



RESCINDED

Office of Thrift Supervision
Department of Treasury

Jonathan L. Fiechter
Regional Director
Operations

November 9, 1992

Any attachments to this document are rescinded only as they relate to national banks and federal savings associations.

TO: CHIEF EXECUTIVE OFFICER

Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), all savings associations holding investments in and extensions of credit to subsidiaries engaged in activities not permissible for a national bank must deduct those investments and extensions made on or before April 12, 1989, according to a phase-in schedule prescribed in the statute. Legislation recently signed by the President modified that provision to give the Director of OTS the authority to extend the phase-in schedule for certain qualified institutions on a case-by-case basis. The legislation provides this authority, however, only with respect to subsidiaries that are ". . . subject to this [deduction provision] solely by reason of the real estate investments and other real estate activities of the association's subsidiary"

On October 30, we issued an order that delays the increase in the deduction from 25% to 40% until January 1, 1993, to provide institutions and the OTS time to implement the approval process required by the statute. Copies of both the statutory provision and the order are attached. The purpose of this letter is to inform you of the process we will use to approve such extensions.

If you wish to use the delayed deduction phase-in schedule, you should send a letter to your Regional Director requesting such treatment before December 1, 1992. The letter should contain the following information:

- o the names of each subsidiary for which you seek a deferred phase-in of the deduction and the amount of investment and extensions of credit involved (the legislation extends eligibility to amounts invested after April 12, 1989 to complete projects initiated prior to that date);
- o a description of the activities conducted in each subsidiary;
- o where a subsidiary contains both real estate and non-real estate activities, a plan to promptly either dispose of or segregate into a separate subsidiary, non-real estate activities; and,

- o a statement that the institution either is well or adequately capitalized as defined in the recently published Prompt Corrective Action Rules, or is in compliance with an approved capital restoration plan and is not critically undercapitalized, or has submitted a capital restoration plan to OTS that has not been denied.

Regional Directors will grant temporary approval within 30 days for each association that has submitted a request that contains this information. Generally, we expect to approve institutions with a MACRO composite rating of 1 or 2. Approval for other institutions will be based upon the Regional Director's evaluation of their regulatory compliance and good faith implementation of prior supervisory direction and capital plan (if applicable). In rare circumstances, Regional Directors may grant temporary approval where an institution has submitted a capital plan to OTS and OTS has not acted on the plan where the Regional Director believes that the plan or a modified version of it has a high probability of being approved in the near future.

Jonathan L. Fiechter
Jonathan L. Fiechter
Deputy Director for
Washington Operations

Attachments

cc: Regional Directors

Subtitle B—Bank Regulatory Clarification Provisions

SEC. 951. AMENDMENT RELATING TO ESTIMATES OF REAL ESTATE SETTLEMENT COSTS.

Section 5(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(d)) is amended by striking the last sentence and inserting "Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period."

SEC. 952. ADJUSTABLE RATE MORTGAGE CAPS.

Section 1204(d)(2) of the Competitive Equality Banking Act of 1987 (12 U.S.C. 3806(d)(2)) is amended by striking "any loan" and inserting "any consumer loan".

SEC. 953. MODIFYING SEPARATE CAPITALIZATION RULE FOR SAVINGS ASSOCIATIONS' SUBSIDIARIES ENGAGED IN ACTIVITIES NOT PERMISSIBLE FOR NATIONAL BANKS.

(a) **IN GENERAL.**—Section 5(t)(5)(D) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(5)(D)) is amended by redesignating clause (iii) as clause (ix) and by inserting after clause (ii) the following new clauses:

"(iii) **AGENCY DISCRETION TO PRESCRIBE GREATER PERCENTAGE.**—Subject to clauses (iv), (v), and (vi), the Director may prescribe by order, with respect to a particular qualified savings association, an applicable percentage greater than that provided in clause (ii) if the Director determines, in the Director's sole discretion, that the use of the greater percentage, under the circumstances—

"(I) would not constitute an unsafe or unsound practice;

"(II) would not increase the risk to the affected deposit insurance fund; and

"(III) would not be likely to result in the association's being in an unsafe or unsound condition.

"(iv) **SUBSTANTIAL COMPLIANCE WITH APPROVED CAPITAL PLAN.**—In the case of a savings association which is subject to a plan submitted under paragraph (7)(D) of this subsection or an order issued under this subsection, a directive issued or plan approved under subsection (s), or a capital restoration plan approved or order issued under section 38 or 39 of the Federal Deposit Insurance Act, an order issued under clause (iii) with respect to the association shall be effective only so long as the association is in substantial compliance with such plan, directive, or order.

"(v) **LIMITATION ON INVESTMENTS TAKEN INTO ACCOUNT.**—In prescribing the amount by which an applicable percentage under clause (iii) may exceed the applicable percentage under clause (ii) with respect to a

particular qualified savings association, the Director may take into account only the sum of—

"(I) the association's investments in, and extensions of credit to, the subsidiary that were made on or before April 12, 1989; and

"(II) the association's investments in, and extensions of credit to, the subsidiary that were made after April 12, 1989, and were necessary to complete projects initiated before April 12, 1989.

