comply with any requirement of subpart B or C of this part.

§ 23.5 Requirement for separate records.

If a national bank enters into both CEBA Leases and Section 24(Seventh) Leases, the bank's records must distinguish the CEBA Leases from the Section 24(Seventh) Leases.

§ 23.6 Application of lending limits; restrictions on transactions with affiliates.

A lease entered into pursuant to this part is subject to the lending limits prescribed by 12 U.S.C. 84 or, if the lessee is an affiliate of the bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1. The OCC may also determine that other limits or restrictions apply. The term affiliate means an affiliate as defined in 12 U.S.C. 371c or 371c–1, as applicable. For the purpose of measuring compliance with the lending limits prescribed by 12 U.S.C. 84, a national bank records the investment in a lease net of any nonrecourse debt the bank has incurred to finance the acquisition of the leased asset.

Subpart B—CEBA Leases

§ 23.10 General rule.

Pursuant to 12 U.S.C. 24(Tenth) a national bank may invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for the purpose of, or in connection with leasing that property, if the aggregate book value of the property does not exceed 10 percent of the bank's consolidated assets and the related lease is a conforming lease. For the purpose of measuring compliance with the 10 percent limit prescribed by this section, a national bank records the investment in a lease entered into pursuant to this subpart net of any nonrecourse debt the bank has incurred to finance the acquisition of the leased asset.

§ 23.11 Lease term.

A CEBA Lease must have an initial term of not less than 90 days. A national bank may acquire property subject to an existing lease with a remaining maturity of less than 90 days if, at its inception, the lease was a conforming lease.

§ 23.12 Transition rule.

(a) *General rule.* A CEBA Lease entered into prior to July 22, 1991, may continue to be administered in accordance with the lease terms in effect as of that date. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.6, however, a national bank that enters into a new extension of credit to a customer, including a lease, on or after July 22, 1991, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a CEBA Lease that was entered into prior to July 22, 1991, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the CEBA Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith, and demonstrates by appropriate documentation, that renewal of the lease is necessary to avoid financial loss and to recover its investment in, and its cost of financing, the leased property.

Subpart C—Section 24(Seventh) Leases

§ 23.20 General rule.

Pursuant to 12 U.S.C. 24(Seventh) a national bank may invest in tangible or intangible personal property, including vehicles, manufactured homes, machinery, equipment, furniture, patents, copyrights, and other intellectual property, for the purpose of, or in connection with leasing that property, if the related lease is a conforming lease representing a noncancelable obligation of the lessee (notwithstanding the possible early termination of that lease).

§ 23.21 Estimated residual value.

(a) *Recovery of investment and costs.* A national bank's estimate of the residual value of the property that the bank relies upon to satisfy the requirements of a full-payout lease, for purposes of this subpart:

(1) Must be reasonable in light of the nature of the leased property and all circumstances relevant to the transaction; and

(2) Any unguaranteed amount must not exceed 25 percent of the original cost of the property to the bank.

(b) *Estimated residual value subject to guarantee.* The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or other third party may exceed 25 percent of the original cost of the property if the bank determines, and demonstrates by appropriate documentation, that the guarantor has the resources to meet the guarantee and the guarantor is not an affiliate of the bank.

(c) *Leases to government entities.* A bank's calculations of estimated residual value in connection with leases of personal property to Federal, State, or local governmental entities may be based on future transactions or renewals that the bank reasonably anticipates will occur.

§ 23.22 Transition rule.

(a) *Exclusion.* A Section 24(Seventh) Lease entered into prior to June 12, 1979, may continue to be administered in accordance with the lease terms in effect as of that date. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.6, however, a national bank that enters into a new extension of credit to a customer, including a lease, on or after June 12, 1979, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a Section 24(Seventh) Lease that was entered into prior to June 12, 1979, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the Section 24(Seventh) Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith, and demonstrates by appropriate documentation, that renewal of the lease is necessary to avoid financial loss and to recover its investment in, and its cost of financing, the leased property.

Dated: December 10, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–31967 Filed 12–17–96; 8:45 am]

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Office of Thrift Supervision

12 CFR Parts 545, 559, 560, 563, 567, 571

[No. 96–119]

RIN 1550–AA88

Subsidiaries and Equity Investments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS or agency) is today issuing a final rule updating and substantially streamlining its regulations and policy statements concerning subsidiaries and other subordinate organizations in which

savings associations have ownership interests (including operating subsidiaries and service corporations) and equity investments (including pass-through investments). These amendments are being made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review (Reinvention Initiative) and section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA), which requires OTS and other federal banking agencies to review, streamline, and modify regulations and policies to improve efficiency, reduce unnecessary costs, and remove inconsistent, outmoded and duplicative requirements.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Deborah Merkle, Project Manager, Supervision Policy, (202) 906–5688; Donna Deale, Manager, Supervision Policy, (202) 906–7488; Susan Miles, Senior Attorney, Regulations and Legislation Division, (202) 906–6798; Dean Shahinian, Senior Counsel for Corporate Activities, Business Transactions Division, (202) 906–7289; or Deborah Dakin, Deputy Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

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I. Background

Pursuant to section 303 of the CDRIA [1] and the Administration's Reinvention Initiative, OTS began a comprehensive review of its regulations in the spring of 1995. Early in that process, OTS identified its regulations governing operating subsidiaries, service corporations and other equity investments as one of the most important areas for updating and streamlining. Each regulation in this area was reviewed to determine whether it was current and understandable; imposed the least possible burden consistent with safety and soundness and statutory requirements; addressed subject matter more suited for handbook guidance; and was written in a clear, straightforward manner. OTS also sought industry input regarding staff's initial recommendations through an industry focus group consisting of thrift representatives, an industry trade association, and OTS staff. The consensus that emerged from this process was that regulatory burden could be reduced primarily by enhancing flexibility and clarifying investment options available to savings associations, including operating subsidiaries, service corporations, and pass-through investments.

As a result of this review, OTS identified a number of ways in which its regulations could be revised to reduce regulatory burden. On June 13, 1996, OTS issued a notice of proposed rulemaking.[2] The proposal reorganized some regulations into a chart to facilitate comparisons of the different types of subordinate organizations; replaced several application procedures with more streamlined notice requirements; standardized the requirements applicable to pass-through investments; revised the list of activities preapproved for thrift service corporations; removed regulations dealing with finance subsidiaries (which have largely been replaced by operating subsidiaries); and restated the regulations in plain language.

Today's final rule is substantially similar to the June proposal, but incorporates several changes and clarifications in response to comments received.

II. Summary of Comments and Description of the Final Rule

A. General Discussion of the Comments

The public comment period on the proposal closed on August 12, 1996. Ten commenters, including six federal savings associations, three trade associations, and one mortgage guaranty insurance corporation, submitted comments.

Eight of the ten commenters supported OTS efforts to clarify, consolidate, and reorganize these regulations. They agreed that the proposed regulatory changes will make it easier to make investments in subordinate organizations. Several commenters specifically supported the plain language drafting and accompanying chart, stating that these changes will be useful and will reduce the burden of compliance with the regulations. Most commenters who supported the proposal also made suggestions for clarifications and modifications, which are discussed in the section-by-section analysis. Two commenters, representing current or potential competitors of savings associations or their service corporations, urged OTS not to adopt, or to proceed more slowly with, changes that would expand the list of preapproved activities for service corporations of federal savings associations.

B. Section-by-Section Analysis

New Part 559–Subordinate Organizations

OTS proposed to adopt a new Part 559, Subsidiaries, that would include all of the agency's regulations affecting thrift subsidiaries. Commenters generally agreed with OTS's view that this reorganization will make it much easier for savings associations to find and use these regulations. OTS has retitled this part as ''Subordinate Organizations'' in order to avoid potential confusion arising from the use of the term ''subsidiary'' both as a generic term for a business organization in which a savings association has an ownership interest and as a more specific term used to describe a narrower category of companies in which the savings association's ownership interest is significant enough to give it direct or indirect control. A federal savings association's ownership interest in a service corporation may not be large enough to make that service corporation a ''subsidiary'' of the thrift, but the service corporation is still subject to federal regulation under this part because the savings association is an owner of the service corporation.

Section 559.1 What Does This Part Cover?

This section explains the scope of new Part 559 and sets forth OTS's basic statutory authority over subordinate organizations. No commenters addressed this section, which is adopted as proposed, with minor technical corrections.

Section 559.2 Definitions (new)

As OTS reviewed the comments received on the proposal, it became clear that adding a definitional section to Part 559 would help users to identify more readily what types of entities are affected by the various regulatory provisions. New § 559.2 gathers in one location definitions of key terms describing different types of entities in which savings associations may invest.

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

[2] 61 FR 29976 (June 13, 1996).

These definitions are derived in large part from existing regulatory definitions. The term ''subordinate organization'' encompasses all business organizations in which a savings association has a direct or indirect ownership interest except where that ownership interest has been acquired through the use of the savings association's pass-through investment authority (discussed below). ''Subsidiary'' is defined using language taken from the Federal Deposit Insurance Corporation's regulations governing notices filed for savings association subsidiaries, 12 CFR 303.13(a)(1996). This definition turns primarily on whether an association has control of the entity in which it invests. For these purposes, OTS will use its standard definition of ''control,'' which appears in its change-of-control regulations, 12 CFR Part 574. ''Operating subsidiary'' is defined as any entity that satisfies the operating subsidiary requirements of new § 559.3 and is designated as an operating subsidiary by the investing association. There are three basic characteristics of an operating subsidiary: (a) a majority of its voting shares must be owned by the investing association; (b) it must be controlled by the association; and (c) it may engage only in activities that are permissible for the association. ''Service corporation'' is defined as any entity that satisfies the service corporation requirements of new § 559.3 and the authorizing statute, 12 U.S.C. 1464(c)(4)(B), and is designated as a service corporation by the investing association. Service corporations may engage in activities reasonably related to the operation of a financial institution. However, the amount of funds a federal savings association may invest in service corporations is limited (as discussed below). ''Lower-tier entity,'' a new term, includes all business organizations in which an operating subsidiary, service corporation, or other subordinate organization has an ownership interest. It includes entities often commonly referred to as ''second-tier service corporations'' or ''service corporation subsidiaries.'' ''GAAP-consolidated subsidiary'' is a newly defined term that describes all operating subsidiaries and any service corporations or lower-tier entities that are consolidated with a savings association for purposes of filing reports in accordance with Generally Accepted Accounting Principles (GAAP).

