

# RESCINDED

Office of Thrift Supervision  
Department of the Treasury

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*Transmittal*

## **TR-269**

Federal Register, Vol. 66, No. 246, pp. 65822 - 65827

**Number TR-269**



This rescission does not change the applicability of the conveyed document. To determine the applicability of the conveyed document, refer to the original issuer of the document.

The attached final rule regarding Lending and Investment was published in the Federal Register on December 21, 2001.

**PART 573—PRIVACY OF CONSUMER FINANCIAL INFORMATION**

47. The authority citation for part 573 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1828; 15 U.S.C. 6801 *et seq.*

48. Revise § 573.15 (a)(7)(ii) to read as follows:

**§ 573.15 Other exceptions to notice and opt out requirements.**

- (a) \* \* \*
- (7) \* \* \*

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, State, or local authorities; or  
\* \* \* \* \*

**PART 583—DEFINITIONS FOR REGULATIONS AFFECTING SAVINGS AND LOAN HOLDING COMPANIES**

49. Revise the part heading for part 583 to read as shown above.

50. The authority citation for part 583 continues to read as follows:

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

**PART 590—PREEMPTION OF STATE USURY LAWS**

51. The authority citation for part 590 continues to read as follows:

**Authority:** 12 U.S.C. 1735f-7a.

52. Revise 590.3(c) to read as follows:

**§ 590.3 Operation.**

\* \* \* \* \*

(c) Nothing in this section preempts limitations in state laws on prepayment charges, attorneys' fees, late charges or other provisions designed to protect borrowers.

Dated: December 11, 2001.

By the Office of Thrift Supervision.

**James E. Gilleran,**

*Director.*

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**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Parts 559 and 560**

[No. 2001-82]

RIN 1550-AB37

**Lending and Investment**

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

**ACTION:** Final rule.

**SUMMARY:** The Office of Thrift Supervision ("OTS") is revising and clarifying its lending and investment regulations to give savings associations greater flexibility in a changing marketplace. Today's regulatory amendments are intended to help thrifts take better advantage of the flexibility available under the Home Owners' Loan Act ("HOLA"), to provide low-cost credit to their customers, and to invest in their communities while still operating safely and soundly.

**EFFECTIVE DATE:** This rule is effective on January 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** William J. Magrini, Senior Project Manager, Supervision Policy, (202) 906-5744; Karen Osterloh, Assistant Chief Counsel, Regulations and Legislation Division, (202) 906-6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

OTS periodically reviews its lending and investment regulations to ensure that they enhance safe and sound lending, implement statutory requirements, protect consumers, minimize regulatory burden, and are clearly written. OTS lending and investment regulations have been considerably modified over time as savings associations, their markets, their competition, and the economy have changed. For the most part, OTS has taken a contract and market-based approach to provide flexibility for thrifts and their customers and to encourage innovations in lending to help make credit more available.

OTS last substantively revised its lending regulations and subordinate organizations regulations in 1996.<sup>1</sup> Since that time, the markets in which thrifts operate have changed substantially. In the primary market, savings associations now compete with other mortgage lenders to offer potential borrowers a wide variety of options besides the traditional 30-year fixed-rate purchase money mortgage. The secondary market continues to narrow the interest-rate spread on high quality mortgages.

As the residential mortgage market has evolved, thrifts have increasingly begun to explore offering other types of credit needed in their communities, including consumer lending and small business lending. A variety of community-related investment opportunities offer thrifts new ways to

serve and to participate in the economic development of their communities. Thrifts have asked whether and how such loans and investments may be made by either the thrift itself or through an operating subsidiary or service corporation.

This evolving environment made it appropriate for OTS to again re-examine and update its lending and investment and subordinate organizations regulations. Accordingly, on November 1, 2001, OTS published a proposed rule intended to help thrifts take better advantage of the flexibility available under the Home Owners' Loan Act ("HOLA"), to provide low-cost credit to their customers, and to invest in their communities while still operating safely and soundly. 66 FR 55131 (Nov. 1, 2001).

**II. Analysis of Comments**

OTS received eight public comments from three Federal savings associations, three trade associations, a community group, and an individual. Seven commenters supported the rule, but recommended modifications. The commenter opposing the rule incorrectly believed that the rule applied to institutions with a common bond (*i.e.*, credit unions), rather than thrifts. The remaining comments are summarized below.

