

CALCULATION OF DEMAND—Continued

	Town	Market area
1-Bedroom _____		
2-Bedroom _____		
3-Bedroom _____		
4-Bedroom _____		
5-Bedroom _____		

The source and/or methodology for the estimated and projected number of renter households: _____

Dated: January 2, 1996.

Jill Long Thompson,

*Under Secretary, Rural Economic and
Community Development.*

[FR Doc. 96-328 Filed 1-16-96; 8:45 am]

BILLING CODE 3410-07-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 556, 560, 563, 571

[No. 96-1]

RIN 1550-AA94

Lending and Investment

AGENCY: Office of Thrift Supervision,
Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) and the Regulatory Reinvention Initiative of the Vice President's National Performance Review, the Office of Thrift Supervision (OTS) has reviewed each of its lending and investment regulations and related policy statements set forth in the Code of Federal Regulations (CFR) to determine whether it is necessary, imposes the least possible burden consistent with safety and soundness, and is written in a clear, straightforward manner. As a result, the OTS today is proposing to update, reorganize, and substantially streamline its lending and investment regulations and policy statements.

DATES: Comments must be received on or before April 16, 1996.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 96-1. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments will be available for inspection at 1700 G

Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: For general information contact: William J. Magrini, Project Manager, Supervision Policy (202) 906-5744; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906-7133; or Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Regulations and Legislation Division, Chief Counsel's Office. For information about preemption, contact Evelyne Bonhomme, Counsel (Banking and Finance), (202) 906-7052, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background of the proposal
- II. Historical overview of current lending and investment regulations
- III. Discussion
 - A. General description of objectives
 1. Removal of unnecessary regulations
 2. Converting regulations into guidance
 3. Reorganization of lending and investment regulations
 4. Continuity of current position on federal preemption in lending area
 - B. Section-by-section analysis
 1. Disposition of existing sections
 2. New Part 560—Lending and investment
- IV. Proposed disposition of lending- and investment-related regulations
- V. Request for comment
- VI. Paperwork Reduction Act of 1995
- VII. Executive Order 12866
- VIII. Regulatory Flexibility Act Analysis
- IX. Unfunded Mandates Act of 1995

I. Background of the Proposal

In a comprehensive review of the agency's regulations in the spring of 1995, the OTS identified numerous obsolete or redundant regulations that could be quickly repealed. On December 27, 1995, the OTS published a final rule in the Federal Register repealing these regulations.¹ This resulted in an eight percent reduction in OTS regulations.

As part of its review in the spring of 1995, the OTS also identified several key areas in its regulations for a more intensive, systematic regulatory burden

review. These areas—lending and investment authority, subsidiaries and equity investments, insurance and fees, and charter and bylaws—were selected for intensive review because they are vital to thrift operations, had not been developed on an interagency basis, and had not been substantively reviewed in recent years.

Today's proposal presents the results of the review of the lending and investment regulations, the first of the subject areas the OTS has identified for intensive review. Today's proposal, if adopted in final form, will reduce the number of lending and investment regulations from 43 to 23, and result in a net reduction of 11 pages of CFR text.

We reviewed each lending and investment regulation under the following criteria:

- Is the regulation current?
- Can the regulation be eliminated without endangering safety and soundness, diminishing consumer protection, or violating statutory requirements?
 - Is the regulation's subject matter more suited for a policy statement or handbook guidance?
 - Is the regulation consistent with the regulations of the other federal banking agencies?
 - Can the regulation be easily understood?

Today's proposal reorganizes the lending and investment regulations into a more rational, user-friendly framework. The proposal removes unnecessary detail from loan documentation regulations in favor of general safety and soundness requirements, removes unnecessary restrictions on the lending and investment powers of federal savings associations (including restrictions on certain commercial loans and community development investments), minimizes inequities between federal and state associations, and eliminates redundant or obsolete provisions.

This proposal was developed in consultation with those who use the regulations on a daily basis: the agency's regional examination staff and representatives of the thrift industry. Regional staff made recommendations

¹ 60 FR 66866 (December 27, 1995).

on the changes being considered. An industry focus group meeting among seven thrift representatives, an industry trade association, and OTS staff discussed staff's initial recommendations.

Both regional staff and industry representatives supported the overall approach presented. They raised some questions, however, that are addressed in the discussion below.

II. Historical Overview of Current Lending and Investment Regulations

The OTS's current lending and investment regulations have remained virtually unchanged since they were adopted in 1983, following enactment of the Garn-St Germain Depository Institutions Act of 1982 (DIA).² Before the DIA, the Home Owners' Loan Act (HOLA)³ had set forth in great detail specific lending and investment authorities and accompanying restrictions. The DIA changed this approach, modifying HOLA section 5(c) to list the broad categories of investment authorities afforded federal savings associations and to indicate which of these categories were subject to percentage-of-assets limitations. The statute provided that the HOLA 5(c) authorities could be exercised subject to regulations promulgated by the Federal Home Loan Bank Board (FHLBB), the OTS's predecessor agency. HOLA section 5(c) retains that format today, referring to the Director of the OTS, rather than the FHLBB.

Before 1983, the FHLBB's lending and investment regulations were based on the premise that HOLA's investment authorities had to be implemented expressly by regulation.⁴ That year, the FHLBB modified its lending and investment regulations to reflect a new regulatory approach, stating:

In order to grant associations the maximum flexibility to exercise the authorities granted by the HOLA, the Board has determined to revise the general approach to regulating investment activities of Federal associations.

Accordingly, Part 545 now addresses the authority of associations only to limit [or] interpret [the statutory authorizations] or [to] recognize incidental authority. Federal associations may exercise all of the authority granted by the HOLA subject only to limitations contained in the regulations.⁵

As a result, the regulations do not currently list all of a federal association's lending and investment authorities. The FHLBB emphasized that "deletion of sections specifically implementing existing authority does

not mean that any authority can no longer be exercised."⁶

As inherited from the FHLBB, today's lending and investment regulations still contain a fair amount of detail and restrictions in some areas, such as real estate lending; minimal guidance in others, such as general leasing authority; and do not mention other important investment authorities at all, such as the ability to invest in mortgage-backed securities. Many of the restrictions that the FHLBB retained in the 1983 regulations, such as loan-to-value requirements, limitations on the maximum terms of loans, and some percentage-of-assets limitations beyond those found in the statute were based on safety and soundness concerns.

While neither the basic lending and investment authorities nor the lending and investment regulations have changed greatly since 1983, the safety and soundness restrictions on both federal and state savings associations have been comprehensively revised. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989⁷ (FIRREA) imposed new capital, loans to one borrower, and appraisal requirements and tied the investment powers of state savings associations more closely to federal association powers. The Federal Deposit Insurance Corporation Improvement Act of 1991⁸ (FDICIA) required new real estate lending standards, as well as operational and managerial standards. The OTS has adopted new regulations in all of these areas, most on an interagency basis with the other federal banking agencies. A number of these regulations directly affect the ways and extent to which thrifts may make investments and loans and obviate the need for some specific provisions currently found in the lending and investment regulations.

III. Discussion

A. General Description of Objectives

The OTS is today proposing a comprehensive revision of the lending and investment regulations to reflect statutory and regulatory changes, as well as the agency's and industry's experience with the current regulations. This section will discuss the overall objectives behind today's proposal. A section-by-section analysis follows in Part III.B.

1. Removal of Unnecessary Regulations

The first objective of the OTS proposal is to remove unnecessary,

uplicative, or outdated lending and investment regulations. By clearing out the unnecessary regulations, the OTS hopes to reduce regulatory compliance costs and enhance the profitability of thrift institutions. Examples of the regulations slated for removal are § 563.97 (loans in excess of 90 percent of value), § 545.44 (mortgage transactions with the Federal Home Loan Mortgage Corporation), and § 545.37 (combination loans).

In some instances, the agency believes that safety and soundness concerns still require a regulation, but that this objective can be satisfied with a less burdensome regulation. For example, the agency is proposing to amend the scope of "commercial loans" under current § 545.46(b) to exclude commercial loans made by service corporations. This will free up additional lending authority within the statutory limit of 10 percent of assets for commercial loans by a federal savings association. The agency is also proposing to remove outdated restrictions on manufactured home loans and investments in government securities and state housing corporations.

2. Converting Regulations Into Guidance

Second, the proposal would convert certain regulatory requirements to handbook guidance. The goal of such a transfer would be to provide thrifts with guidance about what the agency considers to be generally safe and sound practices in a particular area, while giving them more flexibility in addressing safety and soundness concerns than the regulations currently allow.

In making determinations about moving specific provisions out of the lending and investment regulations and into guidance, the OTS has carefully looked at whether the other federal banking agencies have specific regulations addressing those issues, such as classification of assets and loan documentation, or whether they rely more on guidance. Thrift lending regulations traditionally have been lengthy, generally providing far more detail and leaving less room for the exercise of judgment by the industry and examiners than have bank lending regulations.

Section 303 of CDRIA encourages the federal banking agencies to move towards greater uniformity in regulations and guidelines on common supervisory issues. In the past, the federal banking agencies have worked together to develop common regulations affecting lending, notably the appraisal and real estate lending standards

² Pub. L. 97-320, 96 Stat. 1469, October 15, 1982.

³ 12 U.S.C. 1461-1470.

⁴ 48 FR 23032 (May 23, 1983).

⁵ *Id.*

⁶ 48 FR 23032.

⁷ Pub. L. 101-73, 103 Stat. 183, Aug. 9, 1989.

⁸ Pub. L. 102-242, 105 Stat. 2236, Dec. 19, 1991.

regulations. Pursuant to section 303 and in continuation of this movement towards uniformity, the OTS is proposing to shift from a more regulation-specific to a more guidance-oriented approach in its lending and investment regulations.

One example of this proposed shift in approach is loan documentation. Currently, § 563.170(c) (1)–(9) lists a number of documents that thrifts must maintain in connection with various types of secured and unsecured extensions of credit. While the document list may provide a useful checklist and may be appropriate as guidance, all transactions may not require all documents. Conversely, safety and soundness concerns for a particular transaction may necessitate different or additional documents beyond those listed in the regulation. Accordingly, the OTS proposes replacing those specific documentation requirements with a more general lending documentation regulation based on interagency safety and soundness guidelines.⁹

Both industry representatives attending the focus group meeting and regional staff raised questions about the effect of incorporating material currently in regulations into handbooks or other guidance. Some industry representatives believed that many in the industry and examination staff view the guidelines in the handbooks as equivalent to binding regulations and would not perceive a burden reduction in such a transfer. Various regional staff raised the opposite concern: that if requirements were moved from regulations to guidance the agency would find it more difficult to convince some in the industry to operate in a safe and sound manner in those areas.

By proposing to remove some specific lending regulations and to rely more heavily on general safety and soundness standards, the OTS is in no way signalling that an association would not need to maintain adequate loan documentation or to classify its assets and establish appropriate valuation allowances. Generally accepted accounting principles and principles of safety and soundness will still require these steps to be taken. In most circumstances, supervisory guidance provided in Regulatory Bulletins, Thrift Bulletins, the Thrift Activities Handbook and other sources can and should be relied upon to define safe and sound practices.

In its ongoing training programs, however, the OTS will continue to

emphasize to examiners that guidance documents should not be confused with regulations. In particular situations, it may be prudent for institutions to deviate from what is stated in standard guidance documents. Examiners and thrift management both have a responsibility to consider what is safe and sound under all the facts of each circumstance. Neither should rely on the regulations and guidance documents in rote fashion.

Provided both management and examiners understand the proper role of regulations and guidance, and the overarching requirement for safe and sound operations and practices, a move away from detailed regulations and toward greater reliance on guidance should provide institutions with more flexibility without diminishing safety and soundness. The OTS believes that regulations should be reserved for core safety and soundness requirements. Details on prudent operating practices should be relegated to guidance. Otherwise, regulated entities can find themselves unable to respond to market innovations because they are trapped in a rigid regulatory framework developed in accordance with conditions prevailing at an earlier time.

Today's proposal represents the agency's current best judgment about the right balance between which provisions affecting lending and investment should be binding regulations and which should be guidance conveying the OTS's more detailed views on what generally constitutes safe and sound standards under current market conditions. The agency specifically seeks comments on whether the proposal achieves these goals.

3. Reorganization of Lending and Investment Regulations

The agency has received comments over the years that its lending and investment regulations are hard to locate and difficult to follow. The agency is proposing two remedies for this problem. First, all lending and investment regulations will be moved into a new part 560, "Lending and Investment," that will specify which regulations apply to all savings associations (such as loan documentation, disclosure, and real estate lending standards) and which apply only to federal savings associations (such as specific lending powers). This part will include provisions currently located in parts 545 and 563 that are being modified as part of today's proposal. The OTS expects that this part will ultimately include all lending and investment regulations

except for Appraisals (located in part 564).

