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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 559 and 560

[No. 2001-67]

RIN 1550-AB37

Lending and Investment

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (“OTS”) proposes to revise and clarify its lending and investment regulations to give savings associations greater flexibility in a changing marketplace.

Today’s proposed 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.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

Mail: Send comments to Regulation Comments, Chief Counsel’s Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001-67.

Delivery: Hand deliver comments to the Guard’s Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention Regulation Comments, Chief Counsel’s Office, Docket No. 2001-67.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906-6518, Attention Docket No. 2001- 67.

E-Mail: Send e-mails to regs.comments@ots.treas.gov, Attention Docket No. 2001-67, and include your name and telephone number.

Public Inspection: Comments and the related index will also be posted on the OTS Internet Site at www.ots.treas.gov. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days

between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date a request is received.

FOR FURTHER INFORMATION CONTACT: William J. Magrini, Senior Project Manager, Supervision Policy, (202) 906-5744; Paul Robin, Assistant Chief Counsel, Regulations and Legislation Division, (202) 906-6648, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background of the Proposal

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. [\[1\]](#) 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 makes it appropriate for OTS to again re-examine and update its lending and investment and subordinate organizations regulations. Today's proposed 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.

II. Section-by-Section Analysis

Section 559.4 What activities are preapproved for service corporations?

Section 559.4 lists activities that are preapproved for service corporations of Federal savings associations. Preapproved means that well-managed savings associations planning to initiate the activity in a service corporation must only give OTS and the Federal Deposit Insurance Corporation (“FDIC”) advance notice under section 18(m) of the Federal Deposit Insurance Act and 12 CFR 559.11, rather than receive OTS approval.

Paragraph (g) of § 559.4 currently preapproves service corporation investments in only those small business investment companies (“SBICs”) licensed by the U.S. Small Business Administration (“SBA”) that engage solely in activities otherwise permissible for the service corporation itself.^[2] Under the current regulation, other investments in SBICs must be approved on a case-by-case basis.

The proposed rule would amend this provision to reflect recent statutory changes made in the Consolidated Appropriations Act -- FY 2001 (“CAA”).^[3] The CAA gives Federal savings associations the same authority that national and state banks enjoy to invest in SBICs^[4] and new markets venture capital companies (“NMVCCs”)^[5] licensed by the SBA, without restriction as to the activities of those companies. Accordingly, proposed § 559.4(g) would preapprove Federal savings association service corporation investments in SBICs and NMVCCs without regard to the nature of a particular company’s activities. (OTS is also proposing to amend 12 CFR 560.30 to reflect Federal savings associations’ ability to make these investments at the thrift level.)

Paragraph (h) of existing § 559.4 preapproves service corporation investments in certain community development and charitable activities. Thrifts interested in participating in community development projects with other depository institutions have asked how the scope of this authority compares to that of banks. OTS is proposing to clarify any ambiguity by modifying paragraph (h)(2) to parallel 12 U.S.C. 24 (Eleventh), which defines a national bank’s authority to make public welfare investments. That definition includes investments “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 would clarify that

Federal savings association service corporations have the same authority that national banks and state member banks have to make investments to promote the public welfare (see 12 U.S.C. 24 (Eleventh) and 12 U.S.C. 338a, respectively).

OTS is also proposing to add a new paragraph (i) to existing § 559.4 to preapprove service corporation activities conducted on an “as agent” basis. Section 559.4’s preapproved list currently includes various activities that are conducted on an agency basis, such as insurance agency or acting as a trustee. Allowing service corporations to engage on behalf of their customers in “any activities conducted other than as principal” expands thrifts’ opportunities to enter other profitable businesses. These activities can enhance their ability to meet their customers’ needs while presenting no significant risk to savings associations or the deposit insurance fund, assuming compliance with the applicable capital standards. The capital provisions of HOLA recognize that such activities present no higher risks to savings associations by specifically excluding activities conducted as agent from otherwise applicable higher capital requirements. See 12 U.S.C. 1464(t)(5)(B). Similarly, the FDIC regulations governing activities by state-chartered banks that are not permitted for national banks specifically exclude activities conducted other than as principal. See 12 CFR 362.1(b)(1).