*Small Business Loans*

Existing § 560.3 provides two alternatives for determining whether a particular loan qualifies as a small business loan.<sup>2</sup> First, a loan of any size qualifies if the loan is made to a business that meets the size standards established by the Small Business Administration. Second, a loan qualifies if a savings association makes a loan to a business and the amount of the loan is less than \$1 million, or makes a loan to a farm and the amount of the loan is less than \$500,000. OTS proposed to raise this safe harbor amount to \$2 million for both small business and farm loans.

Most commenters supported the increase. One commenter, however, noted that the existing definition is more consistent with an emphasis on serving the smallest businesses and farms and with the Community Reinvestment Act (CRA) definition of small business and farm loan. This commenter feared that the proposed increase could cause thrifts to neglect the smallest businesses.

<sup>2</sup> Sections 5(c)(2)(A) and 10(m)(4)(E) specifically authorize the Director to define the terms "small business loans" and "small business" for purposes of HOLA investment limits and the Qualified Thrift Lender test, respectively.

<sup>1</sup> See Lending and Investment Final Rule, 61 FR 50951 (Sept. 30, 1996); Subsidiaries and Equity Investments, 61 FR 66561 (Dec. 18, 1996).

The proposed changes were designed to define the scope of a Federal savings association's lending and investment powers, rather than to assess the adequacy of its CRA performance. OTS believes that the additional flexibility afforded by the proposed modification will enable more savings associations to provide a broader range of small business customers with credit products tailored to their needs, particularly in higher price geographic areas. OTS will continue to assess an institution's record of meeting the credit needs of the local communities, including small business lending, under the CRA and CRA implementing regulations at 12 CFR part 563e.<sup>3</sup>

To satisfy the safe harbor under the current and proposed rules, a savings association must make the loan to "a business or farm." Several commenters noted that commercial loans are often made to individuals who use the proceeds for their own small businesses. To accommodate this lending, commenters suggested that OTS should apply the \$2 million safe harbor if loan proceeds are used for business or commercial purposes. OTS has always believed that such loans fall within the definition, but has modified the safe harbor in the final rule to make clear that it applies to loans that are for "commercial, corporate, business, or agricultural purposes." See 12 U.S.C. 1464(c)(2)(A).

#### *De Minimis Investments*

Existing § 560.36 permits a Federal savings association to invest the greater of one-fourth of one percent of its total capital or \$100,000 in community development investments of the type permitted under 12 CFR part 24. OTS proposed to increase these limits to the greater of one percent of an association's total capital or \$250,000. One commenter urged OTS to increase this limit to the national bank limit (five percent of capital stock paid in and five percent of unimpaired surplus). See 12 U.S.C. 24 (Eleventh) and 12 CFR part 24.

The proposed increase to the community development investment

limits attempts to give thrifts authority as comparable to that of banks as possible, given the different statutory authority.<sup>4</sup> Because Federal thrifts have other community development investment options that are not available to national banks, OTS is not inclined to increase the *de minimis* authority beyond the proposed amount at this time.

In addition to the *de minimis* authority, Federal savings associations are permitted to invest in certain community development and charitable activities through service corporations.<sup>5</sup> One commenter requested clarification that the authority to invest in public welfare investments under the *de minimis* authority in § 560.36 is not contingent on the balance of public welfare investments made under the service corporation authority. OTS has consistently stated that if a loan or investment is authorized under more than investment authority, a Federal savings association may designate the section under which the loan or investment is made. See 12 CFR 560.31.<sup>6</sup> Section 559.3(i) also specifically provides that investments made at the service corporation level are not aggregated with those made at the thrift level when calculating HOLA investment limitations. Compare § 559.3(i)(1) (operating subsidiaries) with § 559.3(i)(2) (service corporations). Thus, the amount a savings association may invest directly in public welfare investments under § 560.36 is not

contingent on the balance of public welfare investments made through a service corporation.