The OTS also proposes to remove unnecessary restatements of statutory authority and limitations from various sections of part 545. These would be replaced by a regulation in chart format that would provide easy reference to the statutory authority for, and statutory limitations on, federal associations' lending powers. Notes to the chart would set forth any additional regulatory restrictions. The agency seeks comment on whether such a chart would make it easier to locate lending authorities and to determine which restrictions apply.

Because of the FHLBB's 1983 decision that part 545 would not repeat all of HOLA section 5(c)'s lending powers but only those where additional restrictions apply, the proposed chart, based on the current part 545, is not comprehensive. Although many of the most significant authorities are listed, some more obscure authorities are not. The agency seeks comment on whether the proposed chart would be more useful if it included statutory provisions not currently set forth in the regulations.

4. Continuity of Current Position on Federal Preemption in Lending Area

One of the points made by industry representatives in the focus group meeting was that OTS should maintain a clear and consistent position on the preemptive effect of its lending regulations, especially if those regulations are restructured, amended, converted into guidance, or deleted. The OTS has long held that, with certain narrow exceptions, any state laws or regulations that purport to affect the lending operations of federal savings associations are preempted. Such preemption is essential to the OTS's regulation of the operations of federal savings associations because lending is one of the most important functions of a savings association. None of the changes discussed today should be construed as evidencing in any way an intent by the OTS to change this long-held position. Whether the OTS continues to have a specific regulation addressing a particular aspect of lending or chooses to remove a federal regulation to streamline its regulations and reduce regulatory burden, the agency still intends to occupy the entire field of lending regulation for federal savings associations.

Because the lending regulations are being moved out of Part 545 and, thus, separated from the general preemption provision that currently appears in Part

⁹Standards for Safety and Soundness, 60 FR 35674 (July 10, 1995).

545,¹⁰ the OTS is proposing to include a general lending preemption provision in new Part 560. This provision (discussed more fully in the section-by-section analysis in Section III.B.2 below) merely restates long-standing preemption principles applicable to federal savings associations, as developed in a long line of court cases and legal opinions by the OTS and the FHLBB.

B. Section-by-Section Analysis

1. Disposition of Existing Sections

Part 545 Operations (Federal Savings Associations)

Section 545.31 Election Regarding Classification of Loans or Investments

Paragraph (a) of § 545.31 sets forth the OTS's general rule that where a loan or investment meets the requirements of more than one authority, the association may elect to place it in any applicable category. The OTS proposes to retain this paragraph in modified form as new § 560.31(a).

The OTS is considering moving the description in § 545.31(a) of the essential characteristics of a loan that can be classified as a real estate loan into a separate definitional section of the regulations¹¹ along with the definition of loan commitment currently found in paragraph (b).

Paragraph (b) also provides that loan commitments are included in total assets and accounted for as an investment for purposes of determining applicable statutory or regulatory investment limitations only to the extent that funds are advanced and not repaid. The OTS proposes to combine this provision into new § 560.31(a).

Paragraph (c) addresses the treatment of loans sold to third parties for purposes of calculating percentage-of-assets investment limitations. Paragraph (d) addresses treatment of loans secured by assignment of loans. The OTS proposes to retain both paragraphs in new § 560.31.

Section 545.32 Real Estate Loans

Paragraph (a) of § 545.32 reiterates the HOLA's general grant of statutory authority for federal savings associations to make or invest in

residential (home) or nonresidential real estate loans.¹² The OTS proposes to delete this paragraph and move the statutory reference into the proposed lending/investment powers chart.

Paragraphs (b) (1) and (2) of § 545.32 duplicate more comprehensive interagency-developed real estate lending standards and appraisal standards set forth at 12 CFR 563.100–101 and 12 CFR Part 564 respectively. Accordingly, the OTS proposes to delete these paragraphs.

Paragraphs (b) (3), (4), (5), and (6) of § 545.32 discuss federal savings associations' authority to adjust the terms of real estate loans, to amortize real estate loans, to charge certain initial fees for real estate loans, and to establish escrow accounts. The HOLA expressly authorizes federal savings associations to "invest in, sell or otherwise deal in * * * loans on the security of liens upon residential real property" and "nonresidential real property."¹³ This express authorization to make real estate loans necessarily includes within it the authority to adjust and fix the terms of each loan, including loan charges, an escrow account, the terms for repayment, and the circumstances under which a repayment obligation can be modified. The OTS believes that the authority to adjust, amortize, establish escrow accounts for, and charge fees for loans properly falls within the scope of savings associations' statutory authority to originate loans, and these powers do not need to be specifically identified or restricted in the CFR.

Because these paragraphs have been relied upon in preemption opinions of the FHLBB and the OTS, the agency emphasizes that by proposing to remove these paragraphs, the OTS does not intend any change in federal thrifts' authority to conduct these activities, but rather to enhance associations' flexibility in lending. Each of these areas is specifically cited in proposed new § 560.2 as an area in which state law is preempted.

Paragraph (c) of § 545.32 defines the phrase "loan made on the security of real estate." The OTS is considering moving this paragraph to a definitional section of the regulations or deleting this paragraph entirely as part of its Regulatory Structure Proposal. Questions have arisen about the application of the current description of secured real estate loan both in the context of asset classification and the making of real estate loans in foreign countries. The OTS seeks comment on

whether the current definition of secured real estate loan has provided adequate guidance for savings associations and how it could be clarified or updated.

Paragraph (d) of § 545.32 addresses loan-to-value ratios and duplicates more comprehensive interagency real estate lending standards.¹⁴ Accordingly, the OTS proposes to delete this paragraph.

Section 545.33 Home Loans

The introductory paragraph of § 545.33 generally describes home loans. The OTS is considering moving this paragraph to a new definitional section of the regulations as part of the Regulatory Structure Proposal.

Paragraph (a) describes the authority of savings associations to amortize home loans. The OTS proposes to delete this paragraph for the reasons discussed under § 545.32(b)(3)–(6).

Paragraph (b) addresses loan-to-value ratios for home loans. The OTS proposes to delete this paragraph because the interagency real estate lending standards address the same issues in a more comprehensive and current manner.

Paragraph (c) sets forth limitations on the adjustments that may be made to residential mortgages. Paragraph (c) requires that adjustments to rates, payments, or loan balances be tied to a national or regional index outside the control of the savings association or a formula or schedule set forth in the loan contract. Loans must also comply with the notice requirements of 12 CFR 563.99, which address disclosure requirements for fixed-rate and adjustable-rate mortgage (ARM) loans made by all savings associations.

The OTS proposes to delete paragraph (c).¹⁵ Because § 563.99 would remain in place, savings associations would still be required to provide full disclosure regarding adjustments in rates, payments, and loan balances. However, the substantive restrictions on how these adjustments can be made that now appear in § 545.33(c) would be eliminated. These limitations are much more detailed than those required of other institutions offering mortgages. When these adjustment limitations were last substantially revised, in 1983, ARMs were still relatively new in the marketplace. Consumers did not have a wide range of choices of lenders offering this type of loan. Today, consumers are much more familiar with this type of loan and have a wide variety of possible

¹⁴ 12 CFR 563.100–563.101.

¹⁵ The last sentence in paragraph (c)(5) concerns a federal thrift's right to call a loan due and payable under certain circumstances. OTS proposes to incorporate this provision into new § 560.2.

¹⁰ 12 CFR 545.2.

¹¹ The question of whether regulatory definitions should all be moved into a centralized location in the regulations or instead be located in or near the sections to which they relate will be addressed in a subsequent proposal regarding the structure and organization of OTS regulations ("Regulatory Structure Proposal"). We anticipate that any changes proposed in the Regulatory Structure Proposal will be made final at the same time any changes proposed today are made final.

¹² 12 U.S.C. 1464 (c)(1)(B), (c)(2)(B).

¹³ 12 U.S.C. 1464 (c)(1)(B), (c)(2)(D).

sources for obtaining home mortgages. The OTS believes that as long as information about adjustments to interest rates, term, payments, and loan balances is clearly disclosed to purchasers, the details should be a matter of contract between the savings association and the purchaser. The agency specifically solicits comments about whether any of the provisions in § 545.33(c) should be retained.

Among the provisions that would be removed is the requirement that an ARM's interest rate adjustment be tied to an external index. Some federal savings associations have argued that this external control provision puts savings associations at a competitive disadvantage in the current ARM market and inhibits their ability to manage their assets. Generally federal savings associations, national banks¹⁶, and those housing creditors who elect to operate under the Alternative Mortgage Parity Act¹⁷ are subject to this requirement. The OTS solicits comment on whether it should retain this requirement or, alternatively, a requirement of a national or regional index. The OTS also solicits comment on how federal thrifts might structure their ARM lending programs to ensure that consumers are protected if adjustments are not tied to an external index.

Paragraph (d) of § 545.33 addresses loans on cooperatives. The OTS proposes to delete this paragraph. The interagency real estate lending standards address the same issues as paragraph (d)(1) in a more comprehensive and flexible manner. No comparable reserve requirement to that set forth in paragraph (d)(1) exists for state-chartered thrifts. The OTS solicits comment on whether the provisions of (d)(2), which set forth what may constitute security for such a loan, should be included in guidance.

Paragraph (e) addresses loans to facilitate trade-in or exchange. The OTS proposes to delete this paragraph because the interagency real estate lending standards address the same

issues in a more comprehensive and flexible manner.

Paragraph (f) specifies the OTS regulations that state savings associations and certain other state lenders who elect to make loans under the Alternative Mortgage Parity Act must follow. The Alternative Mortgage Parity Act preempts state laws that might otherwise limit certain state creditors' ability to offer ARMs if they comply with the OTS regulations identified in this paragraph. The agency is concerned that this paragraph is not easy to locate for those affected by it. The OTS therefore proposes to move the provisions of this paragraph, as modified to reflect changes elsewhere in today's proposal, into new § 560.210, as part of a subpart dealing with alternative mortgages, with a title that highlights its content.

Section 545.34 Limitations for Home Loans Secured by Borrower-Occupied Property

Paragraph (a) permits federal savings associations to include due-on-sale clauses in loan instruments to the extent authorized under federal statutes and regulations, regardless of state prohibitions of due-on-sale clauses.¹⁸ The OTS proposes to remove this paragraph and incorporate its provisions into new § 560.2.

Paragraphs (b) and (c) permit federal savings associations to include provisions imposing late fees and prepayment penalties in loan contracts on home loans subject to certain conditions. The OTS proposes to remove these paragraphs and incorporate these limitations, which may provide protection for borrowers, into new § 560.34. The OTS solicits comment on whether these restrictions are important for borrowers.

Section 545.35 Other Real Estate Loans

Section 545.35 sets forth federal savings associations' authority to lend and invest in nonresidential real estate subject to certain statutory and regulatory limitations. Paragraph (a) requires compliance with real estate lending standards. Paragraph (b) reiterates the statutory limit of 400 percent of an association's total capital imposed on investments in nonresidential real estate. The OTS proposes to delete this section, incorporate the reference to federal savings associations' statutory authority to invest in nonresidential real estate loans into the proposed lending and investment powers chart, and place the

limitations into an accompanying endnote.

Section 545.36 Loans To Acquire or To Improve Real Estate

Section 545.36 sets forth regulatory investment limitations pertaining to acquisition, development, and construction loans. The OTS proposes to delete this section inasmuch as the interagency real estate lending standards and interagency safety and soundness standards address the same issues in a more comprehensive and current manner. Paragraphs (c) and (d) of § 545.36 would be incorporated into the Thrift Activities Handbook to provide additional guidance to thrifts making development loans beyond that contained in the interagency real estate lending standards.

Section 545.37 Combination Loans

Section 545.37 allows thrifts to combine loans authorized by part 545. The OTS proposes to delete this section as unnecessary and vague.

Section 545.38 Insured and Guaranteed Loans

Paragraphs (a) and (b) of § 545.38 authorize Federal thrifts to make insured and guaranteed residential real estate loans, notwithstanding other provisions of part 545 but subject to certain conditions. The OTS proposes to delete these paragraphs as unnecessary. Federal savings associations may make an unlimited percentage of residential real estate loans, subject to the interagency real estate lending standards. Other regulatory restrictions affecting such loans have either already been removed from part 545 or are proposed for deletion today.

Paragraph (c) addresses nonresidential real estate loans that are guaranteed by the Economic Development Administration, the Farmers Home Administration, or the Small Business Administration. The OTS proposes to delete this paragraph and incorporate the HOLA's statutory grant of authority for Federal thrifts to make guaranteed nonresidential real estate loans in the endnotes to the proposed lending and investment powers chart.

