:

Capital

OTS is today adopting several technical amendments to its capital regulations to remove references to transition periods that have elapsed and to streamline its definitions relating to capital.

Regulatory Burden Reduction Regulations

OTS is also making a number of technical corrections to its charter and bylaw, conversion, and subordinate organization regulations [1] that were substantially revised during December, 1996, pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.[2]

In particular, § 552.10, regarding the mailing of annual reports to stockholders, is being amended. Section 552.10 currently requires Federal stock associations that are not wholly-owned

[1] Corporate Governance, 61 FR 64007 (December 3, 1996). Subsidiaries and Equity Investments, 61 FR 66561 (December 18, 1996).

[2] 12 U.S.C. 4803(a)(1).

to send out annual reports to their shareholders within 90 days of the end of the association's fiscal year.

OTS's regulation regarding Corporate Governance[3] extended the time frame. within which an association must hold its annual meeting from 120 days to 150 days after the close of its fiscal year. OTS inadvertently did not extend the time frame for mailing annual reports to stockholders.

Section 552.10 is, therefore, being amended to provide a 130-day mailing requirement for annual reports to enable federal savings associations that are subject to the Securities Exchange Act of 1934 to take advantage of the full time period permitted for delivery of an annual report under the SEC's Proxy Rules,[4] and to conform to the changes to the regulations under Corporate Governance. The extension to 130 days also ensures that the mailing requirement in section 552.10 is consistent with the OTS rule that a notice for an annual meeting be sent 20 to 50 days before the meeting.[5]

In addition, section 545.71, which restates federal savings associations' statutory authority to invest in liquid assets, is being removed. The substance of the provision was added to the lending and investment powers chart found at 12 CFR 560.30 as part of the final rule on Subsidiaries and Equity Investments.

Miscellaneous

Finally, OTS is making the following technical revisions:

—OTS's subordinated debt securities regulation is amended to remove references to the Resolution Trust Corporation.

—Erroneous cross-references are corrected throughout OTS's regulations.

—The definition of service corporation in § 561.45 is revised to correct a cross-reference to OTS's subordinate organizations regulations.

—Part 506 is amended to include language mandated by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and to update the display table of OMB control numbers.

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

The OTS has found good cause to dispense with both prior notice and comment on this final rule and a 30-day delay of its effective date mandated by the Administrative Procedure Act.[6] OTS believes that it is contrary to public interest to delay the effective date of the rule, as it eliminates provisions that have caused confusion. Because the amendments in the rule are not substantive, they will not detrimentally affect savings associations by becoming effective immediately.

In addition, this document is exempt from the requirement found in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994[7] that regulations must not take effect before the first day of the quarter following publication, as it imposes no new requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[8] it is certified that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

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

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

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

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 559

Savings associations, Subsidiaries.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 561

Savings associations.

12 CFR Part 563

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

12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

12 CFR Part 567

Capital, Savings associations.

12 CFR Part 575

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

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V, of the Code of Federal Regulations as set forth below:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended:

a. In paragraph (a) by adding a sentence at the end of the paragraph;

b. In paragraph (b) by adding two entries to the table in numerical order, and revising the entry for Part 575.

The additions and revisions read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) * * * Respondents/recordkeepers are not required to comply with any collection of information unless it displays a currently valid OMB control number.

(b) * * *

[3] 61 FR 64007 (December 3, 1996).

[4] See 17 CFR 240.14a–3(b), which requires that proxy statements sent to shareholders must be accompanied or preceded by the annual report to shareholders.

[5] 12 CFR 552.6(b).

[6] 5 U.S.C. 553.

[7] Pub. L. 103–325, 12 U.S.C. 4802.

[8] Pub. L. 96–354, 5 U.S.C. 601.

12 CFR part or section where identified and described	Current OMB control No.
* * *	* *
Part 516	1550–0005, 1550–0006, 1550–0016
* * *	* *
550.3	1550–0037
* * *	* *
Part 575	1550–0072
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PART 544—CHARTER AND BYLAWS

3. The authority for part 544 continues to read as follows:

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

§ 544.5 [Amended]

4. Section 544.5 is amended, in paragraph (a), by removing the word "shall" from the last sentence, and by adding in lieu thereof the word "may".

