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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, 571, 583 and 584

[No. 95-201]

RIN 1550-AA85

Regulatory Review

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS or Office) is today issuing a final rule eliminating duplicative, unduly burdensome, and unnecessary regulations. These amendments result from a review of OTS regulations 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.

**EFFECTIVE DATE:** [Insert date of publication in the Federal Register.]

**FOR FURTHER INFORMATION CONTACT:** Francis E. Raue, Policy Analyst, Supervision Policy, (202) 906-5750; 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.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

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. Staff in both the Washington and Regional Offices reviewed the regulations and policy statements contained in Chapter V of Title 12 of the Code of Federal Regulations (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."<sup>1</sup> The OTS sought industry input through town meetings and industry roundtable meetings held by the Acting Director and Regional Directors.

As a result of this effort, the OTS identified a number of ways in which its regulations could be improved and, on August 28, 1995, issued a notice of proposed rulemaking.<sup>2</sup> The preamble to the proposed rulemaking described a multi-step process that the agency intends to follow to implement the results of its regulatory review.

The first step in that process is to eliminate regulations that are clearly outdated, duplicative, or otherwise unnecessary. Today's final rule draws this first step to a close.

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The second step is to conduct focused, intensive reviews of key areas of OTS's regulations in an effort to find additional ways to streamline and reduce burden. This effort is already underway. Over the next several months, OTS expects to issue proposals that will reduce the burden imposed by its regulations governing lending, subsidiaries, corporate governance, and preemption.

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<sup>1</sup> § 303 of CDRIA, 12 U.S.C. 4803(a)(1)(A), (B).

<sup>2</sup> See 60 FR 44442 (August 28, 1995).

A third step in the review process is to determine whether the OTS's regulations should be reorganized to make them more user-friendly. In the August 28 preamble, the agency posed five questions regarding the overall structure and content of its regulations.<sup>3</sup> The OTS appreciates the comments received in response to these questions and will take them into consideration in future rulemakings that specifically address the organizational issues raised by the comments.

## II. Summary of Comments

The August 28, 1995, notice of proposed rulemaking targeted approximately eight percent of OTS's regulations for immediate

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<sup>3</sup> The specific questions in the preamble were:

1. Should OTS consolidate common definitions of general applicability now in parts 541, 561, 563, and 583 in a new part 501?
2. Should OTS consolidate the remaining safety and soundness regulations in part 545 into part 563?
3. Should OTS delete regulations that only repeat statutory authority or list an implied power?
4. Should policy statements in parts 556 and 571 be deleted and either recast as regulations or placed as guidance in the appropriate regulatory handbook?
5. What is the best method of communicating different types of information, guidance, policies, restrictions, and requirements?

repeal. The public comment period on the August 28 proposal closed on October 27, 1995. Two federal savings banks, one savings and loan holding company, and one national trade association submitted comments. In addition to its comment letter, the national trade association, America's Community Bankers (ACB), included the results of a survey which ACB sent to a number of OTS-supervised institutions.<sup>4</sup>

Generally all of the commenters supported the OTS initiative to streamline and eliminate unnecessary and burdensome rules in the proposal. They indicated that the deletions and modifications, with a few exceptions, would be helpful.

However, one commenter recommended that paragraphs (a) and (c) of section 545.15 not be deleted. Paragraph (a) provides generally that a Federal savings association shall require at least seven days advance notice of withdrawals from savings accounts that do not have fixed or minimum terms of at least seven days. The commenter asked that this paragraph be retained because it believes that the elimination of the seven-day withdrawal notice on savings

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<sup>4</sup> ACB is a trade association representing 2,000 savings associations and community financial institutions and related business firms. ACB's survey was sent to 94 OTS-supervised institutions; 43 institutions completed the survey. As reported by ACB, 86 percent of the respondents deem simplification of OTS rules to be worth the time and attention of the OTS and the industry.

accounts may conflict with section 5(b)(1)(C) of the Home Owners' Loan Act (HOLA).<sup>5</sup> We disagree. Section 5(b)(1)(C) of the HOLA provides that a "Federal savings association may require not less than 14 days notice . . . if the charter of the savings association or the regulations of the Director so provide." By its terms, this statutory provision applies only to withdrawal notice requirements that equal or exceed 14 days. The provision does not affect the ability of savings associations to impose notice requirements of shorter duration.

Moreover, the seven-day notice requirement that currently appears in OTS's regulations is unrelated to, and does not implement, section 5(b)(1)(C) of the HOLA. Section 545.15(a) was meant to mirror the requirements under the Federal Reserve Board's Regulation D for savings accounts.<sup>6</sup> Regulation D defines a savings deposit for reserve purposes as a deposit or account where a depository institution may require at least seven days advance notice of withdrawal.<sup>7</sup> The OTS is removing section 545.15(a) because it is duplicative of Regulation D. Savings associations will, of course, still be required to comply with Regulation D.

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<sup>5</sup> 12 U.S.C. 1464(b)(1)(C).

<sup>6</sup> See 12 CFR Part 204.