#### *Commercial Paper and Corporate Debt Securities*

Existing § 560.40 reiterates HOLA's grant of statutory authority to Federal thrifts to invest in commercial paper and corporate debt securities and sets out limitations on that authority.<sup>7</sup> Recently, some Federal savings associations have purchased complex investment securities with nonstandard ratings, ratings that only apply to the principal amount rather than both the principal and interest, or payment features such as residuals. These investments tend to be speculative in nature, and their likelihood of producing a particular rate of return is difficult to assess even where they may be partially guaranteed or rated investment grade. These investments are clearly not intended to hedge interest rate risk or credit risk. Rather, their potential purchase creates risks that highlight the need for savings associations to perform thorough underwriting analyses. To address issues raised by these types of investments, OTS proposed changes to § 560.40 to codify the agency's existing expectations about the circumstances under which these investments may be made.

Among other requirements, OTS proposed that a Federal savings association must determine whether an investment security is safe and sound and suitable for the association before committing to acquire the security. The proposed rule indicated that a Federal savings association must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity. One commenter supported this provision, but requested confirmation that an investment need not be reasonable under each separate criterion. The risks of each investment should be evaluated on an overall basis. Individual risk factors may impact the overall safety and soundness of a particular investment so significantly that they may not be offset by other strengths of the investment. On the other hand, a slight deviation in one area may not have such an impact on the overall safety and soundness of an investment. These determinations are inherently case-by-case. As a result, OTS cannot provide the requested confirmation.

The preamble to the proposed rule indicated that a savings association has

<sup>4</sup> The HOLA does not contain a provision paralleling the authority of 12 U.S.C. 24 (Eleventh). However, OTS has long recognized that a Federal savings association may make community development related investments to raise its profile in its market as a form of advertising.

<sup>5</sup> In the proposed rule, OTS revised the service corporation regulation at § 559.4(h) to clarify that these service corporation investments include those that "designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs.)" This modification clarified that Federal savings association service corporations have the same authority as national banks and state member banks to make investments to promote the public welfare (see 12 U.S.C. 24 (Eleventh) and 12 U.S.C. 338a, respectively). One commenter noted that the amount that national banks may invest in public welfare investments is limited to five percent of capital stock paid in plus five percent of unimpaired surplus. The commenter asked OTS to clarify whether these national bank limits also restrict the amount of the service corporation public welfare investment. The proposed modification to § 559.4 was intended to define the scope of permissible investments, not the limits on the amount of the investment. OTS existing regulations define the limits on the amount of a thrift's investment in service corporations at 12 CFR 559.5. This regulation does not incorporate the national bank limitation on public welfare investments.

<sup>6</sup> See *generally* Thrift Bulletin 78 "Classifying Commercial and Other Loans under the Home Owners' Loan Act" (October 5, 2001).

<sup>7</sup> 12 U.S.C. 1464(c)(2)(D).

<sup>3</sup> Another commenter asked OTS to conform the definitions of "small business loan" set out in the CRA regulations and in the Thrift Financial Report (TFR) to include the \$2 million safe harbor threshold. Revisions to the CRA regulations are beyond the scope of this rulemaking. However, OTS is working on an interagency basis to update and amend the CRA regulations. See Advance Notice of Proposed Regulations published July 19, 2001 (66 FR 37602). The agencies may consider revisions to the CRA definition of "small business loan" in that rulemaking. In addition, OTS continually reevaluates the TFR and the instructions to the TFR to ensure that the terms used appropriately reflect OTS regulations, and will review these documents in light of the changes made in today's final rule.

an ongoing responsibility to monitor its investments in commercial paper and debt securities. One commenter observed that the rule text does not incorporate a review requirement or indicate what factors should be addressed in this analysis. OTS believes that the ongoing review responsibilities should be left to each institution based on the level and complexity of its investment activity. OTS has issued guidance concerning appropriate initial and continuing underwriting criteria.<sup>8</sup>

The commenter also noted that the rule does not address the actions required of an institution if an investment fails to meet the original assumptions or suitability requirements subsequent to its acquisition. Depending on the circumstances of each case, OTS may, as a part of its ongoing supervision and oversight, criticize an institution's investments, its investment activities, or its investment policies, and will require appropriate remedial action as necessary.

**Loan Purchases**

One commenter asked OTS to add a new provision requiring savings associations to screen loan purchases for abusive and predatory features. This request addresses important issues beyond the scope of the proposal and is not an area OTS believes appropriate to address in this final rule without further public input and analysis. Nonetheless, a Federal savings association must determine the safety, soundness, and suitability of any investment or purchase, and should consider the reputation of the seller and the quality and underwriting standards of the loans it purchases.