Section 545.39 Loans Guaranteed Under the Foreign Assistance Act of 1961

This section reiterates the HOLA's statutory grant of authority¹⁹ to Federal thrifts to make loans guaranteed under the Foreign Assistance Act (FAA).²⁰ The

¹⁶ 12 CFR 34.7. The Office of the Comptroller of the Currency has recently proposed amendments to its real estate lending regulations that would not amend this requirement. The preamble to the proposal did not explain why OCC proposes to retain this requirement. See 60 FR 35353, 35355-35356 (July 7, 1995).

¹⁷ The Alternative Mortgage Parity Act, Pub. L. 97-320, Title VII, authorizes certain housing creditors to make alternative mortgage transactions notwithstanding any contrary state law under certain conditions. Among the conditions that housing creditors that rely on the Parity Act and are not commercial banks or credit unions must satisfy is compliance with applicable OTS regulations on ARMs, which include this paragraph. See 12 CFR 545.33(f).

¹⁸ 12 U.S.C. 1701j-3, 12 CFR Part 591.

¹⁹ 12 U.S.C. 1464(c)(4)(C).

²⁰ 22 U.S.C. 2181, 2184.

OTS proposes to delete this section and incorporate its provisions into the proposed lending powers and investment chart and endnotes and new § 560.43. The OTS solicits comment on whether thrifts have invested in or made loans guaranteed under the FAA.

Section 545.40 Loans on Low-Rent Housing

Section 545.40 exempts loans made pursuant to certain low rent housing programs of the Department of Housing and Urban Development from regulatory maximum loan term and loan-to-value limitations. The OTS proposes to delete this section as unnecessary because the loan term and loan-to-value ratio limitations referred to in this section have already been or are now being removed from OTS regulations. By deleting this section, the OTS does not intend to limit Federal thrifts' authority to make low-rent housing loans pursuant to applicable statutory and regulatory provisions, but rather to remove obsolete restrictions that only serve to confuse CFR users.

Section 545.41 Community Development Loans and Investments

Section 545.41 reiterates the HOLA's statutory grant of authority to Federal savings associations to make direct community development loans and investments, subject to an overall 5 percent of assets limitation.²¹ The OTS proposes to delete this section and incorporate the statutory authority reference into the proposed lending and investment powers chart. The chart will separately list the sublimit of 2 percent of assets for equity investments in community development real estate under this authority.

Section 545.42 Home Improvement Loans

Section 545.42 reiterates the HOLA's statutory grant of authority to Federal thrifts to make home improvement loans subject to prudent lending standards.²² The OTS proposes to delete this section and incorporate the reference to Federal thrifts' statutory authority to make home improvement loans into the proposed lending and investment powers chart.

Section 545.43 State Housing Corporation Investment-Insured

Section 545.43 reiterates the HOLA's grant of statutory authority to Federal thrifts to invest in State housing corporation loans²³ subject to a regulatory 30 percent of assets

limitation. This section also duplicates restrictions in current § 563.95, which regulates investment in State housing corporations for all savings associations.²⁴ The OTS proposes to delete § 545.43 and incorporate the reference to the HOLA's statutory grant of authority to Federal thrifts to invest in State housing corporation loans into the proposed lending and investment powers chart.

Section 545.44 Mortgage Transactions With the Federal Home Loan Mortgage Corporation

Section 545.44 provides, in accordance with HOLA § 5(c)(1)(E) and the Federal Home Loan Mortgage Corporation (FHLMC) Act, that Federal thrifts may enter into or perform mortgage transactions with the FHLMC. It does not impose any additional regulatory restrictions, nor does it currently exempt these transactions from any regulatory restrictions. The OTS proposes to delete this section as an unnecessary reiteration of statutory authority and savings associations' inherent power to enter into business contracts. The OTS also solicits comments on whether the OTS should incorporate the definition of "mortgage" set forth in § 302 of the FHLMC Act, currently cross-referenced in this section, in a general definitional section as part of its Regulatory Structure Proposal.

Section 545.45 Manufactured Home Financing

Paragraph (a) of § 545.45 contains several definitions relating to manufactured home financing. The proposed disposition of this section will render these definitions unnecessary and, therefore, the OTS proposes to delete this paragraph.

Paragraph (b) of § 545.45 reiterates the HOLA's statutory grant of authority to federal thrifts to invest in or make manufactured home loans.²⁵ The OTS proposes to delete this paragraph and incorporate the statutory reference to federal thrifts' authority to invest in manufactured home loans into the proposed lending and investment powers chart.

Paragraphs (c) and (d) of § 545.45 address inventory financing and retail financing for manufactured home chattel paper and establish term and loan to value limits for such loans. The OTS believes these paragraphs describe underwriting standards for manufactured homes that are more

suitable as guidance and proposes to transfer these paragraphs to the Thrift Activities Handbook. The OTS solicits comment as to whether these paragraphs provide useful guidance to savings associations.²⁶

Paragraph (e) provides that a federal thrift's sale of manufactured home chattel paper must be sold without recourse. Since it was adopted, the OTS has adopted a capital regulation that requires thrifts to hold appropriate levels of capital against all sales with recourse.²⁷ The OTS therefore proposes to delete this paragraph.

Section 545.46 Commercial Loans

Paragraph (a) of § 545.46 reiterates the HOLA's grant of statutory authority to federal thrifts to invest in and make commercial loans not to exceed 10 percent of their assets.²⁸ The OTS proposes to delete this paragraph and incorporate the authority and statutory limitation in paragraph (a) into the proposed lending and investment powers chart.

The agency is also proposing to delete paragraph (b). This paragraph defines commercial loans to include commercial overdrafts related to demand accounts and commercial unsecured loans by service corporations. Paragraph (b)(1) (commercial overdrafts) will be incorporated into an endnote to the lending and investment powers chart. Thus, commercial overdrafts will continue to be subject to the commercial lending limit.

As for commercial loans made at the service corporation level, however, the agency has determined that the statutory maximum 3 percent of assets that federal savings associations may invest in service corporations generally provides a sufficient safeguard for the savings association, as it does for all other types of activities conducted in service corporations. Under the current service corporation regulation, only a service corporation's commercial loans are aggregated with its parent's loans for purposes of statutory percentage-of-assets limitations on general investment

²⁶ One commenter on the agency's August 28, 1995 proposal to remove unnecessary provisions from its regulations suggested the removal of the provisions in paragraphs (d)(2)(ii)(chattel paper must generally be payable within 20 years in substantially equal payments) and (iii)(the financed amount may not exceed certain loan to value ratios), claiming that they imposed a competitive disadvantage for federal savings associations.

²⁷ See 12 CFR 567.1(kk), 567.6(a)(2)(i)(C).

²⁸ 12 U.S.C. 1464(c)(2)(A). The language in § 545.46(a) regarding pre-1984 investment limits is obsolete and will be deleted.

²¹ See 12 U.S.C. 1464(c)(3)(B).

²² 12 U.S.C. 1464(c)(1)(I).

²³ 12 U.S.C. 1464(c)(1)(P).

²⁴ Section 563.95, as discussed later, is proposed to be modified and moved into new Part 560.

²⁵ 12 U.S.C. 1464(c)(1)(I).

authority.²⁹ Other service corporation investments are not. The agency believes such a distinction is no longer warranted and that such loans should no longer be subject to the statutory 10 percent of assets limitation on commercial lending set forth in HOLA section 5(c)(2)(A).

By removing these loans from the definition of commercial loans, federal savings associations' limited authority to make commercial loans will be somewhat enhanced, benefiting both thrifts and their customers, without endangering safety and soundness or thrifts' primary mission of providing mortgage lending.

Section 545.47 Overdraft Loans

Section 545.47 reiterates the HOLA's statutory grant of authority to federal thrifts to make loans specifically related to transaction accounts, which includes overdraft loans.³⁰ The OTS proposes to delete this section and incorporate the reference to federal thrifts' statutory authority to make overdraft loans into the proposed lending and investment powers chart.

The endnote accompanying this provision will specify that commercial overdraft loans formerly covered by § 545.46 remain subject to the same commercial lending limits.

Section 545.48 Letters of Credit

Section 545.48 authorizes federal thrifts to issue letters of credit in conformance with the Uniform Commercial Code or the Uniform Customs and Practices for Documentary Credits and subject to certain general standards. As already discussed, the HOLA expressly authorizes federal thrifts to invest in or make commercial loans, and this express authorization to make commercial loans necessarily includes within it the authority to issue letters of credit. For ease of reference, the OTS proposes to reference the authority of federal thrifts to issue letters of credit in the proposed lending and investment powers chart.

The OTS believes it would be useful to establish general standards for the issuance of letters of credit for all savings associations. The OTS therefore also proposes to incorporate the substance of § 545.48(a), modified to include a broader range of permissible

letters of credit, into new § 560.120 as prudent lending standards for the issuance of letters of credit. The OTS believes, and industry representatives at the focus group meeting concurred, that many states have already incorporated similar standards and that most associations already have such prudent practices in place.

The OTS solicits comment on whether transferring the substance of § 545.48(a) to the new part 560 would provide needed uniform standards for all savings associations, the benefits of which would outweigh any additional burden on state-chartered savings associations. Alternatively, the OTS invites comment on whether § 545.48(a) should be transferred to handbook guidance.

The OTS proposes to delete paragraph (b) of § 545.48, which addresses the treatment of funds advanced under a letter of credit without compensation from the account party, because it duplicates § 545.31(b), which the OTS proposes to incorporate into new § 560.31(a).

Section 545.49 Loans on Securities

Section 545.49 reiterates the HOLA's statutory grant of authority to federal thrifts to invest in loans to financial institutions and brokers secured by obligations backed by the United States government or certain agencies or instrumentalities thereof.³¹ The OTS proposes to delete this section and incorporate a reference to thrifts' statutory authority to invest in such loans secured by U.S. government or agency backed obligations into the proposed lending and investment powers chart. The introductory paragraph that limits permissible investments in agencies or instrumentalities of the United States to those entities named in § 566.1(g)(3) is being removed as unnecessary.

Section 545.50 Consumer Loans

Section 545.50 reiterates the HOLA's statutory grant of authority to federal thrifts to make consumer loans subject to a 35 percent of assets limit.³² For purposes of determining compliance with this limit, federal thrifts must aggregate their consumer loans with any investments in corporate debt securities and commercial paper.³³ In other words, a federal thrift's aggregate investments in consumer loans, corporate debt securities, and commercial paper may not exceed 35 percent of its assets.

The OTS proposes to delete § 545.50 and to incorporate the reference to federal thrifts' statutory authority to make consumer loans, subject to the statutory asset limit, into the proposed lending and investment powers chart. The OTS plans to include an endnote incorporating the provisions of § 545.50(c), which addresses loans to dealers in consumer goods. The OTS is considering moving paragraph (b) of § 545.50, which defines consumer loans, to a consolidated definitional location in the regulations as part of its Regulatory Structure Proposal. The OTS solicits comment on how the definition of consumer loan can be clarified for categorization purposes and coordinated with other OTS regulations that address consumer credit.³⁴ The current definition of consumer loan that appears in § 545.50(b) expressly excludes credit cards. As a result, under current regulations, credit card loans are not subject to the 35 percent of assets investment limit applicable to consumer loans, corporate debt securities, and commercial paper. A separate regulation, § 545.51 (discussed below), governs the credit card activity of federal savings associations. No percentage of assets limits are imposed on credit cards by that regulation.

This approach mirrors the HOLA. The statutory provision authorizing federal thrifts to invest in consumer loans, corporate debt securities, and commercial paper subject to a 35 percent of assets limit is separate from the statutory provision that authorizes them to invest in credit cards. The statutory provision authorizing credit cards contains no percentage of assets limit.

The OTS has reviewed the legislative history of the two statutory provisions. The legislative history does not provide clear guidance regarding whether any linkage was intended. Thus, under normal rules of statutory interpretation, the plain language of the statute would ordinarily be given effect. As indicated above, the plain language imposes no percentage of assets limit on credit card operations. This does not mean that federal thrifts can make unlimited credit card loans, however. Independent of the investment authorizations in HOLA section 5, all savings associations are required to meet the qualified thrift lender test.³⁵ Credit card loans count as qualified thrift investments only to a very limited extent. The qualified thrift

²⁹ 12 CFR 545.74(c)(1)(1995). For purposes of some other regulations, such as loans to one borrower (12 CFR 563.99) and transactions with affiliates (12 CFR 563.41 and 563.42), investments at the service corporation level are aggregated with investments of the parent savings association. Today's proposal does not affect those regulatory provisions.

³⁰ 12 U.S.C. 1464(c)(1)(A).

³¹ 12 U.S.C. 1464(c)(1)(C), (D), (E), (F).