<sup>7</sup> 12 CFR 204.2(d)(1).

Because section 545.15(a) does not implement HOLA § 5(b)(1)(C), its removal will not adversely affect the ability of savings associations to impose notice requirements of 14 days or more. Associations that wish to do so may continue, as under current law, to include an authorizing provision in their charters and appropriate terms in their savings account contracts.

The same commenter requested that OTS retain paragraph (c) of section 545.15. That paragraph states that, when computing earnings due on deposit accounts at the end of a business period, a Federal savings association may elect to disregard amounts withdrawn from accounts in the last three days of any business period -- thereby effectively paying depositors slightly more interest than they might be entitled to under the terms of their deposit contracts. The commenter stated that the three-day grace period should be retained because it may have operational significance for small institutions without adequate technology to make computations on all of their accounts on one day at the end of the period. Removal of paragraph (c) will not adversely affect the flexibility of savings associations in computing interest on their deposit accounts. Institutions that wish to compute interest without reference to withdrawals made during the last three days of a business period may continue to do so. A regulation is not needed to authorize this practice.

The same commenter asked that section 556.15 be retained because it delineates the specific services that may and may not be performed at drive-in and pedestrian facilities. Under section 545.92(g), Federal savings associations are authorized to establish such facilities without prior OTS approval, subject to certain restrictions. The services provided at such facilities are limited to those "ordinary functions" provided at teller windows at branch offices. Section 556.15 defines what constitutes services "ordinarily" provided at teller windows. This definition is outdated and unduly restrictive. Elimination of section 556.15 will allow more flexibility in defining the scope of services that can be offered from drive-in and pedestrian facilities.

One commenter stated that it would prefer that section 545.31(a) (Election regarding classification of loans or investments) not be removed unless it would be included in its entirety in the regulatory handbook. The OTS notes that the proposal did not suggest the deletion of that section and that it is not anticipated that OTS's regulatory review of its lending regulations will propose deleting that section.

One commenter requested that the OTS review the documentation and recordkeeping requirements in sections 563.41 (Loans and other transactions with affiliates and subsidiaries) and 563.42

(Additional standards applicable to transactions with affiliates and subsidiaries) because they are too cumbersome. The commenter also requested that certain clarifications be made to these regulations. On the same subject, another commenter requested that the term "affiliated person" in the OTS's regulations be replaced by the term "insider" as defined in the regulations of the other Federal banking agencies. The OTS will address these comments in a subsequent notice of proposed rulemaking, during the phase of regulatory review dealing with OTS's regulations on subsidiaries and related entities.

Finally, one commenter suggested that the OTS consider reviewing its manufactured home financing regulation at section 545.45 so that savings associations may more fairly compete with other lenders in the market. The OTS will address this comment in the phase of regulatory review addressing the OTS's lending regulations.

### **III. Description of Final Rule**

The final rule issued today implements all of the proposed revisions and modifications contained in the August 28, 1995 proposal, except for the proposed revision to § 567.1's definition

of an OECD-based country, which will be addressed in a later final rule.

The following parts and sections are being removed:

<u>Part or Section number</u>	<u>Title</u>
Part 504	National security information
§ 510.1	Ex parte communications
§ 510.3	Coordination of subchapters
Part 515	Use of penalty mail in the location and recovery of missing children
Part 529	Nondiscrimination in federally assisted programs
Part 533	Electronic funds transfers
§ 543.12	Bank Insurance Fund-insured Federal savings banks
§ 543.13	Notice to FDIC
§ 545.15	Withdrawal requests
§ 545.18	Issuance of mutual capital certificates
§ 545.19	Issuance of net worth certificates

§ 545.20	Borrowing, issuing obligations and giving security
§ 545.44	Mortgage transactions with the Federal Home Loan Mortgage Corporation
§ 545.122	Employment contracts
§ 545.136	Financial futures transactions
§ 545.137	Financial options transactions
§ 552.2-4	Limitation on transaction of business
§ 556.4	Insurance
§ 556.6	Savings accounts
§ 556.8	Suretyship
§ 556.9	Imposition of late charges and due on sale clauses
§ 556.11	Prepayment penalty on mortgage loans
§ 556.14	Chief executive officer of a branch office
§ 556.15	Drive-in and pedestrian facilities
§ 562.3	Statements of Condition

§ 563.8	Negotiable order of withdrawal accounts authorized
§ 563.49	Membership in a Federal Home Loan Bank
§ 563.72	Form, return, and maturity of securities
§ 563d.200-30	Delegation of authority to the Chief Counsel
§ 563g.22	Delegation of authority to the Chief Counsel
§ 584.3	Transactions with affiliates
§ 584.6	Penalty for loss of QTL status
§ 584.11	Hearings

The OTS is also amending the following parts or sections to remove unnecessary burdens, as proposed.

<u>Part or Section number</u>	<u>Description of amendment</u>
Part 500	Simplification of organizational structure <sup>8</sup>

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<sup>8</sup> OTS's current organizational structure will be reflected in a notice to be published in the Federal Register at a later date.