Section 559.3 What Are the Characteristics of, and What Requirements Apply to, Subordinate Organizations of Federal Savings Associations?

Section 559.3 (proposed as § 559.2) authorizes federal savings associations to establish or acquire operating subsidiaries and service corporations. Most of this section takes the form of a chart that lists and compares the different characteristics of, and requirements that apply to, operating subsidiaries and service corporations (including lower-tier entities in which these companies invest). The chart is derived in large part from the current regulations at 12 CFR 545.74 (service corporations) and 545.81 (operating subsidiaries). Where appropriate, and for ease of reference, it cross-references other applicable OTS regulations that have been the subject of frequent questions to the agency. The chart reiterates that, in addition to preapproved service corporation activities, a federal thrift may continue to apply to OTS for case-by-case approval for a service corporation to engage in any activity that is reasonably related to the operation of a financial institution.

Commenters thought the chart would be a comprehensive and concise reference source that would make it easier to compare these two structures and determine which best fits the association's needs.

Commenters addressed several substantive areas covered by the chart:

Preemption

The regulation sets forth OTS's long-standing position that state law is preempted for operating subsidiaries to the same extent as it is for the parent federal savings association. OTS has taken this position because an operating subsidiary—which may only engage in activities permissible for its parent federal savings association and must be controlled by the investing savings association—is treated as the equivalent of a department of the parent thrift for regulatory and reporting purposes. In the past, OTS has not preempted state law for service corporations because service corporations are not so closely tied to the parent thrift.

One commenter asked that we reexamine whether state law should be preempted for those service corporations that must be incorporated in the state where the parent federal savings association is incorporated (commonly referred to as first-tier service corporations). Alternatively, this commenter urged that OTS consider relaxing or eliminating the requirement that first-tier service corporations (in contrast to operating subsidiaries and lower-tier entities) must be organized in the state where their parent thrift has its home office. The commenter argued that § 5(c)(4)(B) of the Home Owners' Loan Act (HOLA) only requires that a service corporation be incorporated in the federal savings association's home state where a service corporation is owned by more than one savings association.

Upon review, OTS continues to believe that state law should not be preempted for service corporations of federal savings associations to the same extent that it has been for federal savings associations and their operating subsidiaries. Service corporations engage in activities that are related to and promote, but go beyond, those permitted for federal savings associations themselves. In contrast, operating subsidiaries engage only in activities that could be conducted at the parent thrift level. Additionally, unlike an operating subsidiary, a service corporation need not be controlled by its parent thrift. Moreover, a federal thrift may only invest a small portion of its assets in service corporations, while no such limits apply to operating subsidiaries. These distinctions make service corporations less critical to the operations of federal savings associations. Therefore, to date OTS has concluded that broad federal preemption for service corporations is not necessary to facilitate the safe and sound operation of federal savings associations, to enable federal savings associations to conduct their operations in accordance with the best practices of thrift institutions in the United States, or to further other purposes of the HOLA. Although the agency could promulgate preemptive regulations if circumstances warranting federal preemption arise, the agency does not believe such circumstances exist at this time. Accordingly, service corporations continue to be subject to state law except where state law comes into direct conflict with federal law.

The home-state incorporation restriction that the commenter alternatively suggests that OTS relax or eliminate is a statutory requirement found at HOLA § 5(c)(4)(B). That section provides that federal savings associations may make investments ''in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the Federal savings association's home office is located, if such corporation's entire capital stock is available for purchase only by savings associations of such State and by Federal savings

associations having their home offices in such State.''[3] The most natural reading of this language is that a service corporation must both: (a) be organized in the parent thrift's home state, and (b) sell capital stock only to thrifts that have their home offices in that state. This is how OTS and its predecessor have long read the statute. OTS does not have the authority to override the statute. Nevertheless, OTS would support a statutory change eliminating the home state incorporation requirement. In our view, this requirement is an unnecessary procedural hurdle with no connection to safety and soundness.

Inapplicability of HOLA Section 5(c) Investment Limits to Service Corporations

One trade association commenter representing competitors of federal savings associations reiterated a comment it had submitted on OTS's Lending and Investment proposal. It argued that OTS should aggregate commercial loans made by a federal thrift's service corporation with commercial loans made by the thrift itself for purposes of calculating investment limits under section 5(c)(2)(A). To do otherwise, it argues, would circumvent Congress' intent to establish a ceiling on commercial loan activity by savings associations.

The requirement that a service corporation's commercial loans be aggregated with those of the parent thrift to determine compliance with the limitation on commercial loans was previously established by OTS regulation, not the HOLA. This requirement was removed by the final Lending and Investments Rule, effective as of October 30, 1996.[4] As discussed in the preamble to that regulation, the statutory language imposing investment limits on commercial lending by savings associations nowhere refers to loans made by service corporations.[5] Similarly, section 5(c)(4)(B) of the HOLA, which authorizes investments in service corporations of up to 3% of a thrift's assets, does not contain any sublimit on commercial lending by service corporations.

Accordingly, as proposed, the chart that appears in § 559.3 reiterates that loans and investments made by service corporations are not subject to the limits that apply to federal savings associations under HOLA section 5(c).

Structure of Operating Subsidiaries and Service Corporations

One commenter specifically supported the provisions in the chart that streamline the procedure for converting service corporations to operating subsidiaries or operating subsidiaries to service corporations. We reiterate that a savings association converting its service corporation to an operating subsidiary must be certain that the activity is permissible for a federal savings association.

Two commenters also suggested that the chart should address whether an operating subsidiary may be structured as a limited partnership or limited liability company (LLC).[6] Both of these forms of organization limit the liability of their owners to the amount of their investment in much the same way as the liability of a stockholder of a corporation is limited. While OTS expects that the vast majority of operating subsidiaries will continue to be structured as corporations, in the interest of increasing federal thrifts' flexibility in structuring their operations, the agency has modified the chart by removing specific references to ''incorporation''. An operating subsidiary must still satisfy the basic requirements of majority ownership interest, limited liability, and effective operating control. Not all forms of organization will meet those requirements. OTS will therefore continue to address requests by thrifts to establish an operating subsidiary in a noncorporate form on a case-by-case basis through its § 559.11 notice and review process. Organizational forms that meet the requirements of the regulation and do not present safety and soundness concerns will be permitted.

The chart has been similarly amended to give service corporations the potential to be organized in other forms. EGRPRA amended the Bank Service Corporation Act to confirm that first-tier bank service corporations may be established as LLCs. HOLA was not similarly amended. Nothing in EGRPRA's legislative history or the legislative history of the HOLA addresses whether savings association service corporations may be organized as LLCs. Absent such guidance, OTS will follow its standard practice of interpreting the HOLA in a manner that does not elevate form over substance. Thus, OTS believes the HOLA authorization to invest in service corporations should be read to permit any organizational form that provides the same basic protections as the corporate form of organization, including limited liability. Any proposal to organize an LLC or a limited partnership as a first-tier service corporation will be carefully reviewed in the § 559.11 notice process to ascertain whether liability will in fact be limited and whether any other safety and soundness concerns are presented.

Consolidation of Operating Subsidiaries with Their Parent Savings Associations

One commenter urged OTS to amend the chart to allow for waiver of the requirement that operating subsidiaries are generally consolidated with their parent thrift for purposes of investment authority and other regulatory requirements. OTS does not believe that a specific waiver provision is necessary. OTS regulations already provide, at 12 CFR 500.30(a), that the OTS Director ''may, for good cause and to the extent permitted by statute, waive the applicability of any provision of this chapter.'' That provision covers all OTS regulations except for those containing statutorily mandated provisions. Because the operating subsidiary form of organization is permitted by, but not specifically addressed in OTS's statutory authority over federal savings associations, most requirements governing operating subsidiaries are not mandated by statute. OTS will review any requests to waive a consolidation requirement on a case-by-case basis to determine whether good cause exists.

OTS has also modified provisions of the chart summarizing the capital and Qualified Thrift Lender (QTL) requirements to reflect changes made to the underlying regulations in this or other recently adopted OTS regulations. Other technical, non-substantive changes have been made to make the chart easier to understand.

Section 559.4 What Activities Are Preapproved for Service Corporations?

This section (proposed as § 559.3) replaces the list of preapproved activities found in current § 545.74(c). This section does not purport to list all possible activities that may be permissible for service corporations of federal savings associations, but only

[3] 12 U.S.C. 1464(c)(4)(B) (emphasis added).

[4] 61 FR 50951 (September 30, 1996).

[5] We also note that on September 30, 1996, following publication of the January Lending and Investment proposal setting forth OTS's interpretation of HOLA section 5(c)(2)(A), the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA'') enhanced the commercial lending authority of federal thrifts under HOLA section 5(c)(2)(A), raising it by an additional 10% of assets for commercial loans made to small businesses. In amending this section, Congress did not in either statutory language or legislative history indicate disapproval of OTS's interpretation of this provision or the HOLA service corporation provision.

[6] LLCs are a relatively new form of business organization, that have certain advantages of both the corporate and partnership forms of ownership. They have become increasingly popular because the Internal Revenue Service has allowed LLCs meeting certain requirements to be taxed as partnerships.

those that have been preapproved and may be conducted by well-run institutions upon notice to OTS. Other unlisted activities that are reasonably related to the operation of financial institutions will be considered on a case-by-case basis upon application to OTS.

The proposal revised the list of preapproved activities to:

- Affirm that any activity a federal thrift may conduct directly, except deposit-taking, is preapproved for a service corporation, when conducted in the same manner as allowed at the federal savings association level. This includes all activities listed in the HOLA and Part 560, as well as other incidental powers addressed in OTS legal opinions and guidance.
- Include certain activities that the OTS already routinely approves on a case-by-case basis.
- Allow business and professional activities that involve financial documents, financial clients, or are generally finance-related to be performed for any person.
- Permit a limited number of services that have not been previously authorized, but are reasonably related to the operation of a financial institution and have been permitted for bank operating subsidiaries or bank service corporations.

Three commenters thought the proposed additions to the list of preapproved activities for service corporations would be helpful in a variety of ways: business plans could be developed more efficiently; uncertainty over whether activities are permissible would be eliminated; and, as a result, federal savings associations could function more efficiently.

One commenter requested that the agency clarify that the presence of an activity on the list of preapproved activities does not necessarily imply that federal savings associations cannot conduct the activity directly. This is correct, but it should also be noted that the activities listed in the regulation may be conducted without being subject to the same limits that apply to the parent federal savings association except where specifically provided. For example, service corporations may perform some services for third parties that the federal savings association may only perform for itself.