PART 545—OPERATIONS

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

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

§ 545.71 [Removed]

6. Section 545.71 is removed.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

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

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

§ 552.4 [Amended]

8. Section 552.4 is amended in paragraph (b)(4), Section 5 of the charter, by removing the word "section", and by adding in lieu thereof the word "Section", where it appears in:

a. The second sentence of the first paragraph;

b. The first sentence of the third paragraph;

c. The first sentence of paragraph (iii); and

d. The first sentence of paragraph A.

§ 552.6–1 [Amended]

9. Section 552.6–1 is amended by removing, in the last sentence of paragraph (c), the word "such", and by adding in lieu thereof the word "regular".

§ 552.10 [Amended]

10. Section 552.10 is amended by removing the word "ninety" in the first sentence, and by adding in lieu thereof the number "130".

PART 559—SUBORDINATE ORGANIZATIONS

11. The authority citation for part 559 continues to read as follows:

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

§ 559.3 [Amended]

12. Section 559.3(g)(2) is amended by removing the phrase "entities be aggregated", and by adding in lieu thereof the phrase "entities must be aggregated".

PART 560—LENDING AND INVESTMENT

13. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

14. Section 560.93 is amended by removing and reserving paragraph (b)(6), and revising paragraph (d)(3)(ii) to read as follows:

§ 560.93 Lending limitations.

* * * * *

(d) * * *

(3) * * *

(ii) The savings association is, and continues to be, in compliance with its capital requirements under part 567 of this chapter;

* * * * *

§ 560.100 [Amended]

15. Section 560.100 is amended by removing the phrase "12 CFR 567.1(l)", and by adding in lieu thereof the phrase "12 CFR 567.1".

PART 561—DEFINITIONS

16. The authority citation for part 561 continues to read as follows:

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

§ 561.45 [Amended]

17. Section 561.45 is amended by removing the phrase "§ 545.74 of this chapter", and by adding in lieu thereof the phrase "part 559 of this chapter".

PART 563—OPERATIONS

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

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806; 42 U.S.C. 4106.

§ 563.41 [Amended]

19. Section 563.41(b)(11) is amended by removing the phrase "§ 563.93(b)(11) of this part", and by adding in lieu thereof the phrase "§ 560.93(b)(11) of this chapter".

20. Section 563.81 is amended by revising paragraphs (A) and (B) of the certificate statement contained in paragraph (d)(1)(vi), and by removing the phrase "or RTC" where it appears in paragraph (d)(3), to read as follows:

§ 563.81 Issuance of subordinated debt securities and mandatorily redeemable preferred stock.

* * * * *

(d) * * *

(1) * * *

(vi) * * *

* * * (A) if the FDIC shall be appointed receiver for the issuer of this certificate (the "issuer") and in its capacity as such shall cause the issuer to merge with or into another financial institution, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another financial institution or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more other financial institutions, the FDIC shall have no obligation, either in its capacity as receiver or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligation represented by this certificate in whole or in part by any financial institution or institutions which results from any such merger or which has purchased or otherwise acquired from the FDIC as receiver for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with the FDIC, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by a financial institution with or into which the issuer may have been merged, as described in this paragraph (A), and/or by one or more financial institutions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by the FDIC as receiver for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in accordance with the procedures and priorities set forth in any applicable receivership regulations or in orders of the FDIC relating to such receivership.

(B) In the event that the obligation represented by this certificate is assumed in full by another financial institution, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with the FDIC assume all or portion of the liabilities of the issuer, and payment or provision for payment shall have been made in respect of all matured installments of interests upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by

acceleration, then any default caused by the appointment of a receiver for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded.

* * * * *

21. Section 563.134 is amended by:

a. Revising paragraph (a)(3); and

b. By removing, in paragraphs (a)(7), (a)(8), and (a)(9), the phrase "fully phased-in capital requirement", and by adding in lieu thereof the phrase "capital requirement'.

The revisions read as follows:

§ 563.134 Capital distributions.

(a) * * *

(3) *Capital requirement* means an association's capital requirement under part 567 of this chapter.

* * * * *

PART 565—PROMPT CORRECTIVE ACTION

22. The authority citation for part 565 continues to read as follows:

Authority: 12 U.S.C. 1831o.