"(vi) **LIMIT.**—The applicable percentage limit allowed by the Director in an order under clause (iii) shall not exceed the following limits:

<i>"For the following period:</i>	<i>The limit is:</i>
Prior to July 1, 1994.....	75 percent
July 1, 1994 through June 30, 1995.....	60 percent
July 1, 1995 through June 30, 1996.....	40 percent
After June 30, 1996.....	0 percent

"(vii) **CRITICALLY UNDERCAPITALIZED INSTITUTION.**—In the case of a savings association that becomes critically undercapitalized (as defined in section 38 of the Federal Deposit Insurance Act) as determined under this subparagraph without applying clause (iii), clauses (iii) through (v) shall be applied by substituting 'Corporation' for 'Director' each place such term appears.

"(viii) **QUALIFIED SAVINGS ASSOCIATION DEFINED.**—For purposes of clause (iii), the term 'qualified savings association' means an eligible savings association (as defined in paragraph (3)(B)) which is subject to this paragraph solely because of the real estate investments or other real estate activities of the association's subsidiary, and—

"(I) is adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act); or

"(II) is in compliance with an approved capital restoration plan meeting the requirements of section 38 of the Federal Deposit Insurance Act, and is not critically undercapitalized (as defined in such section)."

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—Clause (ix) of section 5(t)(5)(D) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(5)(D)) (as so redesignated by subsection (a) of this section) is amended by inserting "or prescribed under clause (iii)" after "clause (ii)".

SEC. 954. REAL ESTATE APPRAISAL AMENDMENT.

Section 1112 of the Financial Institution Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341) is amended—

(1) by striking "Each Federal financial institutions" and inserting "(a) **IN GENERAL.**—Each Federal financial institutions"; and

(2) by adding at the end the following new subsections:

"(b) **THRESHOLD LEVEL.**—Each Federal financial institutions regulatory agency and the Resolution Trust Corporation may estab-

OFFICE OF THRIFT SUPERVISION

**Approval of Inclusion of Higher Percentage of Investments in Certain
Subsidiaries in Capital Calculations**

Order No. 92-472

Date: October 30, 1992

On October 28, 1992, the President signed into law the Housing and Community Development Act of 1992 (the "Act"), (H.R. 5334). Section 953 of the Act amends Section 5(t)(5)(D) of the Home Owners' Loan Act ("HOLA") to authorize the Director of OTS to prescribe by order that a "qualified savings association" may, for a limited period of time, include a higher percentage of its investments in certain subsidiaries in calculating its capital than would otherwise be permitted by the statute.

Under Section 5(t)(5)(D), prior to its amendment by the Act, the percentage of a savings association's investment in a subsidiary subject to section 5(t)(5)(D) that may be included in the association's capital calculations is scheduled to decrease on November 1, 1992 from 75% to 60%. The OTS does not have sufficient time prior to November 1 to review all potentially qualified savings associations to determine which savings associations meet the criteria of the Act. Requiring institutions that meet the new statutory eligibility requirements for the delayed implementation of this decrease to adjust their portfolios before the OTS has an opportunity to review any applications for approval, however, could lead some savings associations to consider short-term activities of questionable safety and soundness, with possible increased risk to the deposit insurance fund. It would also impose an unnecessary and confusing reporting burden on affected associations. This would not be consistent with the clear statutory purposes of Section 953 of the Act.

Therefore, the Director hereby determines, pursuant to HOLA Section 5(t)(5)(D)(iii), that savings associations meeting the following conditions may continue to include up to 75% of their investments in subsidiaries that are subject to the phase-out schedule of HOLA Section 5(t)(D) in calculating their capital until January 1, 1993:

(1) The savings association must be an "eligible savings association" under HOLA Section 5(t)(3)(B) and 12 C.F.R. 567.1(h);

(2) The association must be subject to the statutory phase-out of its investment in this subsidiary from capital calculations solely because of the real estate investments or other real estate activities of the subsidiary (a savings association with a subsidiary that holds both real estate assets and other assets that separately would cause it to be subject to the statutory deduction requirement must cause the subsidiary either to divest those other assets or to place them into a separate subsidiary in order to take advantage of these statutory provisions); and

(3) The association must be either (a) well-capitalized or adequately capitalized as defined in section 38 of the Federal Deposit Insurance Act ("FDIA"), or (b) in compliance with, (i) an approved capital plan under HOLA section 5(t) or (ii) an approved capital restoration plan under section 38 of the FDIA, and not critically undercapitalized under section 38 of the FDIA.


(4) It must submit a letter application to its Regional Office by December 1, 1992 setting forth information necessary for the OTS to determine:

(a) that the particular savings association's use of the higher percentage would not constitute an unsafe and unsound practice, would not increase the risk to the deposit insurance fund, and would not be likely to result in the savings association's being in an unsafe and unsound condition;

(b) that the savings association meets the statutory eligibility requirements for a "qualified savings association;" and

(c) the amount of the savings association's investments in the subsidiary that may be taken into account under HOLA § 5(t)(5)(D)(v).

By the order of the Director of the Office of Thrift Supervision, effective November 1, 1992.


Jonathan L. Flechter
Deputy Director for
Washington Operations