**III. Effective Date**

In the proposed rule, OTS stated that it intended to publish a final rule that will be effective on January 1, 2002. See 66 FR 55131, at 55135 (Nov. 1, 2001). Section 553 of the Administrative Procedure Act (APA), however, provides that a final rule must not be made effective before 30 days after its publication, 5 U.S.C. 553(b)(B), unless the rule grants or recognizes an exemption or relieves a restriction.

Today's final rule relieves restrictions by enhancing savings associations'

flexibility to offer a greater range of products, to invest in activities that support their local communities, and to compete more effectively with other financial institutions. It also relieves restrictions by permitting savings associations to make a greater amount of community development investments. Finally, the final rule rewrites certain provisions using plain language drafting techniques, which will make it easier for all savings associations to comply with OTS regulations. Accordingly, OTS has concluded that the final rule relieves restrictions and that the APA does not require OTS to delay its effective date for 30 days.

This rule is effective on January 1, 2002. This date is consistent with section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), which requires final rules to take effect on the first day of a calendar quarter that begins on or after the date of publication of the rule. 12 U.S.C. 4802.

**IV. Executive Order 12866**

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

**V. Unfunded Mandates Reform 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, 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. 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, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

**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 economic impact on a substantial number of small entities. The final rule makes certain changes that reduce burden on all savings associations, including small

institutions. The final rule reduces burden on all savings associations by enhancing thrifts' flexibility to offer a greater range of products, to invest in activities that support their local communities, and to compete more effectively with other financial institutions. The final rule allows small savings associations to make a greater amount of community development investments. Finally, the final rule revises § 560.42 into plain language, which will make it easier for all savings associations to comply with the regulation. Accordingly, OTS concludes that this final rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects**

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.

Accordingly, the Office of Thrift Supervision amends 12 CFR chapter V, as follows.

**PART 559—SUBORDINATE ORGANIZATIONS**

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

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

2. Section 559.4 introductory text, and paragraphs (g)(3), (h)(2) and (3), and (i) are revised; and § 559.4(j) is added to read as follows:

**§ 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 for 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 part 516 of this chapter and receive prior written OTS approval 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:

- \* \* \* \* \*
- (g) \* \* \*

<sup>8</sup> E.g., Memorandum for Chief Executives 130 dated October 23, 2000. This memorandum indicates that management has an ongoing responsibility to monitor the investment, including cash flows, collateral quality, and the performance of the underlying assets of the security at least quarterly to determine the effect of any changes on the association's investment. Thrift Bulletin 13a also provides guidance on the fundamental underwriting standards thrifts should use in this area.

(3) Small business investment companies and new markets venture capital companies licensed by the U.S. Small Business Administration; and

\* \* \* \* \*

(h) \* \* \*

(2) Investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as providing housing, services, or jobs);

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

\* \* \* \* \*

(i) Activities conducted on behalf of a customer on an other than "as principal" basis.

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

**PART 560—LENDING AND INVESTMENT**

3. 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.

4. Section 560.3 is amended by revising the first sentence in the definition of "Real estate loan" and by revising the definition of "Small business loans and loans to small businesses" as follows:

**§ 560.3 Definitions.**

\* \* \* \* \*

*Real estate loan*, for purposes of this part, is a loan for which the savings association substantially relies upon a security interest in real estate given by the borrower as a condition of making the loan. \* \* \*

\* \* \* \* \*

*Small business loans and loans to small businesses* include any loan to a

small business as defined in this section; or a loan that does not exceed \$2 million (including a group of loans to one borrower) and is for commercial, corporate, business, or agricultural purposes.