³² 12 U.S.C. 1464(c)(2)(D).

³³ Id.

³⁴ Compare 12 CFR 545.50(b)'s definition of consumer loan, which excludes credit extended in connection with credit cards, with 12 CFR 561.12, which defines consumer credit for purposes of the regulations in part 563 to include credit cards.

³⁵ 12 U.S.C. 1467a(m).

lender test effectively requires all savings associations to hold a substantial amount of residential mortgage-related assets.

The proposed rule carries forward the pattern of OTS's existing regulations. Under the proposed rule, credit card loans would not be subjected to the 35 percent of assets limit. The OTS solicits comment, however, regarding whether this is the proper approach.

Section 545.51 Credit Cards

As discussed above, § 545.51(a) reiterates the HOLA's grant of statutory authority to federal thrifts to issue credit cards and extend credit in connection therewith, and otherwise engage in credit card operations.³⁶ The OTS proposes to delete this section and incorporate a reference to federal savings associations' statutory authority to engage in credit card operations into the proposed lending/investment powers chart. Consistent with the current form of § 545.51(a), credit card operations would not be subject to the 35 percent of assets limit.

Paragraph (b), addressing the confidentiality of personal security identifiers in conjunction with credit card operations, would be deleted as redundant with the provisions of the Electronic Funds Transfer Act and Regulation E.³⁷

Section 545.52 Loans on Savings Accounts

Section 545.52 reiterates the HOLA's statutory grant of authority to federal thrifts to make loans on the security of savings accounts and sets forth a regulatory limitation on such loans.³⁸ The OTS proposes to delete this section and incorporate the reference to federal thrifts' statutory authority to make loans on savings accounts into the proposed lending and investment powers chart. The limitation on loans on savings accounts to the withdrawal amount of the savings account set forth in paragraph (b) will be retained as an endnote.

Section 545.53 Finance Leasing

This section authorizes federal thrifts to engage in various leasing activities that are the functional equivalent of lending, subject to certain regulatory limitations.³⁹ The OTS proposes to reference federal thrifts' finance leasing

authority with applicable limitations in the proposed lending and investment powers chart.

The OTS is also proposing to consolidate the finance leasing requirements of this section with the general leasing requirements of § 545.78 into one streamlined section, new § 560.41. As part of this consolidation and streamlining, OTS proposes to delete the term limits in paragraph (c)(2) of § 545.53. Institutions should be free to establish their own term limits based on prudent underwriting criteria and market conditions. OTS proposes to amend the residual value requirement for finance leases in current § 545.53(c)(2). The current rule states that no more than 20 percent of the return may be realized from the residual value of the property. Commenters have stated that this language is confusing and that the 20 percent requirement is too strict in light of the fact that the Office of the Comptroller of the Currency (OCC) allows national banks to make leases with a residual value of 25 percent of the original cost of the property to the lessor. Therefore, OTS proposes to amend its residual value requirement for finance leases, to clarify the language and to incorporate the 25 percent standard.⁴⁰

The OTS solicits comment on whether it should consolidate the salvage powers described in this section and in the service corporation regulations into one new section that will outline salvage powers on all types of loans and investments.

Section 545.72 Government Obligations

Section 545.72 reiterates the HOLA's grant of statutory authority to federal thrifts to invest in obligations of any state, territory, or political subdivision thereof.⁴¹ The OTS proposes to delete this section and incorporate the reference to federal thrifts' statutory authority to invest in government obligations into the proposed lending and investment powers chart. The provisions of § 545.72(a) regarding investments in obligations meeting investment grade requirements will be incorporated into new § 560.42 and noted in the endnotes to the chart.

Other provisions of § 545.72 will also be modified and incorporated into new § 560.42. In order to encourage additional safe and sound community-related investments under this provision, the agency is proposing to

modify the regulatory restrictions currently contained in § 545.72(b) for unrated government obligations before incorporating them into the new section.

First, the agency is clarifying that the 1 percent of assets limitation for investments in obligations of a state or political subdivision where a savings association has its home or a branch office that do not meet the rating or full faith and credit requirements of § 545.72(a) is an aggregate limit. However, the OTS is proposing to allow savings associations to invest additional amounts in such obligations, without geographic restrictions, if the obligation is approved for investment by the OTS. This will allow savings associations additional flexibility while allowing the agency the opportunity to monitor the potential riskiness of such investments.

The OTS is also proposing to remove the restriction on gold-related obligations contained in paragraph (c) as obsolete.⁴²

Section 545.73 Inter-American Savings and Loan Bank

Section 545.73 reiterates federal savings associations' statutory authority to invest in the share capital and capital reserve of the Inter-American Savings and Loan Bank, subject to statutory and regulatory limitations on the amount of the investment.⁴³ The OTS proposes to remove this section and incorporate this authority and limitations into the new lending and investment powers chart, endnotes and new § 560.43, which addresses foreign assistance investments. As with investments authorized under the Foreign Assistance Act, discussed earlier under § 545.39, the OTS solicits comment on the extent to which federal savings associations have utilized this authority.

Section 545.74 Service Corporations

The OTS proposes, as discussed under § 545.46 above, to no longer aggregate commercial loans made by a savings association's service corporation with such loans made by the savings association itself for purposes of the statutory 10 percent of assets limitation. The agency proposes a conforming change to § 545.74(c)(1)(vi), where this regulatory aggregation is repeated. The remaining provisions of § 545.74 are under separate review as part of the agency's reinvention of its subsidiaries regulations.

³⁶ 12 U.S.C. 1464(b)(4).

³⁷ See 15 U.S.C. 1693 *et seq.* and 12 CFR part 205 respectively.

³⁸ 12 U.S.C. 1464(c)(1)(A).

³⁹ Section 545.53 cites several HOLA lending provisions, 12 U.S.C. 1464(c)(1)(B), (c)(2)(A), and (c)(2)(D), as the basis for federal thrifts' leasing authority.

⁴⁰ The OCC has recently proposed amendments to its leasing regulation at 60 FR 46246 (September 6, 1995).

⁴¹ 12 U.S.C. 1464(c)(1)(H).

⁴² See 57 FR 40352 (September 3, 1992).

⁴³ 12 U.S.C. 1464(c)(4)(C).

Section 545.75 Commercial Paper and Corporate Debt Securities

Section 545.75(a) reiterates the HOLA's grant of statutory authority to federal thrifts to invest in commercial paper and corporate debt securities.⁴⁴ The OTS proposes to delete this paragraph and to reference federal thrifts' statutory authority to invest in commercial paper and corporate debt securities in the proposed lending and investment powers chart. The agency proposes to retain the limitations on these investments contained in paragraphs (b) and (c) and to move them into a new § 560.40 on commercial paper and corporate debt securities in part 560. The agency solicits comment on whether these provisions should, alternatively, be removed from the regulations and incorporated as guidance in the Thrift Activities Handbook.

The agency proposes to delete paragraph (d) as no longer having any practical application for thrifts in light of section 28(d) of the Federal Deposit Insurance Act. Paragraph (d) authorizes a Federal savings association to invest in commercial paper and corporate debt securities not meeting the rating and marketability requirements of paragraphs (b) and (c), so long as such investments are not otherwise prohibited by section 28(d) of the FDIA, which prohibits investments in junk bonds. The OTS solicits comment as to whether there is any scenario under which paragraph (d) is still relevant.

Section 545.78 Leasing

Section 545.78(a) reiterates the HOLA's grant of statutory authority to federal thrifts to invest in tangible personal property for leasing purposes.⁴⁵ The OTS proposes to incorporate this statutory authority reference into the proposed lending and investment powers chart. The OTS also proposes to delete paragraph (b) of § 545.78, which imposes a maximum 70 percent residual value limit for general leasing activities, because the OTS believes that such an underwriting restriction may be unduly restrictive if applied in all cases. Such lease underwriting considerations are more appropriately addressed in the Thrift Activities Handbook as guidance. As discussed under § 545.53 earlier, new part 560 will contain a § 560.41 addressing both finance leasing and general leasing authority.

⁴⁴ 12 U.S.C. 1464(c)(2)(D).

⁴⁵ 12 U.S.C. 1464(c)(2)(C).

Part 556 Statements of Policy

Section 556.2 Power To Engage In Escrow Business

Section 556.2 addresses federal thrifts' power to engage in the escrow business. The OTS proposes to delete this policy statement. As already discussed with regard to § 545.32(b)(6), the OTS believes that the authority to establish escrow accounts is subsumed within the authority of federal savings associations to make loans and does not need to be specifically identified in the CFR.

Section 556.3 Real Estate

Section 556.3(a) addresses the treatment of motels as either improved nonresidential real estate or combination home and business property for real estate categorization purposes. The OTS proposes to delete this paragraph and incorporate it into guidance. Section 556.3(b) permits federal thrifts to purchase paving certificates that constitute a lien on property securing an association's loan. The OTS proposes to delete this section and transfer the language of the policy statement to the Thrift Activities Handbook.

Section 556.10 First Liens on Properties Sold by the Secretary of HUD

Section 556.10 reiterates federal thrifts' authority to make mortgage loans insured by the Federal Housing Administration and secured by first liens on improved real estate and discusses the treatment and documentary evidence of such loans after disposal by the Secretary of Housing and Urban Development. The OTS proposes to delete this policy statement and move it to guidance in the Thrift Activities Handbook.

Part 563—Operations (All Savings Associations)

Section 563.95 Investment in State Housing Corporations

Section 563.95 covers investments in or loans to state housing corporations by all savings associations. It imposes certain conditions, including percentage-of-asset limitations, depending on the type of loan or investment and the savings association's capital level. The OTS proposes to modify and update this section and move it into a new § 560.121 in new part 560.

Paragraph (a) deals with loans to, and investments in obligations of, state housing corporations that are secured, directly or indirectly, by first liens on insured improved real estate. The OTS proposes to remove percentage-of-asset

limitations in this paragraph (a). Although in the agency's opinion the existing percentage-of-assets limitations would not affect most savings associations that make this type of investment, removing the limit will allow thrifts to exercise business judgment in determining the amount they wish to invest in such loans and obligations, subject, as always, to overall safety and soundness considerations.

The OTS proposes to update the language in paragraph (b), which covers investments in obligations of state housing corporations that do not fall under paragraph (a), in several ways. First, the agency proposes to remove the outdated limitation based on a thrift's level of "general reserves surplus and undivided profits." Instead, any thrift that is adequately capitalized under 12 CFR Part 565 may make such investments. Second, the OTS proposes to allow investments under paragraph (b) to be made in obligations of state housing corporations located in any state in which the association has its home or a branch office. Third, the OTS proposes to revise the aggregate limit on such investments to equal a thrift's total capital under 12 CFR Part 567 and to move this requirement into a new paragraph (b)(2). Finally, the agency proposes to delete the requirement that a thrift may make no more than 25 percent of its aggregate investment in this type of obligation in the obligations of any one state housing corporation. This requirement effectively requires an institution to invest in four state housing corporations any time it wishes to invest in one.

The agency also proposes to delete existing paragraph (c), which allows thrifts (that otherwise have the legal authority to do so) to make direct equity investments in equity securities of state housing authorities. Federal thrifts currently do not have authority to invest in equity securities of state housing corporations, and section 28 of the FDIA constrains state chartered thrifts from making, or retaining past July 1, 1994, any equity investment not permissible for federal thrifts.⁴⁶ The OTS solicits comment as to whether there is any scenario under which paragraph (c) is still relevant.

The agency proposes to move paragraph (d), substantially unchanged, into new § 560.121 as paragraph (c). This paragraph addresses a thrift's obligation before making an investment

⁴⁶ See 12 U.S.C. 1831e(c), which states that a state chartered savings association "may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association," with a limited exception for service corporation investments.

in a state housing corporation, to obtain the corporation's agreement to make information available to the OTS upon request.

Section 563.97 Loans in Excess of 90 Percent of Value

Section 563.97 authorizes thrifts to make loans on the security of residential real estate with loan-to-value ratios in excess of 90 percent of value, consistent with the interagency real estate lending standards. The OTS proposes to delete this section because the interagency real estate lending standards address the same issues in a more comprehensive manner.

Section 563.99 Fixed-Rate and Adjustable-Rate Mortgage Loan Disclosures, Adjustment Notices, and Interest Rate Caps

Section 563.99 defines fixed and adjustable rate mortgage loans and requires thrifts to make certain disclosures to applicants of adjustable rate mortgage loans. The OTS is considering moving the definitions in paragraph (a) to a consolidated definitional location in the regulations as part of the Regulatory Structure Proposal. The agency also expects ultimately to move this section into new Part 560, Subpart C, "Adjustable Rate Mortgages."