Section 560.3 Definitions.

HOLA section 5(c) lists various categories of loans and investments permissible for Federal savings associations. Because some categories focus on the *purpose* of a loan and others on the *security* for a loan, some loans have characteristics that would qualify them for more than one category. For example, a home equity loan could qualify as a loan secured by residential real estate, a loan to repair or improve residential real property, or a consumer loan. Some loans may be collateralized by both real and personal property. OTS regulations have long allowed savings associations to report all or part of any such multi-category-qualifying loan in whatever category best suits the institution’s needs. See 12 CFR 560.31(a).

OTS has received some questions about how the regulatory definition of loans secured by real estate at § 560.3 fits into this regulatory scheme. In part, the rule currently requires that the savings association must “substantially” rely on the real estate as “the primary security” for the loan. We have been asked for clarification of the meaning, purpose, and relative importance of “substantially” and “primary.” In trying to understand the regulation’s requirements, some have focused on the details of how the loan is underwritten and others look at how the loan is reported on the Thrift Financial Report.

Upon review of the statute, which does not contain either term, and the confusion that has resulted by having both terms, OTS is modifying its definition of real estate loans for purposes of 12 CFR part 560 to remove the requirement that the real estate be the primary security for a loan. The regulation will expand upon the existing “substantially relies” requirement by stating that a real estate loan is one where the association “substantially relies upon a security interest in real estate given by the borrower as a condition of making the loan.” The purpose of this new language is to treat as a real estate loan only a loan that would not have been made in the same amount or on the same terms unless it was secured, in whole or in part, by real estate. This change is consistent with the definition of “Loans Secured by Real Estate” in the FFIEC’s Call Report Instructions. Thus, for example, a \$500,000 loan to a non-profit organization or small business where the savings association required the organizers or owners to give the savings association a security interest valued at \$300,000 in the real property used by the organization or in the owner’s home as a condition of making the loan could be treated as either a small business loan or as a real estate loan. In contrast, a multi-million dollar loan to a large business secured in part by a \$100,000 mortgage would not meet the requirement that the association “substantially” rely on the real estate as security for the loan. This change should help savings associations use more effectively the long-standing flexibility embodied in § 560.31(a).

OTS is also proposing to modify the definition of “small business loans and loans to small businesses.” 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.

Current OTS regulations, adopted in 1996 when this statutory authority was granted, provide two alternatives for determining whether a particular loan qualifies as a small business loan for purposes of either provision. First, a loan of any size to a business that meets the size standards established by the Small Business Administration qualifies as a small business loan. Because determining whether a particular business meets the SBA size standards can be time-consuming and difficult, OTS regulations have also allowed savings associations to count any loan of less than \$1 million to a business or \$500,000 to a farm as a small business loan.

Since 1996, OTS has heard from savings associations that this alternative has not provided the flexibility the agency originally anticipated, especially in certain higher priced geographic areas. The agency therefore

proposes to raise the safe harbor level for small business loans to \$2 million for both businesses and farms. This level should help more savings associations use their small business lending authority under the HOLA. This increase is also consistent with statutory changes made in the CAA to increase the maximum gross loan amount for loans qualifying for SBA guarantees under the § 7(a) General Business Loan Guaranty program to \$2 million. OTS specifically requests comment on whether a higher safe harbor level would be appropriate.

Section 560.30 General lending and investment powers of Federal savings associations.

Section 560.30 contains a chart summarizing the lending and investment powers granted to Federal thrifts by the HOLA. OTS proposes to update the lending and investment chart to reflect the new statutory authority granted to savings associations by the CAA to invest in SBICs and NMVCCs. As discussed above, the CAA gives Federal savings associations the same authority that national and state banks enjoy to invest up to 5% of their capital in SBICs and NMVCCs. OTS proposes to add NMVCCs as one of the investment categories on the chart with its corresponding 5% of total capital investment limit, change the investment limit for SBICs in the chart to 5% of total capital, and remove endnote 17 because its limits on savings associations' SBIC investments have been overridden by the CAA.