5. 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 OTS by policy directive, order, or regulation:

**LENDING AND INVESTMENT POWERS CHART**

Category	Statutory authorization <sup>1</sup>	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. <sup>2,3</sup>
Community development loans and equity equity investments.	5(c)(3)(A) .....	5% of total assets, provided equity investments do not exceed 2% of total assets. <sup>4</sup>
Construction loans without security .....	5(c)(3)(C) .....	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. <sup>2,5</sup>
Credit card loans or loans made through credit card accounts.	5(c)(1)(T) .....	None. <sup>6</sup>
Deposits in insured depository institutions .....	5(c)(1)(G) .....	None. <sup>6</sup>
Education loans .....	5(c)(1)(U) .....	None. <sup>6</sup>
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. <sup>6</sup>
Finance leasing .....	5(c)(1)(B), 5(c)(2)(A), 5(c)(2)(B), 5(c)(2)(D).	Based on purpose and property financed. <sup>7</sup>
Foreign assistance investments .....	5(c)(4)(C) .....	1% of total assets. <sup>8</sup>
General leasing .....	5(c)(2)(C) .....	10% of assets. <sup>7</sup>
Home improvement loans .....	5(c)(1)(J) .....	None. <sup>6</sup>
Home (residential) loans <sup>9</sup> .....	5(c)(1)(B) .....	None. <sup>6,10</sup>
HUD-insured or guaranteed investments .....	5(c)(1)(O) .....	None. <sup>6</sup>
Insured loans .....	5(c)(1)(I), 5(c)(1)(K) .....	None. <sup>6</sup>
Liquidity investments .....	5(c)(1)(M) .....	None. <sup>6</sup>
Loans secured by deposit accounts .....	5(c)(1)(A) .....	None. <sup>6,11</sup>
Loans to financial institutions, brokers, and dealers .....	5(c)(1)(L) .....	None. <sup>6,12</sup>
Manufactured home loans .....	5(c)(1)(J) .....	None. <sup>6,13</sup>
Mortgage-backed securities .....	5(c)(1)(R) .....	None. <sup>6</sup>
National Housing Partnership Corporation and related partnerships and joint ventures.	5(c)(1)(N) .....	None. <sup>6</sup>
New markets venture capital companies .....	5(c)(4)(F) .....	5% of total capital.
Nonconforming loans .....	5(c)(3)(B) .....	5% of total assets.
Nonresidential real property loans .....	5(c)(2)(B) .....	400% of total capital. <sup>14</sup>
Open-end management investment companies <sup>15</sup> .....	5(c)(1)(Q) .....	None. <sup>6</sup>
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. <sup>16</sup>
Small business investment companies .....	15 U.S.C. 682(b)(2) .....	5% of total capital.

LENDING AND INVESTMENT POWERS CHART—Continued

Category	Statutory authorization <sup>1</sup>	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
Small-business-related securities .....	5(c)(1)(S) .....	None. <sup>6</sup>
State and local government obligations .....	5(c)(1)(H) .....	None for general obligations. Per issuer limitation of 10% of capital for other obligations. <sup>6 17</sup>
State housing corporations .....	5(c)(1)(P) .....	None. <sup>6 18</sup>
Transaction account loans, including overdrafts .....	5(c)(1)(A) .....	None. <sup>6 19</sup>

**Endnotes**

1. All references are to section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) unless otherwise indicated.

2. 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.

3. 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 of this part. 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.

4. 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)(A) (formerly 5(c)(3)(B), as explained in an opinion of the OTS Chief Counsel dated May 10, 1995 (available at [www.ots.treas.gov](http://www.ots.treas.gov))).

5. Amounts in excess of 30% of assets, in the 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.

6. 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.

7. A Federal savings association may engage in leasing activities subject to the provisions of § 560.41 of this part.

8. 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 of this part.

9. 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.

10. A Federal savings association may make home loans subject to the provisions of §§ 560.33, 560.34, and 560.35 of this part.

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 of this part.

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

17. 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 of this part.

18. A Federal savings association may invest in state housing corporations subject to the provisions of § 560.121 of this part.

19. 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.

6. Revise 560.36 to read as follows:

**§ 560.36 De minimis investments.**

A Federal savings association may invest in the aggregate up to the greater of 1% of its total capital or \$250,000 in community development investments of the type permitted for a national bank under 12 CFR part 24.

7. Amend § 560.40 by adding the words "as to the portion of the security in which the association is investing" after "categories" in § 560.40(a)(2)(ii) and by adding § 560.40(c) to read as follows:

**§ 560.40 Commercial paper and corporate debt securities.**

\* \* \* \* \*

(c) *Underwriting.* Before committing to acquire any investment security, a Federal savings association must determine whether the investment is safe and sound and suitable for the association. The Federal savings association must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity. The Federal savings association must also determine that the issuer has adequate resources and the willingness to provide for all required payments on its obligations in a timely manner.