The disclosure requirements of § 563.99 and the Federal Reserve Board's (FRB) Truth in Lending Regulation Z⁴⁷ are substantially parallel except for their coverage of certain types of credit transactions. Pursuant to § 303(b) of the CDRIA, the FRB is required to review its regulations with respect to disclosures pursuant to the TILA with regard to adjustable-rate mortgages in order to simplify the disclosures, if necessary, and make the disclosures more meaningful and comprehensible to consumers.⁴⁸ Accordingly, the OTS will undertake a comprehensive review of § 563.99 in conjunction with the FRB's section 303 review of Regulation Z.

Currently § 563.99 covers all adjustable rate loans with a term of more than one year, secured by property occupied or to be occupied by the borrower. Unlike § 563.99, Regulation Z's coverage is not determined by the nature of the secured property but rather by other criteria, e.g., the extension of credit must be for personal, family, or household purposes.⁴⁹

As the regulations currently interact, certain transactions are encompassed by

§ 563.99 but not by Regulation Z. For example, a savings association that makes a business purpose adjustable rate mortgage loan secured by a home would be subject to the disclosure requirements set forth at § 563.99; however, no disclosures would be required under Regulation Z.⁵⁰ In order to establish parity in coverage with respect to disclosure requirements among lenders, the OTS is today proposing to revise § 563.99 to exclude from that section's coverage adjustable rate loans that are primarily for a business, commercial, or agricultural purposes, consistent with Regulation Z.⁵¹

Section 563.100-101 Real Estate Lending Standards

These sections prescribe real estate lending standards that require all savings associations to adopt and maintain comprehensive written real estate lending policies that are consistent with safe and sound practices and with the Guidelines for Real Estate Lending.⁵² Savings associations' policies must address certain lending considerations including loan-to-value limits, loan administration procedures, portfolio diversification standards, and documentation, approval, and reporting requirements. The OTS is not proposing changes to these sections today, but plans ultimately to redesignate and move them substantially unchanged into a new part 560.

The OTS adopted the real estate lending standards pursuant to an interagency effort mandated by section 304 of the FDICIA.⁵³ Pursuant to Section 303 of the CDRIA, the OTS and the other banking agencies are each to review these standards and to "consider the impact that such standards have on the availability of credit for small business, residential, and agricultural purposes, and on low- and moderate-income communities."⁵⁴ The OTS welcomes comments on the impact that the real estate lending standards, including the Guidelines, are having on the availability of the types of credit and communities described above.

Section 563.160 Classification of Certain Assets

Section 563.160 requires thrifts to classify their own assets and establish

valuation allowances. The OTS proposes to delete this section in its entirety.⁵⁵

Section 563.160 was added in 1987 pursuant to section 402 of CEBA, which amended the HOLA to add a new section 9 requiring that the FHLBB, the OTS's predecessor, adopt regulations establishing an asset classification system. FIRREA removed that section and in turn amended the HOLA to require only that OTS asset classification regulations and policies be no less stringent than the OCC's.⁵⁶ None of the banking agencies, including OCC, has an asset classification regulation. Their asset classification systems are set forth in supervisory guidance.

In order to more closely parallel the asset classification systems of the other federal banking agencies, the OTS believes that § 563.160 can be removed without impairing safety and soundness. The existing asset classification system will be placed in the Thrift Activities Handbook.

This change in no way relieves thrifts of the responsibility to properly classify their assets and establish prudent valuation allowances as necessary. Nor does it reduce the OTS's statutory supervisory authority to require associations to classify their assets and establish valuation allowances based on examination findings.

Section 563.170 Examinations and Audits; Appraisals; Establishment and Maintenance of Records

Paragraph (a) of § 563.170 authorizes the OTS to examine thrifts consistent with OTS policies and to annually assess thrifts for the costs of such examinations based on the thrifts' assets. The OTS proposes to retain this paragraph.

Paragraph (b) authorizes the OTS to select appraisers to perform appraisals of real estate in connection with examinations and audits and requires thrifts to pay for such appraisal services. The agency proposes to retain this paragraph.

Paragraph (c) sets forth general record maintenance requirements for savings associations to ensure that examiners have access to an accurate and complete record of all business transacted by the thrift. The OTS proposes to retain this

⁵⁵The OTS has already requested comment on deleting the definitions of "substandard," "doubtful," and "loss" set forth in paragraph (b), and the definition of "Special Mention" assets in paragraph (e) because definitions of those terms are contained in the Thrift Activities Handbook. 58 FR 38730 (July 20, 1993). Commenters supported such deletions. The OTS proposed deleting paragraph (f) as part of its regulatory review proposal of August 28, 1995, and received no unfavorable comments.

⁵⁶See HOLA section 4(c), 12 U.S.C. 1463.

⁵⁰Regulation Z exempts from its disclosure requirements extensions of credit primarily for business, commercial, or agricultural purposes. See 12 CFR 226.3(a)(1).

⁵¹12 CFR 226.3(a).

⁵²Appendix A to the Real estate lending standards at §§ 563.100-563.101.

⁵³See 57 FR 62890 (December 31, 1992).

⁵⁴12 U.S.C. 4803(a)(1)(C).

⁴⁷See 12 CFR 226.19(b), 226.20(c).

⁴⁸12 U.S.C. 4803.

⁴⁹12 CFR 226.1(c)(1)(iv).

general introductory paragraph, with a modification to incorporate language in current paragraph (c)(9) on maintaining records required by other laws or regulations.

Paragraphs (c)(1)–(9) set forth a list of specific loan documents that, at a minimum, thrifts must maintain to comply with § 563.170(c). While the documents listed are generally appropriate and could be used as a checklist for prudent lending, a rigid requirement that all documents be present for each loan is too restrictive and does not necessarily address all safety and soundness concerns. Currently, if an institution is missing any of the documents required by regulation, it is technically in violation of that regulation, even if the safety and soundness intent of the regulation has been satisfied. Conversely, safety and soundness concerns may, in a particular instance, necessitate different or additional documentation beyond those records listed in the regulation.

For example, § 563.170(c)(1)(v) requires either a financial statement or a credit report for all loans, ostensibly to justify the borrower's willingness and ability to repay the loan. However, the ability and willingness of a borrower to repay a consumer or home loan may be better demonstrated with a verification of employment (not currently required) and a satisfactory credit report, rather than a financial statement. For commercial borrowers, verification by the institution that the borrower's financial statements accurately reflect all assets, liabilities, and any other guarantees or encumbrances is more important to the decision to extend credit than the mere presence of a financial statement.

Since FIRREA, several interagency regulations have been developed that include guidelines for proper loan documentation. These underwriting and documentation standards minimize the need for OTS to have a regulation setting specific documentation requirements.

Guidelines appended to the interagency real estate lending standards state that an institution should establish loan administration procedures that address documentation.⁵⁷ The OTS also sets forth loan documentation and credit underwriting requirements in the interagency Standards for Safety and Soundness and Guidelines Establishing Standards for Safety and Soundness to

which all federal insured depository institutions are expected to adhere.⁵⁸

The OTS proposes replacing the specific documentation listed in paragraphs (c)(1)–(9) with more general documentation standards in a new § 560.170 in part 560. These proposed standards are drawn from the interagency guidelines establishing standards for safety and soundness.

Deleting these paragraphs would not only relieve savings associations of documentation requirements that exceed those for banks and other financial institutions but also may enable savings associations to take better advantage of technological marketplace advances such as telephone and computerized home banking. The OTS invites comment as to whether the proposed revisions to loan documentation requirements are sufficiently flexible to accommodate savings associations' participation in telephone and computerized home banking.

The OTS is considering transferring the current document list in paragraphs (c)(1)–(5), (7), to the Thrift Activities Handbook to be used as a checklist of records generally maintained by prudent lenders to support a loan.

Paragraph (c)(10) of § 563.170 exempts certain small business loans from the documentation requirements set forth in paragraphs (c)(1)–(7). The OTS proposes to delete paragraph (c)(10) inasmuch as the revision of paragraphs (c)(1)–(7) eliminates the need for this exemption.

Paragraph (d) of § 563.170 addresses change in location of accounting or control records. Paragraph (e) addresses use of data processing services for maintenance of records. The OTS proposes to retain these paragraphs, but solicits comments on how these paragraphs might be updated to reflect technological changes in record maintenance.

Section 563.172 Re-evaluation of Real Estate Owned

Section 563.172 requires savings associations to appraise all real estate owned (REO) at the earlier of in-substance foreclosure or at the time of acquisition and, thereafter, as dictated by prudent management policy. The OTS is considering deleting this section inasmuch as thrifts can apply the appraisal regulations and general accounting principles (GAAP) to determine when an appraisal may be appropriate or necessary for safety and soundness. If it is retained, this section

would be incorporated into new part 560. The OTS solicits comment on the need for this section and on how the interaction between this section and the appraisal regulations at part 564 might be clarified.

Part 571 Statements of Policy

Section 571.8 Investment in State Housing Corporations

Section 571.8 limits savings associations' investment authority in state housing corporations to certain public and private corporations and agencies. The OTS proposes to delete this policy statement as an unnecessary limitation on the definition of state housing corporation.

Section 571.13 Participation Interests in Pools of Loans

Section 571.13 addresses appropriate documentation for a savings association's purchase of a participation interest in a pool of loans (in the nature of mortgage-backed securities) and indicates that compliance with the documentation requirements of § 563.170 may be impracticable for such transactions. The OTS proposes to delete this section inasmuch as the proposed revision of § 563.170(c) would eliminate the need for this policy statement. The OTS plans to transfer the documentation guidance for purchases of participation interests in pools of loans to the Thrift Activities Handbook.

Section 571.20 Payment for Appraisals

Section 571.20 addresses payment by savings associations for appraisals obtained as part of an OTS examination. The OTS proposes to delete this section and expects to transfer this policy statement to the Thrift Activities Handbook.

Section 571.22 Most Favored Lender Status

Section 571.22 implements section 4(g) of the HOLA, which authorizes savings associations to charge on any extension of credit an interest rate equal to the greater of (a) one percentage point above the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which the savings association is located or (b) the rate allowed by the laws of the State in which the savings association is located. The OTS proposes to move the provisions of this section into new section 560.2 without substantive modification.

However, the OTS requests specific comment on one aspect of § 571.22. Paragraph (b) indicates that any savings association seeking to make loans at the

⁵⁷ See 12 CFR part 563, subpart D, appendix A.

⁵⁸ 12 CFR part 570 and Appendix A thereto, 60 FR 35674 (July 10, 1995).

interest rate authorized for a state most favored lender must also comply with the same "substantive state law requirements" that are applicable to that state lender when making loans of the same type. The OCC, which administers a very similar statutory provision for national banks, uses a slightly different phrase to describe what types of state laws must be complied with pursuant to the most favored lender doctrine. The OCC requires national banks to comply with all state laws that apply to the state most favored lender and are "material to the determination of the interest rate" authorized under state law.⁵⁹ The OTS has previously opined that this standard is essentially the same as the OTS's "substantive law" standard.⁶⁰ Accordingly, when addressing interpretive questions, the OTS has looked to the case law and other precedent interpreting the national bank standard. In order to promote both clarity and parity, the OTS specifically requests comment regarding whether paragraph (b) of § 571.22 should be replaced in its entirety with a reference to state laws that are "material to the determination of the interest rate."

2. New Part 560—Lending and Investment

The OTS proposes to adopt a new part 560, Lending and Investment, that will ultimately include all of the agency's lending and investment regulations except for Appraisals (part 564) and subsidiary-related investments (currently under separate review). The agency believes that this reorganization will make it much easier for those using the agency's regulations to find all relevant lending and investment powers, authorities, and limitations.

Section 560.1 Authority and Scope (Proposed)

This proposed section sets out the basic statutory authority for lending and which regulations in this part will apply only to federal savings associations and which to all savings associations. It also briefly sets forth the agency's expectations that all lending and investment activities are to be conducted prudently, consistent with safety and soundness, with adequate portfolio diversification, and in a manner appropriate for the size of the institution, the nature and scope of its operations, and conditions in its lending market.

Section 560.2 Applicability of Law (Proposed)

This proposed section sets forth the OTS's longstanding position, as developed in caselaw and legal opinions by both the OTS and its predecessor, the FHLBB, and as currently reflected in § 545.2, on the federal preemption of state laws purporting to affect the lending activities of federal savings associations. Because the lending regulations are being moved out of Part 545 and, thus, separated from § 545.2 and because many of the details of the lending regulations that have been cited in preemption opinions are being removed, the OTS proposes to include new § 560.2 to confirm and carry forward its existing preemption position.