One trade association commenter representing competitors of savings associations argued that the proposed regulation would expand the activities permissible for service corporations too far. It only supported the modification of preapproved activities to include those previously authorized and permitted for bank operating subsidiaries or bank service corporations. This commenter also objected to permitting preapproved ''financial-related'' or ''credit-related'' activities to be performed for anyone (rather than only primarily for financial institutions), and characterized the proposal's changes as ''substantive modifications that go beyond regulatory burden reduction.''

OTS does not agree. The effect of today's amendments is *not* to expand the scope of permissible service corporation activities. The service corporation regulation has never purported to list all ''permissible'' activities of service corporations of federal savings associations, but only those ''preapproved.'' Under both the current and the new regulation, federal savings associations may apply to OTS for approval of any proposed service corporation activity that is ''reasonably related'' to the activities of federal savings associations and other financial institutions.[7] OTS believes that once it has become familiar with an activity and determined that it is ''reasonably related,'' the activity should be added to the preapproved list. No purpose is served by requiring well-run institutions to file applications (rather than notices) to engage in these activities, pay higher fees, and wait for agency approvals. Today's action merely reduces the procedural hurdles that service corporations of well-run federal savings associations must scale before engaging in certain permissible activities by replacing application requirements with notice requirements.

Of course, savings associations may continue to apply to OTS for case-by-case approval for their service corporations to engage in activities not on the preapproved list, or for the service corporation to provide services to a broader range of customers than those specified for some categories of activities on the preapproved list.

Today's additions to the preapproved list will place federal thrifts on a more level playing field with competitors (including non-depository financial institutions) by allowing thrift service corporations to engage in profitable businesses that do not carry significant risks and that may be synergistic with the core thrift business.

Mortgage Insurance

OTS requested comment on whether service corporations should be permitted to engage in activities related to private mortgage insurance (mortgage insurance). As part of its recent Conflicts of Interest, Corporate Opportunity, and Hazard Insurance rulemaking,[8] OTS has removed § 563.44 of its regulations, which had significantly limited the mortgage insurance activities of federal savings associations and their subordinate organizations, by, among other things, limiting the circumstances under which a savings association could insure any loan with a mortgage insurance company in which it had a significant direct or indirect interest.

One trade association commenter urged OTS not to make underwriting mortgage insurance a preapproved activity for service corporations and to proceed with caution in allowing service corporations to enter the mortgage insurance business. This commenter believed that mortgage insurance underwriting presents different risks than other insurance products because, among other reasons, it is non-cancelable, its premium is fixed for the duration of the policy, and it covers the riskiest type of single-family mortgage. If underwriting mortgage insurance is permitted, this commenter believed OTS should require an application, separate capitalization of the subsidiary, and arms' length transactions.

A second commenter urged OTS to make underwriting of captive mortgage reinsurance (''CMR'') (reinsurance solely of loans originated by an affiliated federal savings association and insured by a primary mortgage insurance provider) a preapproved activity. This commenter pointed out that the mortgage insurance industry is a highly regulated industry subject to comprehensive state and federal insurance regulatory requirements and oversight, as well as the ongoing scrutiny of the mortgage lending industry and secondary markets. The commenter specifically did not address the direct underwriting of mortgage insurance or general reinsurance of mortgage insurance.

Based on this commenter's description of CMR, it appears that CMR could be an activity ''reasonably related to the activities of financial institutions.'' At this point, however, OTS believes that the underwriting of captive mortgage reinsurance and other mortgage insurance-related activities should be considered on a case-by-case, rather than a preapproved, basis. This is consistent with the approach OTS has generally taken when authorizing new service corporation activities in order to

[7] See the introductory text to current 12 CFR 545.74(c)(1996). See also § 559.3(e)(2)(i) of today's final rule.

[8] 61 FR 60173 (November 27, 1996).

gain additional supervisory experience with a particular business over time before prescribing standards for preapproval. A savings association that is interested in conducting reinsurance activity through a service corporation may file an application with the agency describing how it would propose to conduct the activity and what safeguards it would put in place.

In addition to the activities listed as preapproved in the proposal, the final rule adds two activities that the Federal Reserve Board, on September 6, 1996, proposed to authorize for bank holding companies: (1) finance-related management consulting and management consulting for financial institution clients; and (2) printing and selling checks and related documents. If the Federal Reserve's rule is adopted in final form, these activities will automatically become authorized for bank service corporations by operation of 12 U.S.C. 1864(f).

In its proposal, OTS signalled its intent to review activities authorized for bank service corporations in making additions to the preapproved list. Although the two activities described above have not yet been adopted in final form by the Federal Reserve Board, they are clearly ''reasonably related'' to the business of financial institutions and, unlike the reinsurance activities described above, do not require significant capital or present other novel issues. Accordingly, the two activities have been added to the preapproved list.

Section 559.5 How Much May a Savings Association Invest in Service Corporations or Lower-Tier Entities?

Proposed § 559.4 (now § 559.5) replaced § 545.74(d), and reiterated that a federal savings association may invest in the aggregate 3% of its assets in one or more service corporations as long as the excess investment over 2% serves primarily community, inner city, or community development purposes. The proposal simplified the rules governing when a federal savings association may make loans to service corporations separate from the 3% of assets limit. Under the proposal, the only restrictions were that such additional loans: (1) be authorized elsewhere under the HOLA; (2) satisfy applicable percentage of assets limits (*e.g.*, 10–20% of assets for commercial loans); and (3) comply with the loans-to-one-borrower (LTOB) regulation.

Commenters generally agreed that the proposal would significantly condense and simplify the rules governing when a federal savings association may make loans to service corporations separate from the 3% of assets limit. Two commenters supported the proposed changes to these limits, believing that simplification would help institutions operate more efficiently. One thought the proposed changes would enhance growth opportunities without undermining the parent's safety and soundness and allow greater flexibility within multiple service corporation structures.

Two commenters, however, expressed concern with the requirement that loans by a thrift to its service corporations and lower-tier entities comply with the LTOB regulation. They argued that under the current regulation, some institutions are making loans in a safe and sound manner, not posing significant concentration risks, and are exceeding the thrift's LTOB limits. After reviewing the commenters' concerns, we agree that there are better ways to promote the goals of limiting and prudently diversifying the risks presented by savings associations' loans to subordinate organizations. In fashioning a final rule, we looked at not only the protections provided by LTOB, but also those afforded by the capital regulation and the HOLA section 5(c) investment limits.

The final rule continues to allow federal thrifts the flexibility to place loans to service corporations or lower-tier entities in either the HOLA section 5(c)(4)(B) investment category (service corporation investments), or another applicable HOLA investment category (*e.g.*, HOLA section 5(c)(2)(A)'s commercial lending authority), provided they have available capacity in the chosen category. Section 559.5 does not further limit the amount of such loans to a thrift's GAAP-consolidated subsidiaries (regardless of whether such GAAP-consolidated subsidiaries are service corporations or lower-tier entities). OTS believes that there is no need to impose separate limits on loans to GAAP-consolidated subsidiaries for several reasons. First, if the GAAP-consolidated subsidiary is engaged only in activities permissible for a national bank, its structure and risk are the equivalent of those of a traditional national bank operating subsidiary. Pursuant to 12 CFR 32.1(c), a national bank's loans to its operating subsidiaries are not subject to lending limits. Second, if the GAAP-consolidated subsidiary is engaged in activities that are not permissible for a national bank, the savings association must deduct its entire debt and equity investment in calculating its core capital under 12 CFR 567.5(a)(2)(iv), regardless of the authority under which such investments are made. As a result, even if the thrift were to lose its entire investment, there would be no adverse impact on its regulatory capital compliance. This provides assurance that such loans, if made, will not adversely affect the viability of a federal savings association. Therefore, we do not believe that any additional limitations under § 559.5 are necessary for GAAP-consolidated subsidiaries.

For subordinate organizations that are not GAAP-consolidated subsidiaries, § 559.5 has been revised from the proposal to impose a limit of 15% of the thrift's total capital on loans to any one subordinate organization. The regulation further imposes a 50% of total capital aggregate limit on loans to all subordinate organizations that are not GAAP-consolidated subsidiaries. By contrast, the proposed rule would have subjected all loans to a service corporation (even if GAAP-consolidated) and to its lower-tier entities to an aggregate 15% of capital limit.

To determine compliance with the ''15/50'' limits of the final rule, a thrift's loans to the subordinate organization must be aggregated with loans made by any GAAP-consolidated subsidiary to that subordinate organization. The Regional Director may modify the 15/50 limits on a case-by-case basis for safety and soundness reasons.

One commenter requested clarification that the additional loan authority is a separate authority from the HOLA section 5(c)(4)(B) investment authority, and not something that is limited to situations where that authority has been exhausted. This is correct.

A commenter requested that, where an entity may be considered either a service corporation or a pass-through entity under § 560.32 (discussed below), OTS clarify that the investment could be apportioned between the two authorities. OTS's longstanding position remains that investments that are authorized under two or more separate provisions of law may be made under either provision, or allocated between both provisions, to the extent that the savings association has remaining investment authority available under the applicable limits.

Subpart B—Regulations Applicable to All Savings Associations

Section 559.10 How Must Separate Corporate Identities be Maintained?

This section describes what a savings association and its subordinate organizations must do to establish and maintain separate identities. The purpose for these requirements, derived

from current §§ 545.81(f), 563.37, and 571.21, is to reduce the potential for customer confusion or for a court to hold the parent liable for the subordinate organization's conduct or obligations. Two commenters specifically supported this section. One of these commenters noted generally, however, that corporate separateness should not unnecessarily restrict the ability to advertise and cross-market products. OTS does not believe that the continuation of these long-standing requirements will in any way hamper the ability of a savings association and its subordinate organizations to advertise or cross-market each other's products. The section is being adopted as proposed.

Section 559.11 What Notices Are Required to Establish or Acquire a New Subsidiary or Engage in New Activities Through an Existing Subsidiary?

This section combines and streamlines the overlapping notice requirements currently contained in §§ 545.74(b)(2), 545.81(c), and 563.37(c). Two commenters expressly supported the streamlined notice and application procedures. This section is being adopted as proposed.

Section 559.12 How May a Subsidiary of a Savings Association Issue Securities?