OTS also proposes to update the lending and investment chart to reflect section 1201 of the Financial Regulatory Relief and Economic Efficiency Act of 2000's^[6] elimination of statutory liquidity requirements previously implemented at 12 CFR part 566. OTS has removed part 566 in a separate rulemaking and today proposes to remove endnote 10 of the lending and investment chart, which currently references § 566.1(g) regarding assets qualified as liquidity investments.^[7] The chart will continue to contain the statutory reference to liquid assets as permissible investments.

Section 560.36 De minimis investments.

Section 560.36 currently permits a Federal savings association to 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 types permitted for a national bank under 12 CFR part 24. OTS proposes to increase Federal savings associations' authority to make de minimis community development investments.

The regulation enables Federal savings associations to invest in community development funds,

community centers, and economic development initiatives within their communities. These investments generally do not present safety and soundness problems and enable a thrift to support and participate fully in its community.

Savings associations, however, have told OTS that they have not been able to participate as fully as competing banks of a comparable size in local partnerships because of the regulatory limitation for de minimis investments. Under the current regulation, for example, a \$500 million savings association with capital of \$50 million may invest up to \$125,000 in the aggregate. A \$100 million thrift with capital of \$10 million may invest up to \$100,000. National banks of comparable size could potentially invest up to \$5 million or \$1 million respectively.

To give savings associations, particularly smaller savings associations, greater flexibility to support their communities through investment, OTS is proposing to amend § 560.36 to increase the de minimis limits to the greater of 1% of an association's total capital or \$250,000. The \$500 million association in the above example could therefore make up to \$500,000 in community development investments in the aggregate at the association or operating subsidiary level. Additional investments could be made at the service corporation level.

Section 560.40 Commercial paper and corporate debt securities.

Section 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.^[8] 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 proposes two changes to § 560.40 to codify the agency's existing expectations about the circumstances under which these investments may be made.

First, OTS proposes to amend paragraph (a)(2)(ii) to clarify that the rating must cover the entirety of the

proposed security in which the thrift is considering an investment. For example, if only the principal of the security is rated as investment grade, the thrift could purchase a principal-only interest in that security, but not an interest in the security as a whole. OTS also proposes to add a new paragraph (c) to § 560.40 that codifies OTS's existing expectations that Federal savings associations must conduct an appropriately thorough underwriting analysis of any investment security they intend to purchase. Proposed paragraph (c) would require that 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 savings association must determine that the issuer has adequate resources and the willingness to provide for all required payments on its obligations in a timely manner. The savings association may consider the rating given by a ratings agency in determining the level of additional review the association should perform. The savings association must also determine that the investment is appropriate for the association.^[9]

In addition to the initial underwriting of the investment, the savings association continues to have 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 to the association's investment. As always, the association must be able to demonstrate to examiners that it has underwritten its investments appropriately.^[10]

Section 560.42 State and local government obligations.

Section 560.42 reiterates the HOLA's grant of statutory authority to Federal savings associations to invest in obligations issued by any state, territory, or political subdivision thereof^[11] and sets out regulatory restrictions on that investment authority. OTS is proposing to enhance Federal savings associations' ability to invest in state and local government obligations by modifying certain of § 560.42's regulatory restrictions.

Section 560.42 currently provides that a Federal savings association may not invest more than ten percent of its total capital in non-general obligations of any one issuer, and that those obligations must hold one of the four highest investment grade ratings or must be issued by a public housing agency and backed by the full faith and credit of the United States. Section 560.42 also authorizes a Federal savings association to invest, in

the aggregate, up to one percent of its assets in the obligations of a state, territory, or political subdivision in which the association's home office or a branch office is located or in any obligations approved by OTS.