§ 563.41(b)(11)	Addition of definition of "unimpaired capital and unimpaired surplus" for purposes of transactions with affiliates limitations
§ 563.41(d)(1)	Removal of expired limitation on sister bank provision for transactions with affiliates
§ 563.42(d)(1)	Removal of expired limitation on sister bank provision for transactions with affiliates
§ 563.43(f)	Addition of definition of "unimpaired capital and unimpaired surplus" for purposes of loans to insiders limitations
§ 563g.5	Reduction in the number of copies required for securities filings

The preamble to the August 28 proposal contains a full section-by-section discussion of the reasons why these sections are being amended or removed. Today's final rule also adopts the

proposed modifications to cross-references in other OTS regulations to conform to the changes being made today.

#### IV. Administrative Procedure Act

Section 553(d)<sup>9</sup> of the APA permits the waiver of its 30-day delayed effective date requirement for good cause, or where a rule relieves a restriction. Also, Section 302 of the CDRIA<sup>10</sup> requires that a federal banking agency regulation that imposes new requirements take effect on the first day of the quarter following publication of the final rule. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

The OTS believes that the final rule will relieve regulatory burden by eliminating obsolete, redundant and unnecessary requirements. The final rule eliminates inefficient and unduly costly regulatory requirements and better focuses thrifts on the substantive and relevant requirements. For these reasons, the OTS believes there is good cause pursuant to both the APA and CDRIA

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<sup>9</sup> 5 U.S.C. 553(d).

<sup>10</sup> 12 U.S.C. 4802.

section 302 provisions to make the final rule effective immediately upon publication in the Federal Register.

#### **V. Executive Order 12866**

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

#### **VI. Regulatory Flexibility Act Analysis**

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

#### **VII. Unfunded Mandates Reform Act of 1995**

The 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 more than \$100 million 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 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.

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**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 Parts 563g**

Reporting and recordkeeping requirements, Savings associations, Securities.

**12 CFR Part 563d**

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

**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.

**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 existing text of § 500.1 is designated as paragraph (a), the existing texts of §§ 500.3, 500.4, and 500.5 are redesignated as paragraphs (b), (c) and (d), respectively, of § 500.1, and §§ 500.3, 500.4, and 500.5 are removed.

3. Section 500.10 is amended by two new sentences at the end of the section 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; 12 U.S.C. 1462a, 1463, 1464.

**§ 510.1 [Removed]**

7. Section 510.1 is removed.

**§ 510.3 [Removed]**

8. Section 510.3 is removed.

**PART 515 - [REMOVED]**

9. Part 515 is removed.

PART 529 - [REMOVED]

10. Part 529 is removed.

PART 533 - [REMOVED]

11. Part 533 is removed.

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

12. 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]**

13. Sections 543.12 and 543.13 are removed.

**PART 545 - OPERATIONS**

14. 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]**

15. 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**

16. 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]**

17. Section 552.2-4 is removed.

**§ 552.6-2 [Amended]**

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

**PART 556 - STATEMENTS OF POLICY**

19. 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, 556.8 - 556.9, 556.11, 556.14 - 556.15 [Removed]**

20. Sections 556.4, 556.6, 556.8 through 556.9, 556.11, and 556.14 through 556.15 are removed.

**PART 562 - REGULATORY REPORTING STANDARDS**

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

**Authority:** 12 U.S.C. 1463.

~~§ 562.3 [Removed]~~

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22. Section 562.3 is removed.

**PART 563 - OPERATIONS**

23. 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]**

24. Sections 563.8, 563.49 and 563.72 are removed.

25. Section 563.41 is amended by removing the period at the end of paragraph (b)(10)(iv) and adding a semicolon in its place, by adding paragraph (b)(11), 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, any" in the introductory text of newly designated paragraph (d)(1) and adding the word "Any" in its place, to read as follows:

§ 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]

26. Section 563.42 is amended, in paragraph (d)(1), 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,", and by adding in lieu thereof the phrase "§ 563.41 of this part, any bank, or".

27. 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]**

28. 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**

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

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

**§ 563d.200-30 [Removed]**

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

~~PART 563g - SECURITIES OFFERINGS~~

31. 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.

32. 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.

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**§ 563g.22 [Removed]**

33. Section 563g.22 is removed.

**PART 571 - STATEMENTS OF POLICY**

34. 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]**

35. 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**

36. 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]**

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

**PART 584 - REGULATED ACTIVITIES**

38. 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]~~

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

§ 584.2-1 [Amended]

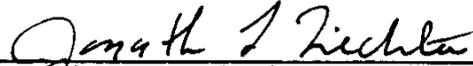
40. Section 584.2-1 is amended by removing the phrase "\$ 584.3 of this part" where it appears in paragraphs (b) (2) and (b) (3) introductory text, and by adding in lieu thereof the phrase "12 U.S.C. 1468".

§§ 584.3, 584.6, 584.11 [Removed]

41. Sections 584.3, 584.6 and 584.11 are removed.

DATED: December 8, 1995

By the Office of Thrift Supervision.

  
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Jonathan L. Fiechter  
Acting Director