OTS proposed this section to replace current § 563.132, requiring that a savings association notify OTS before a subsidiary issues securities. The proposed section also incorporated requirements from current § 545.82 (finance subsidiaries of federal savings associations) requiring that securities issued by all subsidiaries indicate that they are not covered by federal deposit insurance and may not be called or accelerated in the event of the savings association's insolvency.

One commenter requested clarification that § 559.12 does not apply to securities issuances to the parent or for a subsidiary's own corporate needs (as compared to issuing securities to a third party and forwarding the proceeds to the parent), arguing that such issuances were not covered by § 563.132 or § 545.82 and that applying the regulation to such issuances would increase regulatory burden. OTS has reexamined the scope of not only §§ 563.132 and 545.82, but also the notice requirements of new § 559.11, which requires savings associations to provide OTS with 30-days advance notice before conducting a new activity in a subsidiary. OTS has always considered the issuance of securities to be an activity covered by these provisions. Issuance of securities by a subsidiary, especially if the parent savings association expects to transfer any assets or make any guarantees in connection with the issuance, is a matter of which the regulator needs to be aware.

Upon review, however, OTS believes that its supervisory concerns can be satisfied by receiving initial notice that the subsidiary will be issuing securities. The more detailed reporting requirements of proposed § 559.12 have been replaced by a less burdensome recordkeeping requirement so that the examination process can thereafter monitor the actual securities issuances. Accordingly, a savings association must notify OTS under § 559.11 before it initially issues securities through a subsidiary, regardless of the purpose to which the proceeds will be put. Thereafter, no further notices are required, but savings associations and their subsidiaries should maintain records of their securities issuances under § 559.12 available for review by OTS examiners for as long as the securities are outstanding. Section 559.12 has been modified accordingly.

Section 559.13 How May a Savings Association Exercise its Salvage Power in Connection With its Service Corporation or Lower-Tier Entities?

This section replaces the application procedure for salvage investments of current § 563.38 with a 30-day notice requirement. In its notice, an institution must fully document its additional investment in a service corporation or a lower-tier entity in a manner that demonstrates how its action is consistent with safety and soundness and document other salvage alternatives considered. If the agency has concerns, it may take objection to, or grant conditional approval of, a notice to exercise such salvage power. One commenter expressly supported the change to a notice requirement.

This section is being adopted as proposed, with one modification. Language is being added to emphasize that investments made using salvage power authority are, as they have always been, considered investments for purposes of the capital regulation. Thus, for example, a salvage investment in a nonincludable subsidiary would be deducted in calculating the thrift's capital.

Amendments to Part 560—Lending and Investment

OTS also proposed to add certain provisions dealing with subordinate organizations and equity-related investments, such as service corporations, pass-through investments and *de minimis* investments to Part 560, Lending and Investments. These additions will make that part a comprehensive resource for users seeking information on federal savings associations' lending and investment authorities.

Section 560.30 General Lending and Investment Powers for Federal Savings Associations

In the interest of completeness, OTS proposed to add several equity-related investments to the lending and investment powers chart contained in this regulation. Investments in the following entities are being added as proposed: Small business investment corporations chartered pursuant to § 301(d) of the Small Business Act; open-end management investment companies; and service corporations. The chart has also been modified to reflect recent statutory amendments enhancing and clarifying federal savings associations' educational, credit card, and small business lending authority enacted as part of EGRPRA. Finally, the chart is being amended to clarify that liquidity investments are authorized under 12 U.S.C. 1464(c)(1)(M) as long as they are of a type that would qualify as liquid asset investments under 12 CFR part 566. The maturity limitations of that part generally do not affect this authorization. This carries forward language from former 12 CFR 545.71 that was inadvertently omitted from the final lending and investment rule when liquidity investments were added to the chart.

Section 560.32 Pass-Through Investments

This new section codifies federal savings associations' authority to invest in entities, such as limited partnerships and mutual funds, that hold only assets, and engage only in activities, permissible for federal savings associations. By clarifying the rules applicable to pass-through investments, this section enhances savings associations' access to this investment option. The section also establishes uniform safety and soundness constraints, ensuring that the OTS is aware of, and has the opportunity to object to, any move by a thrift to place significant amounts of its assets under the operating control of third parties.

A federal savings association's ability to make pass-through investments is derived from the same incidental authority pursuant to which it invests in operating subsidiaries. Pass-through entities differ from operating subsidiaries, however, in that a thrift

must have majority ownership of an operating subsidiary but may not control a pass-through entity. Unlike a service corporation, which is usually structured as a corporation and which may potentially engage in a broader range of activities than a federal savings association, pass-through investments (except for investments made primarily in order to use a corporation's services under § 560.32(b)(5)(v)) may take the form of stock investments only with special approval from OTS and may only be made in entities that engage in activities that a federal savings association could conduct directly.

Investments that satisfy the conditions enumerated in this section will not require advance notice to OTS. A savings association must provide written notice to OTS before making any pass-through investment that does not meet those standards. OTS will review these notices and may object or impose conditions for supervisory, legal, or safety and soundness reasons.

Loans that a savings association makes to an entity in which it has made a pass-through equity investment will be subject to the LTOB rule in the same manner as loans by a savings association to any third party. Absent particular safety and soundness concerns, such loans will not be aggregated with pass-through equity investments made pursuant to this section for purposes of either LTOB restrictions or restrictions under this section.

Commenters supported codifying pass-through investments because the requirements would be more clearly set forth and the approval process would be more predictable.

One commenter requested that OTS confirm that the restrictions applicable to pass-through investments do not apply to operating subsidiaries. A thrift's investment in its operating subsidiary is not subject to the restrictions set forth in this section. Pass-through investments made by an operating subsidiary would, however, be subject to this section.

Two commenters argued that LLCs should be a preapproved structure for pass-through investments. OTS agrees that LLCs should be a preapproved pass-through investment structure, as they offer a number of benefits to thrifts while containing adequate safeguards. Consistent with other preapproved entities, LLCs are generally structured to provide a thrift with limited liability equal to the amount invested. OTS believes that by preapproving this structure for potential pass-through investments, thrifts will enjoy greater flexibility and a lower regulatory burden, especially in the community development area.

Section 560.36 De minimis investments

This section (proposed as § 560.33) specifically confirms that a federal savings association may make *de minimis* equity investments in community organizations in which national banks may invest. Total investments made under this section may not exceed the greater of ¼ of 1% of an association's total capital or $100,000.

Two commenters argued that OTS should increase the permissible investment for well-capitalized, CAMEL 1- or 2-rated institutions to 5% of capital, in the aggregate, so long as deducting the investment from capital would not cause the institution to fall into a lower capital category and up to 10% of capital on application to OTS. This would parallel limits for national banks under 12 U.S.C. 24 (Eleventh) and 12 CFR part 24.

The HOLA does not contain a provision paralleling the authority of 12 U.S.C. 24 (Eleventh). However, OTS and its predecessor have long recognized that a federal savings association's incidental powers include the ability to make charitable contributions that assist its community. New § 560.36 allows thrifts to contribute to their communities by making equity investments in community organizations that do not exceed what they could otherwise generally directly contribute and deduct for tax purposes. Because this is a new regulation and federal thrifts have other community development investment options not available to national banks, OTS is not inclined to increase the *de minimis* limit at this time.

In this regard, we note that federal thrifts may, in addition to the *de minimis* authority set forth under this section, make community-related investments through their 3% of assets service corporation investment authority. The HOLA, in fact, requires that a thrift wishing to take full advantage of its authority to invest up to 3% of its assets in service corporations must dedicate at least 1% of those assets to investments promoting community, inner-city, or community development purposes. Additional investments may also be possible using an operating subsidiary, lower-tier entity, or pass-through investment. Accordingly, this section is adopted as proposed, with the limits proposed.

Amendments to Other Regulatory Sections

Section 545.74 Service Corporations

The bulk of this section has been incorporated into new part 559, Subordinate Organizations. The one exception is the safeguards that apply to securities brokerage activities of service corporations, which have been governed by 12 CFR 545.74(c)(4). OTS proposed to amend this paragraph to remove a prohibition against savings associations contracting with third parties for securities brokerage activities, but to otherwise leave it unchanged while the agency considered whether to incorporate this paragraph into part 559 or to modify the safeguards and apply them to all securities sales programs taking place on thrift premises by any entity, including service corporations, affiliates, and third party broker-dealers.

One commenter addressed this issue. The commenter supported the removal of the prohibition on federal savings associations contracting with third parties for securities brokerage activities, but argued that all of § 545.74(c)(4) duplicates existing regulations and interagency guidelines and should be removed. At this point, the agency has decided to deal with the broader issues of securities sales on association premises, including sales by service corporations, as part of a later rulemaking. This comment will be considered as part of that rulemaking. Accordingly, § 545.74(c)(4) is being amended and retained as § 545.74, ''Securities Brokerage,'' to better reflect its new scope.

Section 545.77 Real Estate for Offices and Related Facilities

This section was not addressed in the proposal. It sets forth federal savings associations' incidental authority to acquire real estate for their current and anticipated future office needs. The section is being recodified as new § 560.37 without substantive change.

Section 545.82 Finance Subsidiaries

The proposal proposed to remove this section and to deem all existing finance subsidiaries to be operating subsidiaries. All of the functions performed by finance subsidiaries may already be done with fewer restrictions by an operating subsidiary. The two commenters addressing this section supported the proposal. Accordingly, § 545.82 is being deleted.

Section 560.93 Lending Limitations

This section is being amended in connection with the amendments made today to new § 559.5. Under the current

section, a thrift's loans to its subsidiaries (defined as 5% or greater ownership) or affiliates are not subject to the LTOB limitations of this section. Loans by a thrift or any of its subsidiaries to a third party are aggregated, however, for purposes of this section. As amended, the section will generally not apply to loans made by a savings association to any of its subordinate organizations as the amount of such loans is governed by new § 559.5.[9] As presently, it will also not apply to loans made to an affiliate of the savings association, as the amount of those loans continues to be governed by § 563.41. Loans by a savings association or any of its subsidiaries (now defined as entities of which the savings association has direct or indirect control) to a third party are subject to this section.

Section 563.41 Loans and Other Transactions With Affiliates and Subsidiaries

OTS proposed to modify the definition of ''subsidiary'' in § 563.41 to mirror the statutory definition of section 23A of the Federal Reserve Act, 12 U.S.C. 371c, rather than the OTS capital regulation. The statutory definition turns on control, whereas the capital regulation was based on a 5% ownership interest. No commenters addressed this issue, but one commenter requested that OTS allow sister-bank treatment between a thrift subsidiary and sister thrift. Consistent with staff interpretations of the Federal Reserve, OTS has interpreted the sister-bank exemption to be available between a thrift subsidiary and sister thrift, provided the transaction would be covered by the sister-bank exemption if conducted by the parent thrift of the subsidiary.