8. Revise 560.42 to read as follows:

**§ 560.42 State and local government obligations.**

(a) *What limitations apply?* Pursuant to HOLA section 5(c)(1)(H), a Federal savings association ("you") may invest in obligations issued by any state, territory, possession, or political subdivision thereof ("governmental entity"), subject to appropriate underwriting and the following conditions:

	Aggregate limitation	Per-issuer limitation
(1) General obligations .....	None .....	None.
(2) Other obligations of a governmental entity (e.g., revenue bonds) that hold one of the four highest investment grade ratings by a nationally recognized rating agency or that are nonrated but of investment quality.	None .....	10% of total capital.
(3) Obligations of a governmental entity that do not qualify under any other paragraph but are approved by your Regional Director.	As approved by your Regional Director	10% of total capital.

(b) *What is a political subdivision?* Political subdivision means a county, city, town, or other municipal corporation, a public authority, or a publicly-owned entity that is an instrumentality of a state or a municipal corporation.

(c) *What is a general obligation of a state or political subdivision?* A general obligation is an obligation that is guaranteed by the full faith and credit of a state or political subdivision that has the power to tax. Indirect payments, such as through a special fund, may qualify as general obligations if a state or political subdivision with taxing authority has unconditionally agreed to provide funds to cover payments.

(d) *What is appropriate underwriting for this type of investment?* In the case of a security rated in one of the four highest investment grades by a nationally recognized rating agency, your assessment of the obligor's credit quality may be based, in part, on reliable rating agency estimates of the obligor's performance. For all other securities, you must perform your own detailed analysis of credit quality. In doing so, you must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity and determine that such investment is appropriate for your institution. You must also determine that the obligor has adequate resources and willingness to provide for all required payments on its obligations in a timely manner.

Dated: December 11, 2001.

By the Office of Thrift Supervision.

**James E. Gilleran,**

Director.

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BILLING CODE 6720-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-SW-78-AD; Amendment 39-12560; AD 2001-25-07]

RIN 2120-AA64

#### Airworthiness Directives; Eurocopter France Model AS 332C, L, L1, and L2 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) that applies to Eurocopter France Model AS 332C, L, L1, and L2 helicopters. That AD requires conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. This amendment requires the same actions as the existing AD but references a revision to the previously referenced service information; adds fuel filter part numbers to the applicability; and clarifies other provisions throughout the AD. This amendment is prompted by jammed fuel filter by-pass valves. The actions specified by this AD are intended to prevent power loss due to fuel starvation, engine flameouts, and a subsequent forced landing.

**DATES:** Effective January 25, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 25, 2002.

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Paul Madej, Aviation Safety Engineer, FAA,

Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110, telephone (817) 222-5125, fax (817) 222-5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 by superseding AD 99-13-02, Amendment 39-11195 (64 FR 32399, June 17, 1999), which applies to Eurocopter France Model AS 332C, L, L1, and L2 helicopters, was published in the **Federal Register** on April 14, 2000 (65 FR 20104). That action proposed to require the same actions as AD 99-13-02 but would have added another fuel filter part number to the applicability.

After issuing that notice of proposed rulemaking (NPRM), Eurocopter France issued Alert Service Bulletin No. 01.00.56, dated January 16, 2001 (ASB), which changed the compliance and operational procedures and added a part number to the affected fuel filters. The Direction Generale De L'Aviation Civile, which is the airworthiness authority for France, classified that ASB as mandatory and issued AD Nos. 1998-318-071(A)R6 and 1998-319-012(A)R6, both dated April 18, 2001, to ensure the continued airworthiness of these helicopters in France. The FAA determined that the actions and all the fuel filter part numbers specified in the SB should be included in the proposal. Because the changes expanded the scope of the originally proposed rule, the FAA determined that it was necessary to reopen the comment period to provide additional opportunity for public comment and issued a supplemental NPRM on August 17, 2001 (66 FR 45651, August 29, 2001).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for a minor editorial change in Note 2 of the AD. The word "bulletin" is inserted to reference the applicable service information. This change neither increases the economic burden on any operator nor increases the scope of the AD.