

§ 100.2 Waiver authority.

The Comptroller of the Currency may, for good cause and to the extent permitted by statute, waive the applicability of any provision of parts 1 through 197 of this chapter I, as applicable, with respect to Federal savings associations.

[76 FR 48956, Aug. 9, 2011, as amended at 80 FR 28479, May 18, 2015]

PART 101—COVERED SAVINGS ASSOCIATIONS

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AUTHORITY: 12 U.S.C. 93a, 1462a, 1463, 1464, 1464a, and 5412(b)(2)(B).

SOURCE: 84 FR 24005, May 24, 2019, unless otherwise noted.

§ 101.1 Authority and purposes.

(a) *Authority.* This part is issued pursuant to sections 3, 4, 5, and 5A of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1462a, 1463, 1464, and 1464a), section 5239A of the Revised Statutes (12 U.S.C. 93a), and section 312(b)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412(b)(2)(B)).

(b) *Purposes.* This part establishes standards and procedures for a Federal savings association to elect to operate as a covered savings association pursuant to section 5A of the HOLA and clarifies the requirements for the treatment of covered savings associations. It also establishes standards and procedures to terminate an election and to reelect to operate as a covered savings association.

§ 101.2 Definitions and computation of time.

(a) *Definitions.* As used in this part:

(1) *Covered savings association* means a Federal savings association that has made an election that is in effect in accordance with § 101.3(b).

(2) *Effective date of the election* means, with respect to a Federal savings association, the date on which the Federal savings association's election to operate as a covered savings association takes effect pursuant to § 101.3(b).

(3) *Nonconforming subsidiary, asset, or activity.* (i) With respect to a covered savings association:

(A) Means any subsidiary, asset, or activity that is not permissible for a covered savings association or, if permissible, is being operated, held, or conducted in a manner that exceeds the limit applicable to a covered savings association; and

(B) Includes an investment in a subsidiary or other entity that is not permissible for a covered savings association; and

(ii) With respect to a Federal savings association that has terminated an election to operate as a covered savings association:

(A) Means any subsidiary, asset, or activity that is not permissible for a Federal savings association or, if permissible, is being operated, held, or conducted in a manner that exceeds the limit applicable to a Federal savings association; and

(B) Includes an investment in a subsidiary or other entity that is not permissible for a Federal savings association.

(4) *Similarly located national bank* means, with respect to a covered savings association, a national bank that has its main office situated in the same location as the home office of the covered savings association.

(b) *Computation of time.* The OCC will compute a period of days for purposes of this part in accordance with 12 CFR 5.12.

§ 101.3 Procedures.

(a) *Notice—(1) Submission.* A Federal savings association that had total consolidated assets of \$20 billion or less as of December 31, 2017, as reported on the Federal savings association's Consolidated Reports of Condition and Income for December 31, 2017, may make an election to operate as a covered savings association by submitting a notice to the OCC.

(2) *Contents.* The notice shall:

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(i) Be signed by a duly authorized officer of the Federal savings association; and

(ii) Identify and describe each nonconforming subsidiary, asset, or activity that the Federal savings association operates, holds, or conducts at the time it submits the notice, each of which must be divested, conformed, or discontinued pursuant to § 101.5.

(b) *Effective date of the election*—(1) *In general*. An election to operate as a covered savings association shall take effect on the date that is 60 days after the date on which the OCC receives the notice submitted under paragraph (a) of this section.

(2) *Earlier notice*. Notwithstanding paragraph (b)(1) of this section, the OCC may notify a Federal savings association in writing prior to the expiration of 60 days that it is eligible to make an election, and the election shall take effect on the date the OCC so notifies the Federal savings association.

§ 101.4 Treatment of covered savings associations.

(a) *In general*—(1) *National bank activities*. Except as provided in this section, a covered savings association may engage in any activity that is permissible for a similarly located national bank to engage in as part of, or incidental to, the business of banking, or explicitly authorized by statute for a national bank, subject to the same authorization, terms, and conditions that would apply to a similarly located national bank, as determined by the OCC for purposes of this part.