As discussed in Section III.A.4., above, lending is one of the core activities in which federal savings associations engage. The OTS believes that Federal preemption of State laws purporting to affect lending is critical to filling the agency's mandate under HOLA sections 4(a) and 5(a) to provide for the safe and sound operation of Federal savings associations in accordance with the best practices of thrift institutions in the United States. Today's proposal, which deals only with preemption in the lending area and does not amend § 545.2, provides general standards drawn from caselaw and legal opinions and the agency's current regulations. The agency is hopeful that the increased clarity and specificity of § 560.2 will reduce confusion and the need for frequent preemption inquiries to OTS.

Subpart A—Lending and Investment Powers for Federal Savings Associations

This subpart will contain lending and investment regulations directly applicable only to federal savings associations.

Section 560.30 General Lending and Investment Powers (Proposed)

Proposed § 560.30 takes the form of a chart that lists many of the lending and investment powers granted to federal thrifts by the HOLA. It is derived from the regulations that currently appear in part 545. An important component of this regulation are the endnotes to the chart that elaborate upon statutory limitations, impose regulatory limitations, or otherwise describe conditions on the exercise of these powers.

Although the chart references many of the more commonly used powers, it does not give a complete listing of all statutory lending and investment

authorities. The OTS solicits comment on whether a chart in this format makes the CFR easier to use. The OTS also invites comment on whether the chart would be more useful if it codified all statutory powers, even those without statutory or regulatory limitations or those rarely used.

Section 560.31 Election Regarding Categorization of Investments and Related Calculations

This proposed section is derived from current § 545.31, incorporating the modifications described earlier under that section.

Section 560.34 Limitations on Home Loans

This proposed section is derived from current § 545.34 (b) and (c).

Section 560.40 Commercial Paper and Corporate Debt Securities

This proposed section is derived from paragraphs (b) and (c) of current § 545.75.

Section 560.41 Leasing

This proposed section is a consolidation and reorganization of current § 545.53 (finance leasing) and § 545.78 (general leasing authority), incorporating the modifications described under those sections.

Section 560.42 State and Local Government Obligations

This proposed section is derived from section 5(c)(1)(H) of the HOLA and paragraphs (a) and (b) of current § 545.72.

Section 560.43 Foreign Assistance Investments

This proposed section is a consolidation and reorganization of current §§ 545.39 and 545.73.

Subpart B—Lending and Investment Provisions Applicable to All Savings Associations

This proposed subpart will contain safety and soundness based lending standards and provisions applicable to all savings associations, including state savings associations, to the extent that they have the authority to make the investments it discusses. The agency expects to move its Real Estate Lending Standards and Guidelines, currently located at 12 CFR 563.100–.101 and Appendix A to Part 563, Subpart D, into this subpart.

Section 560.120 Letters of Credit

This proposed section is derived from current § 545.48 and establishes standards for letters of credit for all savings associations.

⁵⁹ 12 CFR 7.7310.

⁶⁰ OTS Op. Chief Counsel, Oct. 14, 1992.

Section 560.121 Investments in State Housing Corporations

This proposed section is derived from current § 563.95, incorporating the modifications described earlier under that section.

Section 560.170 Records for Lending Transactions

This proposed section will contain general loan documentation requirements based on the interagency safety and soundness standards and guidelines found at 12 CFR Part 570. It will replace the specific loan documentation requirements currently found at 12 CFR 563.170(c) (1)–(10).

Subpart C—Adjustable Rate Mortgages

This proposed subpart will contain new § 560.210, “Alternative Mortgage Parity Act” and will also ultimately include ARM disclosure requirements currently found in § 563.99, with the possible amendments discussed under that section.

Section 560.210 Alternative Mortgage Parity Act

This proposed section is derived from current § 545.33(f), “Notice of housing creditors regarding alternative mortgage transactions.” The OTS has observed that housing creditors interested in engaging in alternative mortgage

transactions could not easily locate this section and believes placing it into a subpart specifically dealing with alternative mortgages will make it more accessible to users. The section has been streamlined and modified to reflect changes proposed today, including the removal of cross-references of provisions proposed for repeal.

IV. Proposed Disposition of Lending- and Investment-Related Regulations

The following chart displays the proposed reorganization of OTS’s existing lending- and investment-related regulations.

Original provision	New provision	Comment
§ 545.31(a)	§ 560.31(a)	Modified; last sentence to be addressed in Regulatory Structure rule-making.
§ 545.31(b)	§ 560.31(a)	Modified; last sentence to be addressed in Regulatory Structure rule-making.
§ 545.31(c),(d)	§ 560.31(b), (c)	Unchanged.
§ 545.32(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.32(b)(1),(2)		Removed.
§ 545.32(b)(3)–(6)		Removed, included as areas in which state law is preempted under § 560.2.
§ 545.32(c)		To be addressed in Regulatory Structure rulemaking.
§ 545.32(d)		Removed.
§ 545.33 Introductory paragraph		To be addressed in Regulatory Structure rulemaking.
§ 545.33(a)–(e)		Removed, included as area in which state law is preempted under § 560.2.
§ 545.33(f)	§ 560.210	Modified.
§ 545.34(a)	§ 560.2	Modified and reorganized.
§ 545.34(b), (c)	§ 560.34	Substantially unchanged.
§ 545.35	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.36		Removed. Paragraphs (c) and (d) to be incorporated into guidance.
§ 545.37		Removed.
§ 545.38(a),(b)		Removed.
§ 545.38(c)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.39(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.39(b)	§ 560.43	Modified.
§ 545.40		Removed.
§ 545.41	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.42	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.43	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.44		Removed.
§ 545.45(a),(b)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.45(c),(d)		To be incorporated into guidance.
§ 545.45(e)		Removed.
§ 545.46(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.46(b) introductory paragraph and (b)(1).	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.46(b)(2)		Removed.
§ 545.47	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.48	§ 560.30	Authority incorporated into lending and investment powers chart.
§ 545.48(a)	§ 560.120	Modified.
§ 545.48(b)		Removed.
§ 545.49	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.50(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.50(b)		To be addressed in Regulatory Structure rulemaking.
§ 545.50(c)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.51(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.51(b)		Removed.
§ 545.52	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.53(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.53(b)–(d)	§ 560.41	Significantly changed.
§ 545.72 Introductory paragraph	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.72(a), (b)	§ 560.42	Significantly changed.
§ 545.72(c)		Removed.
§ 545.73 Introductory paragraph	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.73(a), (b)	§ 560.43	Modified.

Original provision	New provision	Comment
§ 545.74(c)(1)(vi) .....	.....	Removed.
§ 545.75(a)	§ 560.30	Incorporated into lending and investment powers chart.
§ 545.75(b), (c)	§ 560.40	Modified.
§ 545.75(d) .....	.....	Removed.
§ 545.78	§ 560.30. See also 560.41	Significantly changed and incorporated into lending and investment powers chart.
§ 556.2 .....	.....	Removed.
§ 556.3 .....	.....	To be incorporated into guidance.
§ 556.10 .....	.....	To be incorporated into guidance.
§ 563.95	§ 560.121	Significantly changed.
§ 563.97 .....	.....	Removed.
§ 563.99 .....	.....	Modified by adding new paragraph (g).
§ 563.160 .....	.....	Removed.
§ 563.170(a),(b) .....	.....	Unchanged.
§ 563.170(c) .....	.....	Modified.
§ 563.170(c)(1)-(10)	§ 560.170	Significantly changed.
§ 563.170(d),(e) .....	.....	Unchanged.
§ 563.172 .....	.....	Modifications or removal under consideration.
§ 571.8 .....	.....	Removed.
§ 571.13 .....	.....	Removed.
§ 571.20 .....	.....	To be incorporated into guidance.
§ 571.22	§ 560.2	No substantive change.

V. Request for Comment

The OTS invites comment on all aspects of the proposal as well as specific comments on the proposed changes. For the convenience of the reader, specific areas noted for comment earlier in this preamble are repeated under section B., below.

A. General Areas for Comment

The OTS also solicits comments on several broader areas of concern:

(1) What is the best approach for providing clear guidance on the preemptive effect of OTS's lending regulations for federal savings associations?

(2) Could a supervisory approach more dependent on general guidelines and safety and soundness standards lead to differences in interpretation of regulatory requirements and safety and soundness standards? Would these differences result in unnecessary misunderstandings and confrontations between institutions and supervisory staff? What types of communications or training would ease the transition to a supervisory approach more dependent on guidelines?

(3) Are there regulatory or policy barriers in OTS's lending and investment regulations that prevent or otherwise discourage savings associations from investing in community development activities? As discussed above, OTS is proposing to remove unnecessary restrictions from its regulations on investments in government obligations and state housing corporations. The agency seeks comments on other regulatory changes that would encourage safe and sound

community lending that are within its statutory authority.

(4) While savings associations have, and will continue to have, a focus on mortgage lending, it is important that the regulations do not impair their ability to offer other types of loans. A savings association should be able to structure its portfolio of assets to offer the best mix of income-producing products that will meet its community's credit needs consistent with statutory authority. The agency is proposing to remove commercial loans made by service corporations from the overall commercial lending limit, which it believes is consistent with safety and soundness and within its statutory authority. The agency solicits comments on what other regulations affecting federal savings associations' commercial lending, especially small business lending, authority could be modified.

B. Specific Requests for Comment

For the convenience of the reader, the specific points on which the proposal requests comment are repeated below:

(1) Should the regulation contain a chart listing the most commonly used lending and investment powers that would make it easier to locate lending authorities and determine which restrictions apply? Would such a chart be more useful if it included statutory provisions not currently set forth in the regulations?

(2) Today's proposal represents the agency's current best considered judgment about the right balance between which provisions affecting lending should be binding regulations and which should be guidance conveying the OTS's general views on

safety and soundness standards. Does the proposal achieve these goals?

(3) The section-by-section analysis highlights particular lending provisions that the agency is considering modifying or removing in an effort to streamline the lending regulations and remove unnecessary restrictions. Are specific, detailed regulations needed in these areas?

(4) Has the current definition of secured real estate loan provided adequate guidance for savings associations and how could it be clarified or updated?

(5) Should any of the provisions in § 545.33(c), limitations on adjustments to mortgages, be retained?

(6) Should OTS retain the requirement that an index used for an ARM must be outside the institution's control or, alternatively, a requirement of a national or regional index? The OTS also solicits comment on how federal thrifts might structure their ARM lending programs to ensure that consumers are protected if adjustments need not be tied to external indices.

(7) Should the provisions of § 545.33(d)(2), which set forth what may constitute security for a loan on a cooperative, be included in guidance?

(8) Are the restrictions on late fees and prepayment penalties on home loans, currently found in § 545.34(b) and (c) and proposed to be incorporated into new § 560.34, important for borrowers?

(9) Have thrifts invested in or made loans guaranteed under the Foreign Assistance Act?

(10) How can OTS best reference federal thrifts' authority to make low-rent housing loans in the proposed lending and investment powers chart?

(11) Should the definition of "mortgage" set forth in § 302 of the FHLMC Act, currently cross-referenced in § 545.44, be incorporated into a future general definitional section?

(12) Do paragraphs (c) and (d) of § 545.45 on manufactured home financing underwriting standards provide useful guidance to savings associations?

(13) Does transferring the substance of the letters of credit regulation, § 545.48(a), to the new part 560 provide needed uniform standards for the thrift industry, the benefits of which would outweigh any additional burden on state savings associations? Alternatively, should § 545.48(a) be transferred to handbook guidance?

(14) How can the definition of consumer loan be clarified for classification purposes and coordinated with other OTS regulations that define consumer credit differently?

(15) Should the salvage powers described in the leasing regulation (proposed new § 560.41) and in the service corporation regulation (§ 545.74) be consolidated into one new section that will outline salvage powers on all types of loans and investments?

(16) To what extent have savings associations utilized the authority to invest in the Inter-American Savings and Loan Bank?

(17) The agency proposes to retain paragraphs (b) and (c) of current § 545.75 and to move them into a new § 560.40 on commercial paper and corporate debt securities in part 560. Should these provisions, alternatively, be removed from the regulations and incorporated as guidance in the Thrift Activities Handbook?

(18) The agency proposes to delete paragraph (d) of current § 545.75, commercial paper and corporate debt securities, as no longer having any practical application for savings associations in light of section 28(d) of the FDIA. Is there any scenario under which paragraph (d) is still relevant?

(19) Pursuant to 303 of the CDRIA, the OTS and the other banking agencies are each to review these standards and to consider the impact that such standards have on credit availability for small business, residential, and agricultural purposes, and on low- and moderate-income communities. What impact have the interagency real estate lending standards, including the Guidelines, had on the availability of the types of credit and communities described above?

(20) Are the proposed revisions to loan documentation requirements (proposed new § 560.170) sufficiently flexible to accommodate participation in

telephone and computerized home banking?