The definition of ''subsidiary'' in § 563.41 is being modified as proposed.

Part 567—Capital

OTS proposed to simplify the calculation of investments in subsidiaries for capital purposes by changing the definition of ''subsidiary'' in § 567.1(dd) from 5% ownership to more than 50% ownership, paralleling the treatment of subsidiaries by the other federal banking agencies, and by removing language that defined investments in subsidiaries in a manner that has resulted in savings associations holding disproportionate amounts of capital against risks presented by investments made in some lower-tier entities. Two commenters supported these changes, stating that they would reduce regulatory burden. OTS is adopting these changes as proposed with one modification. Instead of referring to an ownership interest of 50% or greater, the regulation will refer to ownership interests that would be consolidated under GAAP. These are generally majority investments, so this change will not affect most savings associations. However, this modification will help to reduce confusion in the limited situations where GAAP, which is used as the basis for reporting under the Thrift Financial Report that savings associations file quarterly with OTS, uses a different standard than majority ownership.

III. Disposition of Existing Rules

Original provision	New provision	Comment
545.74(a)		Removed.
545.74(b) introductory text	560.30	Incorporated into lending and investment powers chart.
545.74(b)(1)	559.3(e)(2).	
545.74(b)(2)	559.11.	
545.74(b)(3)	559.3(e)(2)(ii).	
545.74(b)(4)	559.3(o)(2).	
545.74(b)(5)	559.1(a).	
545.74(c) introductory text	559.3(e)(2).	
545.74(c)(1)–(7) except for (c)(4)	559.4.	
545.74(c)(4)	545.74	Modified.
545.74(d)	559.5	Substantially revised.
545.74(e)	559.3(q)(2).	
545.76(a)	560.30.	
545.76(b)		Removed.
545.77	560.37.	
545.80	560.30.	
545.81(a)	559.3.	
545.81(b)	559.3(c)(1), (e)(1).	
545.81(c)(1), (2)	559.3(a)(1).	
545.81(c)(3)	559.11.	
545.81(d)	559.3(p).	
545.81(e)	559.3(h)(1).	
545.81(f)	559.10.	
545.81(g)	559.3(o)(1).	
545.81(h)	559.1(a).	
545.81(i)	559.1(b)	Modified.
545.81(j)	559.3(e)(1).	
545.81(k)	559.3(p).	
545.82		Removed.
560.93(a)		Modified.
563.37(a), (b)	559.10	Modified.
563.37(c)	559.11.	
563.38	559.13	Modified.
563.41(b)(4)		Modified.
563.132(a), (b)		Removed.
563.132(c)	559.12	Modified.

[9] Loans that a thrift makes to a third party that invests in the thrift's subordinate organization will be aggregated with any loans by the thrift to that subordinate organization in accordance with the combination rules that generally apply under the LTOB regulation.

Original provision	New provision	Comment
567.1(l)		Modified.
567.1(dd)		Modified.
571.21	559.10	Modified.

IV. 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.

V. Paperwork Reduction Act

The reporting requirements at 12 CFR 560.32 have been submitted to and approved by the Office of Management and Budget under OMB control number 1550–0078. The information is needed by the OTS to assist in regulating savings associations and their subsidiaries.

The final rule differs from the proposal in that 12 CFR 559.12 no longer contains the requirement to notify the OTS in writing following a securities issuance. The information that would have been contained in the notice is now a recordkeeping requirement. At the proposed rule stage, the burden attributed to § 559.12, approved under OMB control no. 1550–0013, remained unchanged. Since the change from the notice requirement to a recordkeeping requirement constitutes a reduction in burden, the information collection package under 1550–0013 has been submitted to OMB for review.

Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule will be displayed in the table at 12 CFR 506.1(b).

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant impact on a substantial number of small entities. The final rule streamlines requirements for all savings associations. It simplifies the requirements that apply when savings associations create, invest in, or conduct new activities through a variety of subordinate organizations or pass-through investments, and clarifies the statutorily required notices for such actions. The final rule will make it easier for small savings associations to locate the rules that apply to their investments.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule reduces regulatory burden. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VIII. Administrative Procedure Act and Effective Date

This final rule results from the notice of proposed rulemaking OTS published on June 13, 1996. In addition to the regulatory language proposed in that notice, OTS is today redesignating, without substantive change, other regulations located in Part 545 into new Part 559. The chart in Part 560 has also been updated to reflect changes in statutory provisions in EGRPRA on September 30, 1996. Pursuant to section 553(b) of the Administrative Procedure Act, OTS hereby finds that good cause exists not to publish those provisions for public notice and comment. These provisions are merely being renumbered and updated for the convenience of users, thus public notice and opportunity to comment are unnecessary.

Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d) permits an agency to waive the normal 30-day delay in effective date when a rule relieves a restriction. OTS finds good cause to make the rule effective in fewer than 30 days because the rule imposes no new regulatory burdens and relieves restrictions by streamlining application and notice requirements.

List of Subjects

12 CFR Part 545

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

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 560

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

12 CFR Part 563

Accounting, Advertising, Conflicts of Interest, Corporate Opportunity, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 567

Capital, Savings associations.

12 CFR Part 571

Accounting, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, and for the reasons set forth in the preamble, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 545—OPERATIONS

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

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

2. Section 545.74 is amended by:

a. Revising the section heading;

b. Removing paragraphs (a), (b), the paragraph heading and introductory text of paragraph (c), paragraphs (c)(1) through (c)(3), paragraph (c)(4)(ii)(F), paragraphs (c)(5) through (c)(7), and paragraphs (d) and (e);

c. Removing the paragraph heading of paragraph (c)(4);

d. Redesignating paragraphs (c)(4)(i) introductory text, (c)(4)(i)(A) through (c)(4)(i)(E), (c)(4)(ii) introductory text, (c)(4)(ii)(A) through (c)(4)(ii)(E), (c)(4)(ii)(G), (c)(4)(iii), and (c)(4)(iv) as paragraphs (a) introductory text, (a)(1) through (a)(5), (b) introductory text, (b)(1) through (b)(5), (b)(6), (c), and (d), respectively;

e. Revising the introductory text of newly designated paragraph (a);

f. Removing, in newly designated paragraph (b) introductory text, the phrase ''this paragraph (c)(4)(ii)'', and by adding in lieu thereof the phrase ''this paragraph (b)'';

g. Removing, in newly designated paragraph (b)(1), the phrase ''under paragraph (c)(3) of this section'', and by adding in lieu thereof the phrase ''§ 559.4 of this chapter''; and

h. Removing, in newly designated paragraph (c), the phrase ''paragraph (c)(4) of'', wherever it appears.

The revisions read as follows:

§ 545.74 Securities brokerage.

(a) A service corporation may execute securities transactions on an agency or riskless principal basis solely upon the order of and for the account of customers, and may provide standardized and individualized investment advice to individuals or entities, provided that the service corporation:

* * * * *

§§ 545.76, 545.77, 545.80–545.82 [Removed]

3. Sections 545.76, 545.77, 545.80, 545.81, and 545.82 are removed.

4. Part 559 is added to read as follows:

PART 559—SUBORDINATE ORGANIZATIONS

Sec.

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

§ 559.1 What does this part cover?

(a) OTS is issuing this part 559 pursuant to its general rulemaking and supervisory authority under the Home Owners' Loan Act, 12 U.S.C. 1462 *et seq.*, and its specific authority under section 18(m) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(m). Subpart A of this part 559 applies to subordinate organizations of federal savings associations. Subpart B of this part applies to subordinate organizations of all savings associations. OTS may, at any time, limit a savings association's investment in any of these entities, or may limit or refuse to permit any activities of any of these entities for supervisory, legal, or safety and soundness reasons.

(b) Notices under this part are applications for purposes of statutory and regulatory references to ''applications.'' Any conditions that OTS imposes in approving any application are enforceable as a condition imposed in writing by the OTS in connection with the granting of a request by a savings association within the meaning of 12 U.S.C. 1818(b) or 1818(i).

§ 559.2 Definitions.

For purposes of this part:

Control has the same meaning as in part 574 of this chapter.

GAAP-consolidated subsidiary means an entity in which a savings association has a direct or indirect ownership interest and whose assets are consolidated with those of the savings association for purposes of reporting under Generally Accepted Accounting Principles (GAAP). Generally, these are entities in which a savings association has a majority ownership interest.

Lower-tier entity includes any company in which an operating subsidiary or a service corporation has a direct or indirect ownership interest.

Operating subsidiary means any entity that satisfies all of the requirements for an operating subsidiary set forth in § 559.3 of this part and that is designated by the parent savings association as an operating subsidiary pursuant to § 559.3 of this part. More than 50% of the voting shares of an operating subsidiary must be owned, directly or indirectly, by a federal savings association and no other person or entity may exercise effective operating control. An operating subsidiary may only engage in activities permissible for a federal savings association.

Ownership interest means any equity interest in a business organization, including stock, limited or general partnership interests, or shares in a limited liability company.

Service corporation means any entity that satisfies all of the requirements for service corporations in 12 U.S.C. 1464(c)(4)(B) and § 559.3 of this part and that is designated by the investing savings association as a service corporation pursuant to § 559.3 of this part. A service corporation must be organized under the laws of the state where the federal savings association's home office is located, may only be owned by savings associations with home offices in that state, and may engage in the activities identified in §§ 559.3(e)(2) and 559.4 of this part.

Subordinate organization means any corporation, partnership, business trust, association, joint venture, pool, syndicate, or other similar business organization in which a savings association has a direct or indirect ownership interest, unless that ownership interest qualifies as a pass-through investment pursuant to § 560.32 of this chapter and is so designated by the investing savings association.

Subsidiary means any subordinate organization directly or indirectly controlled by a savings association.

Subpart A—Regulations Applicable to Federal Savings Associations

§ 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of federal savings associations?