(2) *Treatment as a Federal savings association*. A covered savings association shall continue to comply with the provisions of law that apply to Federal savings associations for purposes of:

(i) Governance (including incorporation, bylaws, boards of directors, shareholders, members, and distribution of dividends);

(ii) Consolidation, merger, dissolution, conversion (including conversion to a stock bank or to another charter), conservatorship, and receivership;

(iii) Provisions of law applicable only to Federal mutual savings associations;

(iv) Offers and sales of securities at an office of a Federal savings association;

(v) Savings bank activities authorized by section 5(i)(4) of HOLA;

(vi) Issuance of subordinated debt securities and mandatorily redeemable preferred stock;

(vii) Increases in permanent capital of a Federal stock savings association;

(viii) Rules of practice and procedure in adjudicatory proceedings;

(ix) Rules for investigative proceedings and formal examination proceedings;

(x) Removals, suspensions, and prohibitions where a crime is charged or proven;

(xi) Security procedures;

(xii) Maintenance of records and recordkeeping and confirmation requirements for securities transactions;

(xiii) Accounting and disclosure standards;

(xiv) Nondiscrimination; and

(xv) Advertising.

(b) *Existing branches*. A covered savings association may continue to operate any branch or agency that the covered savings association operated on the effective date of the election.

(c) *Assets greater than \$20 billion*. A covered savings association may continue to operate as a covered savings association if, after the effective date of the election, it has total consolidated assets greater than \$20 billion.

§ 101.5 Nonconforming subsidiaries, assets, and activities.

(a) *Divestiture, conformance, or discontinuation*. A covered savings association shall divest, conform, or discontinue a nonconforming subsidiary, asset, or activity at the earliest time that prudent judgment dictates but not later than two years after the effective date of the election. The OCC may require a covered savings association to submit a plan to divest, conform, or discontinue a nonconforming subsidiary, asset, or activity.

(b) *Extension*. The OCC may grant a covered savings association extensions of not more than two years each up to a maximum of eight years if the OCC determines that:

(1) The covered savings association has made a good faith effort to divest,

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conform, or discontinue the nonconforming subsidiary, asset, or activity;

(2) Divestiture, conformance, or discontinuation would have a material adverse financial effect on the covered savings association; and

(3) Retention or continuation of the nonconforming subsidiary, asset, or activity is consistent with the safe and sound operation of the covered savings association.

(c) *Applicable law.* Until a covered savings association divests, conforms, or discontinues a nonconforming subsidiary, asset, or activity, the nonconforming subsidiary, asset, or activity shall continue to be subject to the same provisions of law that applied to the nonconforming subsidiary, asset, or activity on the day before the effective date of the election, including any amendments to those provisions of law.

§ 101.6 Termination.

(a) *Termination.* A covered savings association may terminate its election to operate as a covered savings association, after an appropriate period of time as determined by the OCC, by submitting a notice to the OCC.

(b) *Procedures.* A covered savings association wishing to terminate its election shall comply with, and shall be subject to, the provisions of §§101.2, 101.3, and 101.5, except that:

(1) The provisions of §§101.3 and 101.5 shall be applied by substituting “covered savings association” for “Federal savings association” and “Federal savings association” for “covered savings association” each place those terms appear in those sections;

(2) Section 101.3(a)(1) shall not apply; and

(3) Sections 101.3 and 101.5 shall be applied by substituting “effective date of the termination” for “effective date of the election.”

(c) *Applicable law.* On and after the effective date of the termination, a Federal savings association that has terminated its election to operate as a covered savings association shall be subject to the same provisions of law as a Federal savings association that has not made an election under this part.

§ 101.7 Reelection.

(a) *Reelection.* A Federal savings association that has terminated its election to operate as a covered savings association may submit a notice to reelect to operate as a covered savings association, if at least five years have elapsed since the effective date of the termination. Upon determining that good cause exists, the OCC may permit a Federal savings association to reelect to operate as a covered savings association prior to the expiration of the five-year period.

(b) *Procedures and treatment.* A Federal savings association reelecting to operate as a covered savings association shall comply with, and shall be subject to, the provisions of this part as if it were making an election for the first time.

§ 101.8 Evasion.

The OCC may disapprove any notice submitted pursuant to this part if the OCC determines that the notice is made for the purpose of evading §101.5, including as that section applies to a covered savings association terminating an election.

PARTS 102-107 [RESERVED]

PART 108—REMOVALS, SUSPENSIONS, AND PROHIBITIONS WHERE A CRIME IS CHARGED OR PROVEN

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AUTHORITY: 12 U.S.C. 1464, 1818, 5412(b)(2)(B).

SOURCE: 76 FR 48956, Aug. 9, 2011, unless otherwise noted.