§ 565.2 [Amended]

23. Section 565.2 is amended, in paragraph (f), by removing the phrase "§ 567.1(m)", and by adding in lieu thereof the phrase "§ 567.1".

PART 567—CAPITAL

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

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

25. Section 567.1 is amended by:

a. removing paragraph (ll) and the alphabetic paragraph designations for the remaining definitions, and placing the definitions in alphabetical order;

b. in the definition of *adjusted total assets*, removing paragraph (2)(ii), adding the word "and" at the end of paragraph (2)(i), redesignating paragraph (2)(iii) as paragraph (2)(ii) and revising it, and revising paragraphs (1), (3)(i), and (3)(iii);

c. in the definition of *equity investments*, redesignating paragraph (2) introductory text and paragraphs (2)(i) through (2)(vii) as paragraph (2)(i) introductory text and paragraphs (2)(i)(A) through (2)(i)(G), respectively, designating the concluding text of paragraph (2) as paragraph (2)(ii) and revising it, and adding a colon at the end of newly redesignated paragraph (2)(i) introductory text;

d. in the definition of *Qualifying multifamily mortgage loan*, revising paragraph (3) and paragraph (4) introductory text;

e. in the definition of *Qualifying residential construction loan*, revising paragraph (2); and

f. in the definition of *Qualifying supervisory goodwill*, revising paragraphs (2)(i), (2)(ii)(A), (2)(ii)(B), and (2)(ii)(C) introductory text.

The revisions read as follows:

§ 567.1 Definitions.

* * * * *

Adjusted total assets. * * *

* * * * *

(1) A savings association's total assets as that term is defined in this section;

* * * * *

(2) * * *

(ii) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in the definition of *qualifying supervisory goodwill* in this section;

(3) * * *

(i) Assets not included in the applicable capital standard except for those subject to paragraphs (3)(ii) and (3)(iii) of this definition; * * *

(iii) Investments in any subsidiary subject to consolidation under paragraph (2)(ii) of this definition; and

* * * * *

Equity investments. * * *

* * * * *

(2) * * *

(ii) The term *equity securities* does not include investments in a subsidiary as that term is defined in this section, equity investments that are permissible for national banks, ownership interests in pools of assets that are risk-weighted in accordance with § 567.6(a)(1)(vi) of this part, or the stock of Federal Home Loan Banks or Federal Reserve Banks.

* * * * *

Qualifying multifamily mortgage loan. * * *

* * * * *

(3) For purposes of paragraphs (1) (vi) and (vii) of this definition, the term *value of the property* means, at origination of a loan to purchase a multifamily property: the lower of the purchase price or the amount of the initial appraisal, or if appropriate, the initial evaluation. In cases not involving purchase of a multifamily loan, the *value of the property* is determined by the most current appraisal, or if appropriate, the most current evaluation.

(4) In cases where a borrower refinances a loan on an existing property, as an alternative to paragraphs (1)(iii), (vi), and (vii) of this definition:

* * * * *

Qualifying residential construction loan. * * *

* * * * *

(2) The documentation for each loan and home sale must be sufficient to demonstrate compliance with the criteria in paragraph (1) of this definition. The OTS retains the discretion to determine that any loans not meeting sound lending principles must be placed in a higher risk-weight category. The OTS also reserves the discretion to modify these criteria on a case-by-case basis provided that any such modifications are not inconsistent with the safety and soundness objectives of this definition.

Qualifying supervisory goodwill. * * *

* * * * *

(2) * * *

(i) Supervisory goodwill as defined in this section that is included in goodwill that is reflected in the current reporting period under generally accepted accounting principles ("GAAP"); or

(ii)(A) Supervisory goodwill as defined in this section that is included in goodwill that is reflected in the current reporting period under GAAP;

(B) Plus any amortization of the goodwill in paragraph (2)(ii)(A) of this definition that occurred subsequent to April 12, 1989 for GAAP reporting purposes;

(C) Minus the amortization of the goodwill in paragraph (2)(ii)(A) of this definition through the current reporting period that results when the goodwill is amortized subsequent to April 12, 1989 on a straightline basis over the shorter of—

* * * * *

§ 567.2 [Amended]

26. Section 567.2 is amended by removing and reserving paragraph (b).

27. Section 567.5 is amended by:

a. revising paragraphs (a)(1)(v), (a)(2)(i), (a)(2)(v), and (c);

b. in paragraph (a)(2)(vi), removing the word "subsidi.ary", and by adding in lieu thereof the word "subsidiary", and removing the phrase "§ 567.1(l)", and by adding in lieu thereof the phrase "§ 567.1"; and

c. in paragraph (b)(4), removing the last two sentences.