Proposed § 560.42 eases the current percentage restrictions on Federal associations' investment in state and local government obligations to give savings associations greater flexibility to make those investments on a competitive basis with other financial institutions. While the 10 percent of capital per issuer limitation in current § 560.42 is a statutory requirement, the other limits are considerably stricter than required either by HOLA or the other banking regulators. [\[12\]](#)

Section 560.42(c)(1)'s current limitation of one percent of assets and accompanying geographic limitations for non-rated securities appears to make it overly difficult for smaller associations to make investments in support of their local community. Enhancing associations' ability to invest in non-rated securities that are of investment quality should strengthen associations' investment portfolios since non-rated municipal securities often pay higher interest rates than investment rated municipal securities.

OTS, however, remains concerned that removing all aggregate limits on investment in non-rated government obligations could potentially raise safety and soundness issues. Some state and local obligations are unrated because they are small issues and the municipality does not want to incur the high costs of having their issues rated by a rating agency. For small-dollar issues, obtaining a rating is generally not feasible. Other issues, however, are not rated because they are not investment grade, and the issuer knows it will likely receive an unfavorable rating. For example, revenue bond type securities that are supported by commercial development projects and not backed by the full faith and credit of municipalities generally present greater risks than municipal bonds to savings associations' investment portfolios.

OTS is proposing to revise § 560.42 to give associations greater flexibility to invest in general obligations of a governmental entity and to invest in high-quality, non-rated municipal securities, while at the same time limiting or prohibiting investments in low-quality municipal securities. Under the proposal, Federal savings associations may invest in general obligations of state or political subdivisions without any limitation. See proposed § 560.42(a)(1).

Pursuant to proposed § 560.42(a)(2), Federal savings associations may invest in other obligations of a government entity, such as 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, subject only to a 10% of total capital limit for investments in the obligations of any one issuer. Finally, OTS has retained its catch-all provision for obligations of a governmental entity that do not otherwise qualify under any other category. Proposed § 560.42(a)(4) provides that Federal savings associations may invest in obligations of a governmental entity that do not otherwise qualify under any other paragraph subject to the approval and conditions set by the appropriate Regional Director. The per issuer limitation remains the same.

III. Request for Public Comment

OTS invites comment on all aspects of the proposal as well as specific comments on the proposed changes. We encourage commenters to suggest modifications to approaches discussed above that could meet OTS's overall goals of enhancing savings associations' flexibility in a competitive mortgage market, encouraging the safe and sound, efficient delivery of low-cost credit to the public, and minimizing undue regulatory duplication and burden. Because OTS hopes to expeditiously publish a final rule effective by beginning of the next calendar quarter, OTS is publishing this proposal with a 30-day comment period.

IV. Solicitation of Comments Regarding the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [\[13\]](#) requires Federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. OTS invites comments on how to make this proposed rule easier to understand. For example:

- (1) Have we organized the material to suit your needs? If not, how could the material be better organized?
- (2) Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?
- (3) Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?
- (4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?
- (5) Would more (but shorter) sections be better? If so, what sections should be changed?
- (6) What else could we do to make the rule easier to understand?

V. Executive Order 12866

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

VI. 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 proposed 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.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (“RFA”) requires Federal agencies to prepare an initial regulatory flexibility analysis (“IRFA”) with a proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule would make certain changes that should reduce burden on all savings associations, including small institutions. The proposed 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 proposed rule would allow small savings associations to make a greater amount of community development investments. Finally, the proposed rule revises § 560.42 into plain language, which should make it easier for all savings associations to comply with the regulation.

Based on the above discussion, OTS concludes that this proposed rule should 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 proposes to amend 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) * * *

(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 (including a group of loans to one borrower) that does not exceed \$2 million to a business or farm.

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

<u>Category</u>	<u>Statutory Authorization</u> ¹	<u>Statutory investment limitations (Endnotes contain applicable regulatory limitations)</u>
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. ^{2, 3}
Community development loans and equity investments	5(c)(3)(A)	5% of total assets, provided equity investments do not exceed 2% of total assets. ⁴
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. ^{2, 5}
Credit card loans or loans made through credit card accounts	5(c)(1)(T)	None. ⁶
Deposits in insured depository institutions	5(c)(1)(G)	None. ⁶
Education loans	5(c)(1)(U)	None. ⁶
Federal government and government-sponsored enterprise securities and instruments	5(c)(1)(C), 5(c)(1)(D),	None. ⁶