A federal savings association (''you'') that meets the requirements of this section, as detailed in the following chart, may establish, or obtain an interest in an operating subsidiary or a service corporation. For ease of reference, this section cross-references other regulations in this chapter affecting operating subsidiaries and service corporations. You should refer to those regulations for the details of how they apply. The chart also discusses the regulations that may apply to lower-tier entities in which you have an indirect ownership interest through your operating subsidiary or service corporation. The chart follows:

	Operating subsidiary	Service corporation
(a) How may a federal savings association (''you'') establish an operating subsidiary or a service corporation?	(1) You must file a notice satisfying § 559.11. Any finance subsidiary that existed on January 1, 1997 is deemed an operating subsidiary without further action on your part.	(2) You must file a notice satisfying § 559.11. Depending upon your condition and the activities in which the service corporation will engage, § 559.3(e)(2) may require you to file an application.
(b) Who may be an owner?	(1) Anyone may have an ownership interest in an operating subsidiary.	(2) Only savings associations with home offices in the state where you have your home office may have an ownership interest in any service corporation in which you invest.
(c) What ownership requirements apply?	(1) You must own, directly or indirectly, more than 50% of the voting shares of the operating subsidiary. No one else may exercise effective operating control.	(2) You are not required to have any particular percentage ownership interest and need not have control of the service corporation.
(d) What geographic restrictions apply?	(1) An operating subsidiary may be organized in any geographic location.	(2) A service corporation must be organized in the state where your home office is located.
(e) What activities are permissible?	(1) After you have notified OTS in accordance with § 559.11, an operating subsidiary may engage in any activity that you may conduct directly. You may hold another insured depository institution as an operating subsidiary.	(2)(i) If you are eligible for expedited treatment under § 516.3(a) of this chapter, and notify OTS as required by § 559.11, your service corporation may engage in the preapproved activities listed in § 559.4. You may request OTS approval for your service corporation to engage in any other activity reasonably related to the activities of financial institutions by filing an application in accordance with § 516.1 of this chapter. (ii) If you are subject to standard treatment under § 516.3(b) of this chapter, and notify OTS as required by § 559.11, your service corporation may engage in any activity that you may conduct directly except taking deposits. You may request OTS approval for your service corporation to engage in any other activity reasonably related to the activities of financial institutions, including the activities set forth in § 559.4(b)–(i), by filing an application in accordance with § 516.1 of this chapter.
(f) May the operating subsidiary or service corporation invest in lower-tier entities?	(1)(i) An operating subsidiary may itself hold an operating subsidiary. Part 559 applies equally to a lower-tier operating subsidiary. In applying the regulations in this part, the investing operating subsidiary should substitute ''investing operating subsidiary'' wherever the part uses ''you'' or ''savings association.''	(2) A service corporation may invest in all types of lower-tier entities as long as the lower-tier entity is engaged solely in activities that are permissible for a service corporation. All of the requirements of this part apply to such entities except for paragraphs (b)(2) and (d)(2) of this section.

	Operating subsidiary	Service corporation
	(ii) An operating subsidiary may also invest in other types of lower-tier entities. These entities must comply with all of the requirements of this part 559 that apply to service corporations except for paragraphs (b)(2) and (d)(2) of this section.	
(g) How much may a federal savings association invest?	(1) There are no limits on the amount you may invest in your operating subsidiaries, either separately or in the aggregate.	(2) Section 559.5 limits your aggregate investments in service corporations and indicates when your investments (both debt and equity) in lower-tier entities be aggregated with your investments in service corporations.
(h) Do federal statutes and regulations that apply to the savings association apply?	(1) Unless otherwise specifically provided by statute, regulation, or OTS policy, all federal statutes and regulations apply to operating subsidiaries in the same manner as they apply to you. You and your operating subsidiary are generally consolidated and treated as a unit for statutory and regulatory purposes.	(2) (i) If the federal statute or regulation specifically refers to ''service corporation,'' it applies to all service corporations, even if you do not control the service corporation or it is not a GAAP-consolidated subsidiary. (ii) If the federal statute or regulation refers to ''subsidiary,'' it applies only to service corporations that you directly or indirectly control.
(i) Do the investment limits that apply to federal savings associations (HOLA section 5(c) and part 560 of this chapter) apply?	(1) Your assets and those of your operating subsidiary are aggregated when calculating investment limitations.	(2) Your service corporation's assets are not subject to the same investment limitations that apply to you. The investment activities of your service corporation are governed by paragraph (e)(2) of this section and § 559.4.
(j) How does the capital regulation (part 567 of this chapter) apply?	(1) Your assets and those of your operating subsidiary are consolidated for all capital purposes.	(2) The capital treatment of a service corporation depends upon whether it is an includable subsidiary. That determination is based upon factors set forth in part 567 of this chapter, including your percentage ownership of the service corporation and the activities in which the service corporation engages. Both debt and equity investments in service corporations that are GAAP-consolidated subsidiaries are considered investments in subsidiaries for purposes of the capital regulation, regardless of the authority under which they are made.
(k) How does the loans-to-one-borrower (LTOB) regulation (§ 560.93 of this chapter) apply?	(1) The LTOB regulation does not apply to loans from you to your operating subsidiary or loans from your operating subsidiary to you. Other loans made by your operating subsidiary are aggregated with your loans for LTOB purposes.	(2) The LTOB regulation does not apply to loans from you to your service corporation or from your service corporation to you. However, § 559.5 imposes restrictions on the amount of loans you may make to certain service corporations. Loans made by a service corporation that you control to entities other than you or your subordinate organizations are aggregated with your loans for LTOB purposes.

	Operating subsidiary	Service corporation
(l) How do the transactions with affiliates (TWA) regulations (§§ 563.41 and 563.42 of this chapter) apply?	(1) Section 563.41 of this chapter explains how TWA applies. Generally, an operating subsidiary of a savings association is not deemed to be an affiliate unless it is a depository institution or the parent holding company or another affiliate has control of the subsidiary outside of the ownership chain that runs through the thrift. Transactions that an operating subsidiary engages in with an affiliate of the thrift are aggregated with those of the thrift.	(2) Section 563.41 of this chapter explains how TWA applies. Generally, a service corporation that is controlled by a savings association is not deemed to be an affiliate of that savings association unless it is a depository institution or the parent holding company or another affiliate has control of the service corporation outside of the ownership chain that runs through the thrift. Transactions that a service corporation that is directly or indirectly controlled by the savings association engages in with an affiliate of the savings association are aggregated with those of the savings association.
(m) How does the Qualified Thrift Lender (QTL) (12 U.S.C. 1467a(m)) test apply?	(1) Under 12 U.S.C. 1467a(m)(5), you may determine whether to consolidate the assets of a particular operating subsidiary for purposes of calculating your qualified thrift investments. If the operating subsidiary's assets are not consolidated with yours for that purpose, your investment in the operating subsidiary will be considered in calculating your qualified thrift investments.	(2) Under 12 U.S.C. 1467a(m)(5), you may determine whether to consolidate the assets of a particular service corporation for purposes of calculating your qualified thrift investments. If a service corporation's assets are not consolidated with yours for that purpose, your investment in the service corporation will be considered in calculating your qualified thrift investments.
(n) Does state law apply?	(1) State law applies to operating subsidiaries only to the extent it applies to you.	(2) State law applies to service corporations regardless of whether it applies to you, except where there is a conflict with federal law.
(o) May OTS conduct examinations?	(1) An operating subsidiary is subject to examination by OTS.	(2) Before you invest in a service corporation, you must obtain its written agreement to permit and to pay the cost of such examinations as OTS deems necessary.
(p) What must be done to redesignate an operating subsidiary as a service corporation or a service corporation as an operating subsidiary?	(1) Before redesignating an operating subsidiary as a service corporation, you should consult with the OTS Regional Director for the Region in which your home office is located. You must maintain adequate internal records, available for examination by OTS, demonstrating that the redesignated service corporation meets all of the applicable requirements of this part and that your board of directors has approved the redesignation.	(2) Before redesignating a service corporation as an operating subsidiary, you should consult with the OTS Regional Director for the Region in which your home office is located. You must maintain adequate internal records, available for examination by OTS, demonstrating that the redesignated operating subsidiary meets all of the applicable requirements of this part and that your board of directors has approved the redesignation.

	Operating subsidiary	Service corporation
(q) What are the consequences of failing to comply with the requirements of this part?	(1) If an operating subsidiary, or any lower-tier entity in which the operating subsidiary invests pursuant to paragraph (f)(1) of this section fails to meet any of the requirements of this section, you must notify OTS. Unless otherwise advised by OTS, if the company cannot comply within 90 days with all of the requirements for either an operating subsidiary or a service corporation under this section, or any other investment authorized by 12 U.S.C. 1464(c) or part 560 of this chapter, you must promptly dispose of your investment.	(2) If a service corporation, or any lower-tier entity in which the service corporation invests pursuant to paragraph (f)(2) of this section, fails to meet any of the requirements of this section, you must notify OTS. Unless otherwise advised by OTS, if the company cannot comply within 90 days with all of the requirements for either an operating subsidiary or a service corporation under this section, or any other investment authorized by 12 U.S.C. 1464(c) or part 560 of this chapter, you must promptly dispose of your investment.

§ 559.4 What activities are preapproved for service corporations?

This section sets forth the activities that have been preapproved for service corporations. Section 559.3(e)(2) of this part sets forth the procedures that govern engaging in a broader scope of activities on a case-by-case basis. You should read these two sections together to determine whether you must file a notice with OTS under § 559.11 of this part, or whether you must file an application under § 516.1 of this chapter and receive prior written OTS approval in order for your service corporation to engage in a particular activity. To the extent permitted by § 559.3(e)(2) of this part, a service corporation may engage in the following activities:

(a) Any activity that all federal savings associations may conduct directly, except taking deposits.

(b) Business and professional services. The following services are preapproved for service corporations only when they are limited to financial documents or financial clients or are generally finance-related:

(1) Accounting or internal audit;

(2) Advertising, marketing research and other marketing;

(3) Clerical;

(4) Consulting;

(5) Courier;

(6) Data processing;

(7) Data storage facilities operation and related services;

(8) Office supplies, furniture, and equipment purchasing and distribution;

(9) Personnel benefit program development or administration;

(10) Printing and selling forms that require Magnetic Ink Character Recognition (MICR) encoding;

(11) Relocation of personnel;

(12) Research studies and surveys;

(13) Software development and systems integration; and

(14) Remote service unit operation, leasing, ownership or establishment.

(c) Credit-related activities.

(1) Abstracting;

(2) Acquiring and leasing personal property;

(3) Appraising;

(4) Collection agency;

(5) Credit analysis;

(6) Check or credit card guaranty and verification;

(7) Escrow agent or trustee (under deeds of trust, including executing and deliverance of conveyances, reconveyances and transfers of title); and

(8) Loan inspection.