(21) Paragraph (d) of § 563.170 addresses change in location of accounting or control records. Paragraph (e) addresses use of data processing services for maintenance of records. How can these paragraphs be updated to reflect technological changes in record maintenance?

(22) What is the need for § 563.172, re-evaluation of real estate? How can the interaction between this section and the appraisal regulations at part 564 be clarified?

(23) Should paragraph (b) of § 571.22 (most favored lender) be replaced in its entirety with a reference to state laws that are "material to the determination of the interest rate," in order to clarify the meaning of paragraph (b) and to promote parity between savings associations and national banks?

VI. Paperwork Reduction Act of 1995

The OTS invites comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection, including the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The reporting requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the OTS, 1700 G Street, NW., Washington, DC 20552.

The recordkeeping requirements in this notice of proposed rulemaking are found in 12 CFR 560.170 and 563.170. The recordkeeping requirements set forth in this notice of proposed rulemaking are needed by the OTS in order to supervise savings associations and develop regulatory policy. The

likely recordkeepers are OTS-regulated savings associations.

Estimated number of respondents and/or recordkeepers: 1,460.

Estimated average annual burden hours per recordkeeper: 422 hours.

Estimated total annual reporting and recordkeeping burden: 616,431 hours.

Start-up costs to respondents: None.

Records are to be maintained for the period of time respondent/recordkeeper owns the loan plus three years.

VII. Executive Order 12866

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

VIII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal does not impose any additional burdens or requirements upon small entities and lowers several paperwork and other burdens on all savings associations.

IX. Unfunded Mandates Act of 1995

The OTS has determined that the requirements of this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995.

List of Subjects

12 CFR Part 545

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

12 CFR Part 556

Savings associations.

12 CFR Part 560

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

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 571

Accounting, Conflicts of interest, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, and under the authority of 12 U.S.C. 1462a, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 545—OPERATIONS

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

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

§ 545.31 [Amended]

2. Section 545.31 is amended by removing the first two sentences of paragraph (a), and paragraphs (c) and (d).

§ 545.32 [Amended]

3. Section 545.32 is amended by removing and reserving paragraphs (a), (b), and (d).

§ 545.33 [Amended]

4. Section 545.33 is amended by removing and reserving paragraphs (a) through (f).

§§ 545.34–545.43, 545.45–545.49 [Removed]

5. Sections 545.34 through 545.43 and 545.45 through 545.49 are removed.

§ 545.50 [Amended]

6. Section 545.50 is amended by removing and reserving paragraphs (a) and (c).

§§ 545.51–545.53 [Removed]

7. Sections 545.51 through 545.53 are removed.

§ 545.72–545.73 [Removed]

8. Sections 545.72 through 545.73 are removed.

9. Section 545.74 is amended by revising paragraph (c)(1)(vi) to read as follows:

§ 545.74 Service corporations.

* * * * *

(c) * * *

(1) * * *

(vi) Commercial loans and participations therein.

* * * * *

§ 545.75 [Removed]

10. Section 545.75 is removed.

§ 545.78 [Removed]

11. Section 545.78 is removed.

PART 556—STATEMENTS OF POLICY

12. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

§§ 556.2, 556.3, 556.10 [Removed]

13. Sections 556.2, 556.3, and 556.10 are removed.

14. Part 560 is added to read as follows:

PART 560—LENDING AND INVESTMENT

Sec.

560.1 General.

560.2 Applicability of law.

Subpart A—Lending and Investment Powers for Federal Savings Associations

560.30 General lending and investment powers for Federal savings associations.

560.31 Election regarding categorization of loans or investments and related calculations.

560.34 Limitations on home loans.

560.40 Commercial paper and corporate debt securities.

560.41 Leasing.

560.42 State and local government obligations.

560.43 Foreign assistance investments.

Subpart B—Lending and Investment Provisions Applicable to All Savings Associations

560.120 Letters of credit.

560.121 Investment in state housing corporations.

560.170 Records for lending transactions.

Subpart C—Adjustable Rate Mortgages

560.210 Alternative Mortgage Parity Act.

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828, 1701j–3, 3803, 3806; 42 U.S.C. 4106.

§ 560.1 General.

(a) *Authority and scope.* This part is being issued by the OTS under its general rulemaking and supervisory authority under the Home Owners' Loan Act, 12 U.S.C. 1462 *et seq.* Subpart A of this part sets forth the lending and investment powers and authority of Federal savings associations. Subpart B of this part contains safety-and-soundness based lending and investment provisions applicable to all savings associations. Subpart C of this part deals with adjustable-rate mortgages.

(b) *General lending standards.* Each savings association is expected to conduct its lending and investment activities prudently. Each association should use lending and investment standards that are consistent with safety and soundness and ensure adequate portfolio diversification and are appropriate for the size and condition of

the institution, the nature and scope of its operations, and conditions in its lending market. Each association should adequately monitor its portfolio and collateral.

§ 560.2 Applicability of law.

(a) *General standards.* In considering whether State laws apply to the lending and investment activities of Federal savings associations, the OTS will apply generally recognized principles of Federal preemption of state law. For purposes of this part, "State law" includes any State statute, regulation, ruling, order or judicial decision. The OTS intends to occupy the entire field of lending regulation for Federal savings associations. For purposes of clarity, paragraphs (b) and (d) of this section set forth specific areas in which State laws are expressly preempted as they purport to affect lending by Federal savings associations and any limitations on such preemption. Paragraph (c) of this section sets forth the specific areas in which state laws that may have an effect on lending are not preempted by Federal law.

(b) *Express preemption.* Federal savings associations may make all loans and investments authorized under federal law, including this part, without regard to limitations in state law purporting to regulate such activities, including, without limitation, laws governing:

(1) Licensing, registration and filings and reports;

(2) Loan to value ratios;

(3) Amortization of loans, including the deferral and capitalization of interest;

(4) Adjustments to the interest rate, payment, balance, or term to maturity of the loan, including calling a loan due and payable upon the passage of a number of years since closing or a specified event external to the loan;

(5) Loan-related fees, including without limitation, initial charges, late charges, and prepayment penalties;

(6) Escrow accounts;

(7) Security property, including leaseholds;

(8) Disclosure requirements and access to credit reports;

(9) Requirements on disbursements and repayments;

(10) Mortgage processing;

(11) Usury and interest rate ceilings to the extent provided in 12 U.S.C. 1735f–7(a) and part 590 of this chapter and 12 U.S.C. 1463(g) and paragraph (d) of this § 560.2; and

(12) Due-on-sale clauses to the extent provided in 12 U.S.C. 1701j–3 and part 591 of this chapter.

(c) *State laws that are not preempted.* Notwithstanding paragraph (b) of this

section, state laws in the following areas are not preempted as they affect the lending operations of Federal savings associations:

- (1) General contract law;
- (2) General real property law;
- (3) Homestead laws specified in 12 U.S.C. 1462a(f);
- (4) Tort law; and
- (5) Criminal law.
- (d) *Most favored lender.* (1) Under 12 U.S.C. 1463(g), savings associations are authorized to charge interest at a rate not to exceed the greater of either one percent above the Federal Reserve ninety-day discount rate or the rate allowed to the most favored lender on the particular class of loans under State law whenever the greater of either of these rates exceeds the rate the association is permitted to charge by State law.
- (2) Savings associations may only charge the preferential rates reserved for

most favored lenders when they are making the same type of loans as the most favored lender. Accordingly, savings associations may not charge the maximum loan rates permitted for small loan companies unless that loan meets the substantive state law requirements as to loan term amount, use of proceeds, identity of borrower, and so forth. Consumer protections specifically required in such loans when made by the most favored lender are also to be considered substantive and must be included in loans made by savings associations that desire to use most-favored-lender rates.

(3) Federal savings associations are not required to submit to state most-favored-lender restrictions that are primarily procedural or regulatory in nature. Such restrictions include licensing, bonding, and reporting to State authorities. The degree to which state-chartered savings associations

must comply with such restrictions will be determined by their State supervisors.

Subpart A—Lending and Investment Powers for Federal Savings Associations

§ 560.30 General lending and investment powers for Federal savings associations.

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

LENDING AND INVESTMENT POWERS CHART

Category	HOLA authorization	Statutory percentage of assets limitations (endnotes contain applicable regulatory limitations)
Commercial loans	5(c)(2)(A)	10% of total assets.
Commercial paper and corporate debt securities.	5(c)(2)(D)	Up to 30% of total assets. ^{1,2}
Community development	5(c)(3)(B)	5% of total assets.
Community development direct investments	5(c)(3)(B)	2% of total assets. ³
Consumer loans	5(c)(2)(D)	Up to 35% of total assets. ^{1,4}
Credit cards	5(b)(4)	None. ⁵
Education loans	5(c)(3)(A)	5% of total assets.
Finance leasing	5(c)(1)(B)	Based on collateral type for property financed. ⁶
	5(c)(2)(A)	
	5(c)(2)(D)	
Foreign assistance investments	5(c)(4)(C)	1% of total assets. ⁷
General leasing	5(c)(2)(C)	10% of assets. ⁶
Home improvement loans	5(c)(1)(J)	None. ⁵
Home (residential) loans ⁸	5(c)(1)(B)	None. ^{5, 9}
Letters of credit	5(c)(2)(A)	Included in aggregate 10% of assets commercial lending limitation. ¹⁰
Loans secured by accounts	5(c)(1)(A)	None. ^{5, 11}
Loans to financial institutions, brokers, and dealers.	5(c)(1)(H)	None. ^{5, 12}
Manufactured home loans	5(c)(1)(J)	None. ^{5, 13}
Nonresidential real property loans	5(c)(2)(B)	400% of total capital. ¹⁴
State and local government obligations	5(c)(1)(H)	None. ^{5, 15}
State housing corporations	5(c)(1)(P)	None. ^{5, 16}
Transaction account loans, including overdrafts.	5(c)(1)(A)	None. ^{5,17}

NOTES:

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

² A Federal savings association may invest in commercial paper and corporate debt securities, which includes corporate debt securities convertible into stock, subject to the provisions of § 560.40.

³ This 2% of assets limitation is a sublimit within the overall 5% of assets limitation on community development loans and investments.

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

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

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

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

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

⁹ A Federal savings association may make home loans subject to the provisions of § 560.34.

¹⁰ A Federal savings association may issue letters of credit subject to the provisions of § 560.120.

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 loans 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 where 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 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.

¹⁶ A Federal savings association may invest in state housing corporations subject to the provisions of § 560.121.

¹⁷ 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.

§ 560.31 Election regarding categorization of loans or investments and related calculations.

(a) If a loan or other investment is authorized under more than one section of the Home Owners' Loan Act, as amended, or this part, a Federal savings association may designate under which section the loan or investment has been made. Such a loan or investment may be apportioned among appropriate categories, and may be moved, in whole or part, from one category to another. A loan commitment shall be counted as an investment and included in total assets of a Federal savings association only to the extent that funds have been advanced and not repaid pursuant to the commitment.

(b) Loans sold to a third party shall be included in calculation of a percentage-of-assets investment limitation only to the extent they are sold with recourse.

(c) A Federal savings association may make a loan secured by assignment of loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loans.

§ 560.34 Limitations on home loans.

(a) *Late charges.* A Federal savings association may include in the loan contract a provision authorizing the imposition of a late charge with respect to the payment of any delinquent periodic payment. With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by a Federal savings association, unless any monthly billing, coupon, or notice the Federal savings association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed. A Federal savings association may not impose a late charge more than one time for late payment of the same installment, and any installment payment made by the borrower shall be applied to the longest outstanding installment due. A Federal

savings association shall not assess a late charge as to any payment received by it within fifteen days after the due date of such payment. No form of such late charge permitted by this paragraph shall be considered as interest to the Federal savings association and the Federal savings association shall not deduct late charges from the regular periodic installment payments on the loan, but must collect them as such from the borrower.

(b) *Loan payments and prepayments.* Except for loans to natural persons secured by borrower-occupied property and on which periodic advances are being made, payments on the principal indebtedness of all loans on real estate shall be applied directly to reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time wholly or partly to offset payments which subsequently accrue under the loan contract. A Federal savings association may impose a penalty on the prepayment of a loan as provided in the loan contract.

§ 560.40 Commercial paper and corporate debt securities.

Pursuant to 12 U.S.C. 1464(c)(2)(D), a Federal savings association may invest in, sell, or hold commercial paper and corporate debt securities subject to the provisions of this section.

(a) *Limitations.* (1) Commercial paper must be:

(i) Denominated in dollars; and

(ii)(A) As of the date of purchase, as shown by the most recently published rating made of such investments by at least two nationally recognized investment ratings services, rated in either one of the two highest categories; or

(B) If unrated, guaranteed by a company having outstanding paper that is rated as provided in paragraph (a)(1)(ii)(A) of this section.