The revisions read as follows:

§ 567.5 Components of capital.

(a) * * * (1) * * *

(v) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in paragraph (1) of the definition for *qualifying supervisory goodwill* in § 567.1 of this part.

(2) *Deductions from core capital.* (i) Intangible assets, as defined in § 567.1 of this part, are deducted from assets and capital in computing core capital,

except as otherwise provided by § 567.12 of this part.

* * * * *

(v) If a savings association has any investments (both debt and equity) in one or more subsidiaries engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, core capital in accordance with this paragraph (a)(2)(v). The savings association must first deduct from assets and, thus, core capital the amount by which any investments in such subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next the savings association must deduct from assets and, thus, core capital the lesser of:

(A) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(B) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

* * * * *

(c) *Total capital.* (1) A savings association's total capital equals the sum of its core capital and supplementary capital (to the extent that such supplementary capital does not exceed 100% of its core capital).

(2) The following assets, in addition to assets required to be deducted elsewhere in calculating core capital, are deducted from assets for purposes of determining total capital:

(i) Reciprocal holdings of depository institution capital instruments;

(ii) All equity investments; and

(iii) That portion of land loans and nonresidential construction loans in excess of 80 percent loan-to-value ratio.

(3) For the purposes of any risk-based capital requirement under this part, a savings association's total capital equals the amount calculated pursuant to paragraphs (c)(1) and (c)(2) of this section, minus the amount of its IRR component as calculated pursuant to § 567.7 of this part.

28. Section 567.6 is amended by revising paragraph (a)(1)(iii)(D) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) * * *

(iii) * * *

(D) Qualifying residential construction loans as defined in § 567.1 of this part.

* * * * *

29. Section 567.9 is amended by:

a. in paragraph (c)(1), removing the phrase "§ 567.1(m)", and by adding in lieu thereof the phrase "§ 567.1";

b. revising paragraph (c)(3); and

c. in paragraph (c)(4), removing the phrase "§ 567.1(1)", and by adding in lieu thereof the phrase "§ 567.1".

The revisions read as follows:

§ 567.9 Tangible capital requirement.

* * * * *

(c) * * *

(3) If a savings association has any investments (both debt and equity) in one or more subsidiary(ies) engaged as of April 12, 1989 and continuing to be engaged in any activity that would not fall within the scope of activities in which includable subsidiaries may engage, it must deduct such investments from assets and, thus, tangible capital in accordance with this paragraph (c)(3). The savings association must first deduct from assets and, thus, capital the amount by which any investments in such a subsidiary(ies) exceed the amount of such investments held by the savings association as of April 12, 1989. Next, the savings association must deduct from assets and, thus, tangible capital the lesser of:

(i) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(ii) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

* * * * *

30. Section 567.12 is amended by revising paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 567.12 Qualifying intangible assets and mortgage servicing rights.

(a) *Scope.* This section prescribes the maximum amount of qualifying intangible assets, as defined in § 567.1 of this part, and mortgage servicing rights that savings associations may include in calculating tangible and core capital.

(b) * * * Intangible assets, as defined in § 567.1 of this part, other than purchased credit card relationships and core deposit intangibles grandfathered by paragraph (g)(3) of this section, must be deducted in computing tangible and core capital.

* * * * *

PART 575—MUTUAL HOLDING COMPANIES

31. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.9 [Amended]

32. Section 575.9 is amended, in the last sentence of paragraph (a)(4), by removing the phrase "remaining paragraphs of section 11", and by adding in lieu thereof the phrase "remaining paragraphs of section 12".

Dated: December 11, 1997.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 97–32829 Filed 12–17–97; 8:45 am]

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