	5(c)(1)(E), 5(c)(1)(F)	
Finance leasing	5(c)(1)(B), 5(c)(2)(A), 5(c)(2)(B), 5(c)(2)(D)	Based on purpose and property financed. ⁷
Foreign assistance investments	5(c)(4)(C)	1% of total assets. ⁸
General leasing	5(c)(2)(C)	10% of assets. ⁷
Home improvement loans	5(c)(1)(J)	None. ⁶
Home (residential) loans ⁹	5(c)(1)(B)	None. ^{6, 10}
HUD-insured or guaranteed investments	5(c)(1)(O)	None. ⁶
Insured loans	5(c)(1)(I), 5(c)(1)(K)	None. ⁶
Liquidity investments	5(c)(1)(M)	None. ⁶
Loans secured by deposit accounts	5(c)(1)(A)	None. ^{6, 11}
Loans to financial institutions, brokers, and dealers	5(c)(1)(L)	None. ^{6, 12}
Manufactured home loans	5(c)(1)(J)	None. ^{6, 13}
Mortgage-backed securities	5(c)(1)(R)	None. ⁶
National Housing Partnership Corporation and related partnerships and joint ventures	5(c)(1)(N)	None. ⁶
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. ¹⁴
Open-end management investment companies ¹⁵	5(c)(1)(Q)	None. ⁶
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	15 U.S.C. 682(b)(2)	5% of total capital.
Small-business-related securities	5(c)(1)(S)	None. ⁶
State and local government obligations	5(c)(1)(H)	None for general obligations. Per issuer limitation of 10% of capital for other obligations. ^{6, 17}
State housing corporations	5(c)(1)(P)	None. ^{6, 18}

Transaction account loans, including overdrafts	5(c)(1)(A)	None. ^{6, 19}
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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. 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)).
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.
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.
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.
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. 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.

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

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 (<i>e.g.</i> , 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: October 25, 2001

By the Office of Thrift Supervision.

Ellen Seidman

Director

^[1] See Lending and Investment Final Rule, 61 FR 50951 (Sept. 30, 1996); Subsidiaries and Equity Investments, 61 FR 66561 (Dec. 18, 1996).

^[2] 12 CFR 559.4(g)(3).

^[3] Pub. L. No. 106-554 (Dec. 21, 2000).

^[4] See section 302(b)(2) of the Small Business Investment Act of 1958, as amended by the CAA, 15 U.S.C. 682(b).

^[5] See new section 5(c)(4)(F) to the HOLA, as amended by the CAA, 12 U.S.C. 1464(c)(4)(F), which authorizes federal savings associations to invest in securities of any new markets venture capital company, subject to a 5% of capital and surplus limit.

^[6] Pub. L. No. 106-569, 114 Stat. 3032 (2000).

^[7] Savings associations must maintain sufficient liquidity to ensure safe and sound operation. See § 563.161.

^[8] 12 U.S.C. 1464(c)(2)(D).

^[9] OTS issued a Memorandum for Chief Executives 130, dated October 23, 2000, that addresses underwriting the purchase of investment securities in more detail. Thrift Bulletin 13a also provides guidance on the fundamental underwriting standards thrifts should use in this area.

^[10] The Office of the Comptroller of the Currency has a similar regulation addressing safe and sound banking practices with respect to securities investments. See 12 CFR 1.5 (2001).

^[11] 12 U.S.C. 1464(c)(1)(H).

^[12] Id. The OCC allows national banks to invest in general obligations of states and municipalities backed by the full faith and credit

of the issuer without limit. It limits an institution's investment in obligations of any one issuer in corporate bonds and municipal revenue bonds (Type III securities) to 10% of capital and surplus, but does not impose an aggregate limit. Other than general obligation bonds, national banks may not invest in non-rated, non-investment quality Type III securities, such as revenue bonds. The OCC does, however, allow national banks to invest in non-rated Type III securities if the bank can demonstrate that the securities are investment quality. See 12 CFR part 1 (2001).

[\[13\]](#) 12 U.S.C. 4809.