(d) Consumer services.

(1) Financial advice or consulting;

(2) Foreign currency exchange;

(3) Home ownership counseling;

(4) Income tax return preparation;

(5) Postal services;

(6) Stored value instrument sales;

(7) Welfare benefit distribution;

(8) Check printing and related services; and

(9) Remote service unit operation, leasing, ownership, or establishment.

(e) Real estate related services.

(1) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites, in accordance with a prudent program of property development;

(2) Acquiring improved real estate or manufactured homes to be held for rental or resale, for remodeling, renovating, or demolishing and rebuilding for sale or rental, or to be used for offices and related facilities of a stockholder of the service corporation;

(3) Maintaining and managing real estate; and

(4) Real estate brokerage for property owned by a savings association that owns capital stock of the service corporation, the service corporation, or a lower-tier entity in which the service corporation invests.

(f) Securities brokerage, insurance and related services.

(1) Execution of transactions in securities or other nondeposit investment products on an agency or riskless principal basis solely upon the order of and for the account of customers, provided that the service corporation complies with the provisions of § 545.74 of this chapter;

(2) Investment advice, provided that the service corporation complies with the provisions of § 545.74 of this chapter;

(3) Insurance brokerage or agency for liability, casualty, automobile, life, health, accident or title insurance;

(4) Liquidity management;

(5) Issuing notes, bonds, debentures or other obligations or securities; and

(6) Purchase or sale of coins issued by the U.S. Treasury.

(g) Investments.

(1) Tax-exempt bonds used to finance residential real property for family units;

(2) Tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(3) Small business investment companies licensed by the U.S. Small Business Administration to invest in small businesses engaged exclusively in the activities listed in paragraphs (a) through (i) of this section; and

(4) Investing in savings accounts of an investing thrift.

(h) Community development and charitable activities:

(1) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character;

(2) Investments that meet the community development needs of, and

primarily benefit, low- and moderate-income communities;

(3) Investments in low-income housing tax credit projects and entities authorized by statute (*e.g.*, community development financial institutions) to promote community, inner city, and community development purposes; and

(4) Establishing a corporation that is recognized by the Internal Revenue Service as organized for charitable purposes under 26 U.S.C. 501(c)(3) of the Internal Revenue Code and making a reasonable contribution to capitalize it, *provided* that the corporation engages exclusively in activities designed to promote the well-being of communities in which the owners of the service corporation operate.

(i) Activities reasonably incident to those listed in paragraphs (a) through (h) of this section if the service corporation engages in those activities.

§ 559.5 How much may a savings association invest in service corporations or lower-tier entities?

The amount that a federal savings association (''you'') may invest in a service corporation or any lower-tier entity depends upon several factors. These include your total assets, your capital, the purpose of the investment, and your ownership interest in the service corporation or entity.

(a) Under section 5(c)(4)(B) of the HOLA, you may invest up to 3% of your assets in the capital stock, obligations, and other securities of service corporations. Any investment you make under this paragraph that would cause your investment, in the aggregate, to exceed 2% of your assets must serve primarily community, inner city, or community development purposes. You must designate the investments serving those purposes, which include:

(1) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character;

(2) Investments for the preservation or revitalization of either urban or rural communities;

(3) Investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or

(4) Other community, inner city, or community development-related investments approved by OTS.

(b) In addition to the amounts you may invest under paragraph (a) of this section, and to the extent that you have authority under other provisions of section 5(c) of the HOLA and part 560 of this chapter, and available capacity within any applicable investment limits, you may make loans to any service corporation and any lower-tier entity, subject to the following conditions:

(1) You and your GAAP-consolidated subsidiaries may, in the aggregate, make loans of up to 15% of your capital as defined in § 567.5(c) of this chapter to each subordinate organization that does not qualify as a GAAP-consolidated subsidiary. All loans made under this paragraph (b)(1) may not, in the aggregate, exceed 50% of your total capital, as defined in § 567.5(c) of this chapter.

(2) The Regional Director may limit the amount of loans to a GAAP-consolidated subsidiary, or may adjust the limits set forth in paragraph (b)(1) of this section where safety and soundness considerations warrant such action.

(c) For purposes of this section, the terms ''loans'' and ''obligations'' include all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

Subpart B—Regulations Applicable to All Savings Associations

§ 559.10 How must separate corporate identities be maintained?

(a) Each savings association and subordinate organization thereof must be operated in a manner that demonstrates to the public that each maintains a separate corporate existence. Each must operate so that:

(1) Their respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of their separate corporate procedures;

(3) Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise; and

(5) Unless the parent savings association has guaranteed a loan to the subordinate organization, all borrowings by the subordinate organization indicate that the parent is not liable.

(b) OTS regulations that apply both to savings associations and subordinate organizations shall not be construed as requiring a savings association and its subordinate organizations to operate as a single entity.

§ 559.11 What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?

When required by section 18(m) of the Federal Deposit Insurance Act, a savings association (''you'') must file a notice (''Notice'') in accordance with § 516.1(c) of this chapter at least 30 days before establishing or acquiring a subsidiary or engaging in new activities in a subsidiary. The Notice must contain all of the information the Federal Deposit Insurance Corporation (FDIC) requires pursuant to 12 CFR 303.13. Providing OTS with a copy of the notice you file with the FDIC will satisfy this requirement. If OTS notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive OTS's prior written approval in accordance with § 516.1(c) of this chapter before establishing or acquiring the subsidiary or engaging in new activities in the subsidiary.

§ 559.12 How may a subsidiary of a savings association issue securities?

(a) A subsidiary may issue, either directly or through a third party intermediary, any securities that its parent savings association (''you'') may issue. The subsidiary must not state or imply that the securities it issues are covered by federal deposit insurance. A subsidiary may not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that you are insolvent or have been placed into receivership.

(b) You must file a notice with OTS in accordance with § 559.11 of this part at least 30 days before your first issuance of any securities through an existing subsidiary or in conjunction with establishing or acquiring a new subsidiary. If OTS notifies you within 30 days that the notice presents supervisory concerns or raises significant issues of law or policy, you must receive OTS's prior written approval before issuing securities through your subsidiary.

(c) For as long as any securities are outstanding, you must maintain all records generated through each securities issuance in the ordinary course of business, including a copy of any prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by OTS. Such records must include, but are not limited to:

(1) The amount of your assets or liabilities (including any guarantees you make with respect to the securities issuance) that have been transferred or made available to the subsidiary; the percentage that such amount represents of the current book value of your assets on an unconsolidated basis; and the current book value of all such assets of the subsidiary;

(2) The terms of any guarantee(s) issued by you or any third party;

(3) A description of the securities the subsidiary issued;

(4) The net proceeds from the issuance of securities (or the pro rata portion of the net proceeds from securities issued through a jointly owned subsidiary); the gross proceeds of the securities issuance; and the market value of assets collateralizing the securities issuance (any assets of the subsidiary, including any guarantees of its securities issuance you have made);

(5) The interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(6) The minimum denomination of the subsidiary's securities; and

(7) Where the subsidiary marketed or intends to market the securities.

(d) Sales of the subsidiary's securities to retail customers must comply with § 545.74 of this chapter.

§ 559.13 How may a savings association exercise its salvage power in connection with a service corporation or lower-tier entities?

(a) In accordance with this section, a savings association (''you'') may exercise your salvage power to make a contribution or a loan (including a guarantee of a loan made by any other person) to your service corporation or lower-tier entity (''salvage investment'') that exceeds the maximum amount otherwise permitted under law or regulation. You must notify OTS at least 30 days before making such a salvage investment. This notice must demonstrate that:

(1) The salvage investment protects your interest in the service corporation or lower-tier entity;

(2) The salvage investment is consistent with safety and soundness; and

(3) You considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (a)(1) and (a)(2) of this section.

(b) If OTS notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive OTS's prior written approval in accordance with § 516.1(c) of this chapter before making a salvage investment.

(c) If your service corporation or lower-tier entity is a GAAP-consolidated subsidiary, your salvage investment under this section will be considered an investment in a subsidiary for purposes of part 567 of this chapter.

PART 560—LENDING AND INVESTMENT

5. 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.

6. Section 560.30 is revised to read as follows:

§ 560.30 General lending and investment powers of federal savings associations.

Pursuant to section 5(c) of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1464(c), a federal savings association may make, invest in, purchase, sell, participate in, or otherwise deal in (including brokerage or warehousing) all loans and investments allowed under section 5(c) of the HOLA including, without limitation, the following loans, extensions of credit, and investments, subject to the limitations indicated and any such terms, conditions, or limitations as may be prescribed from time to time by the OTS by policy directive, order, or regulation:

LENDING AND INVESTMENT POWERS CHART

Category	HOLA authorization	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
Bankers' bank stock	5(c)(4)(E)	Same terms as applicable to national banks.
Business development credit corporations	5(c)(4)(A)	The lesser of .5% of total outstanding loans or $250,000.
Commercial loans	5(c)(2)(A)	20% of total assets, provided that amounts in excess of 10% of total assets may be used only for small business loans.
Commercial paper and corporate debt securities.	5(c)(2)(D)	Up to 35% of total assets.[1, 2]
Community development loans and equity investments.	5(c)(3)(B)	5% of total assets, provided equity investments do not exceed 2% of total assets.[3]
Construction loans without security	5(c)(3)(D)	In the aggregate, the greater of total capital or 5% of total assets.
Consumer loans	5(c)(2)(D)	Up to 35% of total assets.[1, 4].
Credit card loans or loans made through credit card accounts.	(5)(c)(1)(T)	None.[5].
Deposits in insured depository institutions	5(c)(1)(G)	None.[5]
Education loans	5(c)(1)(U)	None.[5]
Federal government and government-sponsored enterprise securities and instruments.	5(c)(1)(C), 5(c)(1)(D), 5(c)(1)(E), 5(c)(1)(F)	None.[5]
Finance leasing	5(c)(1)(B), 5(c)(2)(A), 5(c)(2)(B), 5(c)(2)(D)	Based on purpose and property financed.[6]
Foreign assistance investments	5(c)(4)(C)	1% of total assets.[7]
General leasing	5(c)(2)(C)	10% of assets.[6]
Home improvement loans	5(c)(1)(J)	None.[5]
Home (residential) loans[8]	5(c)(1)(B)	None.[5, 9]
HUD-insured or guaranteed investments	5(c)(1)(O)	None.[5]
Insured loans	5(c)(1)(I), 5(c)(1)(K)	None.[5]
Liquidity investments	5(c)(1)(M)	None.[5, 10]
Loans secured by deposit accounts	5(c)(1)(A)	None.[5, 11]
Loans to financial institutions, brokers, and dealers.	5(c)(1)(L)	None.[5, 12]
Manufactured home loans	5(c)(1)(J)	None.[5, 13]
Mortgage-backed securities	5(c)(1)(R)	None.[5]
National Housing Partnership Corporation and related partnerships and joint ventures.	5(c)(1)(N)	None.[5]
Nonconforming loans	5(c)(3)(C)	5% of total assets.