(2) Corporate debt securities must be:

(i) Denominated in dollars;

(ii) Securities that may be sold with reasonable promptness at a price that

corresponds reasonably to their fair value; and

(iii) Rated in one of the four highest categories by a nationally recognized investment ratings service at its most recently published rating before the date of purchase of the security.

(3) A Federal savings association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any one person or entity affiliated with such issuer, together with other loans shall not exceed the general lending limitations contained in § 563.93(c) of this chapter.

(4) Investments in corporate debt securities convertible into stock are subject to the following additional limitations:

(i) The purchase of securities convertible into stock at the option of the issuer is prohibited;

(ii) At the time of purchase, the cost of such securities must be written down to an amount that represents the investment value of the securities considered independently of the conversion feature; and

(iii) Federal savings associations are prohibited from exercising the conversion feature.

(5) A Federal savings association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.

(b) Notwithstanding the limitations contained in this section, the Office may permit investment in corporate debt securities of another savings association in connection with the purchase or sale of a branch office or in connection with a supervisory merger or acquisition.

§ 560.41 Leasing.

(a) *Authorization.* Pursuant to general lending authority in 12 U.S.C. 1464(c)(1)(B), 1464(c)(2)(A), and 1464(c)(2)(D), a Federal savings association may engage in leasing activities that are the functional equivalent of lending, subject to the

limitations of this section. Pursuant to 12 U.S.C. 1464(c)(2)(C), a Federal savings association may invest in tangible personal property for the purpose of leasing that property, subject to the limitations of this section.

(b) *General.* A Federal savings association may become the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, may obtain an assignment of a lessor's interest in a lease of such property, and may incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, subject to the limitations of this section.

(c) *Finance leasing.* (1) A financing lease of tangible personal property made to a natural person for personal, family or household purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in consumer loans. A financing lease made for commercial, corporate, business, or agricultural purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in commercial loans. A financing lease of residential or nonresidential real property made pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in real estate loans.

(2) To qualify as the functional equivalent of a loan, a financing lease must meet all of the following requirements:

(i) The lease must be a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease.

(ii) Both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property.

(iii) At the termination of a financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held in anticipation of releasing must be reevaluated and recorded at the lower of fair market value or book value.

(3) *Definitions.* For the purposes of this section:

(i) The term *net lease* means, a lease under which the Federal savings association will not, directly or indirectly, provide or be obligated to provide for:

(A) The servicing, repair or maintenance of the leased property during the lease term;

(B) The purchasing of parts and accessories for the leased property; Provided, that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this section;

(C) The loan of replacement or substitute property while the leased property is being serviced;

(D) The purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(E) The renewal of any license, registration or filing for the property unless such action by the Federal savings association is necessary to protect its interest as an owner or financier of the property.

(ii) The term *full-payout lease* means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the association to yield the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease does not exceed 25% of the original cost of the property to the lessor.

(iii) The term *realization of investment* means that a Federal savings association that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(A) Rentals;

(B) Estimated tax benefits, if any; and

(C) The estimated residual value of the property at the expiration of the term of the lease.

(d) *General leasing.* (1) Pursuant to section 5(c)(2)(C) of the HOLA, a Federal savings association may invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture for the purpose of rental or sale. Lease investments made under this section are not restricted to being the functional equivalent of loans as is the case for financing leases.

(2) A Federal savings association's investments in such property may not exceed 10% of its assets.

(e) *Salvage powers.* If, in good faith, a Federal savings association believes that there has been an unanticipated

change in conditions that threatens its financial position by significantly increasing its exposure to loss, the provisions of this section shall not prevent the Federal savings association:

(1) As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) From including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (d)(1) and (d)(2) of this section.

§ 560.42 State and local government obligations.

Pursuant to 12 U.S.C. 1464(c)(1)(H), a Federal savings association may invest in obligations issued by any State or political subdivision thereof, subject to the following conditions:

(a) A Federal savings association may not invest more than 10% of its capital in obligations of any one issuer, exclusive of general obligations of the issuer.

(b) The obligations must continue to hold one of the four highest national investment grade ratings, or must be issued by a public housing agency and backed by the full faith and credit of the United States.

(c) Notwithstanding the limitations in paragraph (b) of this section, a Federal savings association may invest, in the aggregate, up to one percent of its assets in the obligations of a State, territory, possession, or political subdivision in which the association's home office or a branch office is located.

(d) Notwithstanding the limitations in paragraphs (b) and (c) of this section, a Federal savings association may invest in any obligations approved by the Office.

§ 560.43 Foreign assistance investments.

Pursuant to 12 U.S.C. 1464(c)(4)(C), a Federal savings association may make foreign assistance investments in an aggregate amount not to exceed one percent of its assets, subject to the following conditions:

(a) For any investment made under the Foreign Assistance Act, the loan agreement shall specify what constitutes an event of default, and provide that

upon default in payment of principal or interest under such agreement, the entire amount of outstanding indebtedness thereunder shall become immediately due and payable, at the lender's option. Additionally, the contract of guarantee shall cover 100% of any loss of investment thereunder, except for any portion of the loan arising out of fraud or misrepresentation for which the party seeking payment is responsible, and provide that the guarantor shall pay for any such loss in U.S. dollars within a specified reasonable time after the date of application for payment.

(b) To make any investments in the share capital and capital reserve of the Inter-American Savings and Loan Bank, a Federal savings association must be adequately capitalized and have adequate allowances for loan and lease losses. The Federal savings association's aggregate investment in such capital or capital reserve, including the amount of any obligations undertaken to provide said Bank with reserve capital in the future (call-able capital), will not, as a result of such investment, exceed one-quarter of 1% of its assets or \$100,000, whichever is less.

Subpart B—Lending and Investment Provisions Applicable to All Savings Associations

§ 560.120 Letters of credit.

(a) To the extent that a savings association has been given the authority to invest in letters of credit elsewhere, a savings association may issue and commit to issue letters of credit within the scope of and in conformance with the laws and rules of practice recognized by law, such as the Uniform Commercial Code, the Uniform Customs and Practice for Documentary Credits, the United Nations Commission on International Trade Law, the Convention on Independent Guarantees and Standby Letters of Credit, and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits. Savings associations may pledge collateral to secure its obligations thereunder, subject to the following requirements:

(1) Each letter of credit must conspicuously state that it is a letter of credit;

(2) The issue's undertaking must contain a specified expiration date or be for a definite term, and must be limited in amount;

(3) The issuer's obligation to pay must be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or

nonperformance by the parties to the underlying transaction; and

(4) The account party must have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

(b) To the extent funds are advanced under a letter of credit without compensation from the account party, the amount shall be treated as an extension of credit subject to percentage-of-assets limits and other requirements under an applicable provision of this part.

§ 560.121 Investment in state housing corporations.

(a) Any savings association to the extent it has legal authority to do so, may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation; provided, that such obligations or loans are secured directly, or indirectly through a fiduciary, by a first lien on improved real estate which is insured under the National Housing Act, as amended, and that in the event of default, the holder of such obligations or loans has the right directly, or indirectly through a fiduciary, to subject to the satisfaction of such obligations or loans the real estate described in the first lien, or the insurance proceeds.

(b) Any savings association that is adequately capitalized may, to the extent it has legal authority to do so, invest in obligations (including loans) of or issued by any state housing corporation incorporated in the State in which such savings association has its home or a branch office; provided (except with respect to loans), that:

(1) The obligations are rated in one of the four highest grades as shown by the most recently published rating made of such obligations by a nationally recognized rating service; or

(2) The obligations, if not rated, are approved by the Office. The aggregate outstanding direct investment in obligations under paragraph (b) of this section shall not exceed the amount of the savings association's total capital.

(c) Each state housing corporation in which a savings association invests under the authority of paragraph (b) of this section shall agree, before accepting any such investment (including any loan or loan commitment), to make available at any time to the Office such information as the Office may consider to be necessary to ensure that investments are properly made under this section.

§ 560.170 Records for lending transactions.

In establishing and maintaining its records pursuant to § 563.170 of this

chapter, each savings association and service corporation should establish and maintain loan documentation practices that:

(a) Ensure that the institution can make an informed lending decision and can assess risk on an ongoing basis;

(b) Identify the purpose and all sources of repayment for each loan, and assess the ability of the borrower(s) and any guarantor(s) to repay the indebtedness in a timely manner;

(c) Ensure that any claims against a borrower, guarantor, security holders, and collateral are legally enforceable;

(d) Demonstrate appropriate administration and monitoring of its loans; and

(e) Take into account the size and complexity of a loan.

Subpart C—Adjustable Rate Mortgages

§ 560.210 Alternative Mortgage Parity Act.

Pursuant to 12 U.S.C. 3803, housing creditors that are not commercial banks, credit unions, or Federal savings associations may make alternative mortgage transactions as defined by that section and further defined and described by applicable regulations identified herein, notwithstanding any state constitution, law, or regulation. In accordance with 12 U.S.C. 3807(b), this part 560 and 12 CFR 563.99 are identified as appropriate and applicable to the exercise of this authority and all regulations not so identified are deemed inappropriate and inapplicable. Housing creditors engaged in credit sales should read the term "loan" as "credit sale" wherever applicable.

PART 563—OPERATIONS

15. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

§ 563.95 [Removed]

16. Section 563.95 is removed.

§ 563.97 [Removed]

17. Section 563.97 is removed.

18. Section 563.99 is amended by adding paragraph (g) to read as follows:

§ 563.99 Fixed-rate and adjustable-rate mortgage loan disclosures, adjustment notices, and interest rate caps.

* * * * *

(g) *Exempt transactions.* This section does not apply to an extension of credit primarily for a business, commercial, or agricultural purpose.

§ 563.160 [Removed]

19. Section 563.160 is removed.

§ 563.170 [Amended]

20. Section 563.170 is amended by revising paragraph (c) to read as follows:

§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * *

(c) *Establishment and maintenance of records.* To enable the Office to examine savings associations and affiliates and audit savings associations, affiliates, and service corporations pursuant to the provisions of paragraph (a) of this section, each savings association, affiliate, and service corporation shall establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts. This includes, without limitation, establishing and maintaining such other records as are required by statute or any other regulation to which the savings association, affiliate, or service corporation is subject. The documents, files, and other material or property comprising said records shall at all times be available for such examination and audit wherever any of said records, documents, files, material, or property may be.

* * * * *

PART 571—STATEMENTS OF POLICY

21. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§§ 571.8, 571.13, 571.20, 571.22 [Removed]

22. Sections 571.8, 571.13, 571.20, and 571.22 are removed.

Dated: January 5, 1996.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96-409 Filed 1-16-96; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 100**

[CGD13-95-003]

Special Local Regulations; Annual National Maritime Week Tugboat Races, Elliott Bay, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to adopt permanent special local regulations for the annual National

Maritime Week Tugboat Races in Seattle, Washington. This event is held each year on the third Saturday in May on the waters of Elliott Bay. In the past, the Coast Guard has established a safety zone each year to protect the safety of life on the navigable waters during this event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to better inform the boating public.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle, WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Ben White, Assistant Operations Officer, U.S. Coast Guard Group Seattle, (206) 217-6138.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this notice, specify the section of this notice to which each comment applies, and give the reason for each comment. Two copies of each comment should be provided in an unbound format. All comments should be on paper no larger than 8½ by 11 inches and should be suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of their comments should enclose stamped, self-addressed postcards or envelopes.

The proposed regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the above address. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a public

hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information. The principal persons involved in drafting this document are LT Ben White, Project Officer, U.S. Coast Guard Group Seattle, and LCDR John Odell, Project Attorney, Thirteenth Coast Guard District Legal Office.

Background and Purpose

The Coast Guard proposes to adopt permanent special local regulations for the annual National Maritime Week Tugboat Races in Seattle, Washington. This event is held on the waters of Elliott Bay each year from 12 p.m. to 4:30 p.m. on the third Saturday in May. In the past, the Coast Guard has established a safety zone each year to protect the safety of life on the navigable waters during the event. However, because the event recurs annually, the Coast Guard is proposing to adopt a permanent description of the event and permanent regulations in the Code of Federal Regulations (CFR) to better inform the boating public. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event. The Tug Boat Races are sponsored by the Seattle Maritime Week Committee as part of the Seattle Maritime Week celebration. This one day event has been held on Elliott Bay for the last ten years. The race attracts a large number of spectator craft which gather on the waters near the race course.

Discussion of Proposed Regulation

To promote the safety of both the spectators and participants, the proposed special local regulations would establish a regulated area and prohibit entry into this area during the event. These special local regulations will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the