LENDING AND INVESTMENT POWERS CHART—Continued

Category	HOLA authorization	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
Nonresidential real property loans	5(c)(2)(B)	400% of total capital.[14]
Open-end management investment companies[15].	5(c)(1)(Q)	None.[5]
Service corporations	5(c)(4)(B)	3% of total assets, as long as any amounts in excess of 2% of total assets further community, inner city, or community development purposes.[16]
Small business investment companies[17]	5(c)(4)(D)	1% of total assets.
Small-business-related securities	5(c)(1)(S)	None.[5]
State and local government obligations	5(c)(1)(H)	None.[5, 18]
State housing corporations	5(c)(1)(P)	None.[5, 19]
Transaction account loans, including overdrafts	5(c)(1)(A)	None.[5, 20]

Notes:

[1] For purposes of determining a Federal savings association's percentage of assets limitation, investment in commercial paper and corporate debt securities must be aggregated with the Federal savings association's investment in consumer loans.

[2] A Federal savings association may invest in commercial paper and corporate debt securities, which includes corporate debt securities convertible into stock, subject to the provisions of § 560.40. Amounts in excess of 30% of assets, in the aggregate, may be invested only in obligations purchased by the association directly from the original obligor and for which no finder's or referral fees have been paid.

[3] The 2% of assets limitation is a sublimit for investments within the overall 5% of assets limitation on community development loans and investments. The qualitative standards for such loans and investments are set forth in HOLA section 5(c)(3)(B), as explained in an opinion of the OTS Chief Counsel dated May 10, 1995 (available upon request at the address set forth in § 516.1(a) of this chapter).

[4] Amounts in excess of 30% of assets, in aggregate, may be invested only in loans made by the association directly to the original obligor and for which no finder's or referral fees have been paid. A Federal savings association may include loans to dealers in consumer goods to finance inventory and floor planning in the total investment made under this section.

[5] While there is no statutory limit on certain categories of loans and investments, including credit card loans, home improvement loans, education loans, and deposit account loans, OTS may establish an individual limit on such loans or investments if the association's concentration in such loans or investments presents a safety and soundness concern.

[6] A Federal savings association may engage in leasing activities subject to the provisions of § 560.41.

[7] This 1% of assets limitation applies to the aggregate outstanding investments made under the Foreign Assistance Act and in the capital of the Inter-American Savings and Loan Bank. Such investments may be made subject to the provisions of § 560.43.

[8] A home (or residential) loan includes loans secured by one-to-four family dwellings, multi-family residential property and loans secured by a unit or units of a condominium or housing cooperative.

[9] A Federal savings association may make home loans subject to the provisions of §§ 560.33, 560.34 and 560.35.

[10] The assets qualifying as liquidity investments are described in § 566.1(g) of this chapter. The maturity limitations (except those for bankers acceptances) of § 566.1(g) of this chapter do not apply for purposes of this section.

[11] Loans secured by savings accounts and other time deposits may be made without limitation, provided the Federal savings association obtains a lien on, or a pledge of, such accounts. Such loans may not exceed the withdrawable amount of the account.

[12] A Federal savings association may only invest in these loans if they are secured by obligations of, or by obligations fully guaranteed as to principal and interest by, the United States or any of its agencies or instrumentalities, the borrower is a financial institution insured by the Federal Deposit Insurance Corporation or is a broker or dealer registered with the Securities and Exchange Commission, and the market value of the securities for each loan at least equals the amount of the loan at the time it is made.

[13] If the wheels and axles of the manufactured home have been removed and it is permanently affixed to a foundation, a loan secured by a combination of a manufactured home and developed residential lot on which it sits may be treated as a home loan.

[14] Without regard to any limitations of this part, a Federal savings association may make or invest in the fully insured or guaranteed portion of nonresidential real estate loans insured or guaranteed by the Economic Development Administration, the Farmers Home Administration, or the Small Business Administration. Unguaranteed portions of guaranteed loans must be aggregated with uninsured loans when determining an association's compliance with the 400% of capital limitation for other real estate loans.

[15] This authority is limited to investments in open-end management investment companies that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940. The portfolio of the investment company must be restricted by the company's investment policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in. Separate and apart from this authority, a Federal savings association may make pass-through investments to the extent authorized by § 560.32.

[16] A Federal savings association may invest in service corporations subject to the provisions of part 559 of this chapter.

[17] A Federal savings association may only invest in small business investment companies formed pursuant to section 301(d) of the Small Business Investment Act of 1958.

[18] This category includes obligations issued by any state, territory, or possession of the United States or political subdivision thereof (including any agency, corporation, or instrumentality of a state or political subdivision), subject to § 560.42.

[19] A Federal savings association may invest in state housing corporations subject to the provisions of § 560.121.

[20] Payments on accounts in excess of the account balance (overdrafts) on commercial deposit or transaction accounts shall be considered commercial loans for purposes of determining the association's percentage of assets limitation.

7. Sections 560.32, 560.36, and 560.37 are added to read as follows:

§ 560.32 Pass-through investments.

(a) A federal savings association (''you'') may make pass-through investments. A pass-through investment occurs when you invest in an entity (''company'') that engages only in activities that you may conduct directly and the investment meets the requirements of this section. If an investment is authorized under both this section and some other provision of law, you may designate under which authority or authorities the investment is made. When making a pass-through investment, you must comply with all the statutes and regulations that would apply if you were engaging in the activity directly. For example, your proportionate share of the company's assets will be aggregated with the assets you hold directly in calculating investment limits (*e.g.*, no more than 400% of total capital may be invested in nonresidential real property loans).

(b) You may make a pass-through investment without prior notice to OTS if all of the following conditions are met:

(1) You do not invest more than 15% of your total capital in one company;

(2) The book value of your aggregate pass-through investments does not

exceed 50% of your total capital after making the investment;

(3) Your investment would not give you direct or indirect control of the company;

(4) Your liability is limited to the amount of your investment; and

(5) The company falls into one of the following categories:

(i) A limited partnership;

(ii) An open-end mutual fund;

(iii) A closed-end investment trust;

(iv) A limited liability company; or

(v) An entity in which you are investing primarily to use the company's services (*e.g.*, data processing).

(c) If you want to make other pass-through investments, you must provide OTS with 30 days' advance notice. If within that 30-day period OTS notifies you that an investment presents supervisory, legal, or safety and soundness concerns, you must file an application with OTS in accordance with § 516.1 of this chapter and may not make the investment without first receiving OTS's prior written approval. Notices under this section are deemed to be applications for purposes of statutory and regulatory references to ''applications.'' Any conditions that OTS imposes on any pass-through investment shall be enforceable as a condition imposed in writing by the OTS in connection with the granting of a request by a savings association within the meaning of 12 U.S.C. 1818(b) or 1818(i).

§ 560.36 De minimis investments.

A federal savings association may invest in the aggregate up to the greater of one-fourth of 1% of its total capital or $100,000 in community development investments of the type permitted for a national bank under 12 CFR Part 24.

§ 560.37 Real estate for office and related facilities.

A federal savings association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the federal savings association's present needs or its reasonable future needs for office and related facilities. A federal savings association may not make an investment that would cause the outstanding book value of all such investments (including investments under § 559.4(e)(2) of this chapter) to exceed its total capital.

8. Section 560.93 is amended by revising paragraph (a) to read as follows:

§ 560.93 Lending limitations.

(a) *Scope.* This section applies to all loans and extensions of credit to third parties made by a savings association and its subsidiaries. This section does not apply to loans made by a savings association or a GAAP-consolidated subsidiary to subordinate organizations or affiliates of the savings association. The terms *subsidiary, GAAP-consolidated subsidiary,* and *subordinate organization* have the same meanings as specified in § 559.2 of this chapter. The term *affiliate* has the same meaning as specified in § 563.41 of this chapter.

* * * * *

PART 563—OPERATIONS

9. 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.

§§ 563.37, 563.38, 563.132 [Removed]

10. Sections 563.37, 563.38, and 563.132 are removed.

11. Section 563.41 is amended by revising paragraph (b)(4) to read as follows:

§ 563.41 Loans and other transactions with affiliates and subsidiaries.

* * * * *

(b) * * *

(4) The term *subsidiary,* when used in connection with a savings association means a company that is controlled by that savings association within the meaning of part 574 of this chapter;

* * * * *

PART 567—CAPITAL

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

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

13. Section 567.1 is amended by removing in paragraph (l)(1) the phrase ''(either directly or through ownership of a subsidiary)'', and by revising paragraph (dd) to read as follows:

§ 567.1 Definitions.

* * * * *

(dd) *Subsidiary.* The term *subsidiary* means any corporation, partnership, business trust, joint venture, association or similar organization in which a savings association directly or indirectly holds an ownership interest and the assets of which are consolidated with those of the savings association for purposes of reporting under Generally Accepted Accounting Principles (GAAP). Generally, these are majority-owned subsidiaries.[1] This definition does not include ownership interests that were taken in satisfaction of debts previously contracted, provided that the reporting association has not held the interest for more than five years or a longer period approved by the OTS.

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PART 571—STATEMENTS OF POLICY

14. 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.

§ 571.21 [Removed]

15. Section 571.21 is removed.

Dated: December 6, 1996.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

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BILLING CODE 6720–01–P

[1] The OTS reserves the right to review a savings association's investment in a subsidiary on a case-by-case basis. If the OTS determines that such investment is more appropriately treated as an equity security or an ownership interest in a subsidiary, it will make such determination regardless of the percentage of ownership held by the savings association.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–29]

Revocation of Class E Airspace; Alameda, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace area at Alameda, CA. The base closure of Alameda Naval Air Station (NAS) has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the surface area no longer exist at Alameda NAS (Nimitz Field), CA.

EFFECTIVE DATE: 0901 UTC January 15, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.