

Proposed Rules

Federal Register

Vol. 61, No. 115

Thursday, June 13, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 559, 560, 563, 567, 571

[No. 96-47]

RIN 1550-AA88

Subsidiaries and Equity Investments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to update, reorganize, and streamline its subsidiaries and equity investment regulations and policy statements. This proposal follows a detailed review of each pertinent regulation and policy statement to determine whether it is necessary, imposes the least possible burden consistent with safety and soundness, and is written in a clear, straightforward manner. Today's proposal is being made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

DATES: Comments must be received on or before August 12, 1996.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 96-47. These submissions may also be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days or 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: Debra Merkle, Project Manager, Supervision Policy, (202) 906-5688; Donna Miller, Senior Program Manager, Supervision Policy, (202) 906-7488;

Susan Miles, Senior Attorney, Regulations and Legislation Division, (202) 906-6798; Dean Shahinian, Senior Counsel for Corporate Activities, Business Transactions Division, (202) 906-7289; or Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background of the Proposal
- II. Objectives
 - A. Create More User-Friendly Subsidiary and Equity Investment Regulations
 - B. Codify Pass-through Investment Authority
 - C. Update the List of Preapproved Activities for Service Corporations
 - D. Streamline Subsidiary Notice and Application Procedures
 - E. Clarify and Simplify Computation of the Service Corporation Investment Limit
 - F. Clarify What Constitutes a "Subsidiary" Under Various Regulatory Provisions and, in so Doing, Simplify Calculations of Capital
- III. Historical Overview
 - A. Service Corporations
 - B. Finance Subsidiaries
 - C. Operating Subsidiaries
 - D. Pass-Through Investments
- IV. Section-by-Section Analysis
 - A. New Part 559—Subsidiaries
 - B. Amendments to Proposed New Part 560—Lending and Investment
 - C. Disposition of Existing Regulations
- V. Chart Showing the Proposed Disposition of Regulations
- VI. Request for Comment
- VII. Paperwork Reduction Act of 1995
- VIII. Executive Order 12866
- IX. Regulatory Flexibility Act Analysis
- X. Unfunded Mandates Act of 1995

I. Background of the Proposal

In a comprehensive review of the agency's regulations in the spring of 1995, OTS identified numerous provisions for immediate repeal, plus several key regulatory areas for further intensive, systematic regulatory burden analysis. These areas—lending and investment authority, subsidiaries and equity investments, insurance referrals and loan-related fees, and charter and bylaws—were selected because they are vital to thrift operations, and have not been developed on an interagency basis or been comprehensively reviewed for many years. Today's proposal presents the results of an intensive review of OTS's subsidiary and equity

investments regulations and related policy statements.

Since commencing its reinvention initiative in the spring of 1995, OTS has already repealed eight percent of its regulations. In addition, in January of 1996, OTS issued a comprehensive proposal on its lending and investment regulations.¹ That proposal, once adopted in final form, will reduce the number of lending and investment regulations from 43 to 23. Burden reduction proposals regarding charter and bylaws and insurance referrals and loan-related fees will be issued in the near future.

Today's proposal regarding subsidiaries and equity investments is also expected to result in significant regulatory burden reduction. In developing this proposal, OTS considered the relevant regulations, guidance, legal interpretations, and reporting requirements of the other federal banking agencies. In addition, as with our other regulatory reinvention efforts, this proposal was prepared in consultation with those who use the regulations on a daily basis, including the agency's regional examination staff and a focus group composed of representatives of the thrift industry.

The consensus that emerged from this process is that the primary need in the subsidiaries and equity investment area is to enhance flexibility and clarify available investment options, as opposed to simply eliminating large portions of regulatory text. Thus, although today's proposal does call for the elimination of 12 paragraphs of regulatory text, the most significant burden reduction is expected to result from clarifying investment options and streamlining procedural requirements.

II. Objectives

The overarching goal of OTS's reinvention initiative is to reduce regulatory burden on savings associations to the greatest extent possible consistent with statutory requirements and safety and soundness. In the context of the subsidiary and equity investment regulations, we believe that maximum burden reduction can be achieved by pursuing the following six specific objectives:

¹ 61 FR 1162 (January 17, 1996).

A. Create More User-Friendly Subsidiary and Equity Investment Regulations

Our first objective is to make it easier for savings associations to find and understand the regulations governing subsidiaries and equity investments. Industry representatives and other reviewers expressed concern that the current subsidiary and equity investment regulations are scattered throughout the regulations and are worded in a confusing manner. Accordingly, this proposal:

- *Reorganizes the regulations for easier reference.* New part 559 consolidates all of the regulations that apply directly to subsidiaries. It features a chart to allow ready comparisons of the requirements applicable to operating subsidiaries and service corporations. This should make it easier for savings associations to determine which structure will best meet their needs. The lending and investment chart and regulations in proposed part 560 are also being expanded to include permissible equity investments.

- *Employs plain language drafting.* Proposed part 559 utilizes plain language drafting techniques that have been pioneered by the Department of the Interior and promoted by the Vice President's Regulatory Reinvention Initiative. If thrifts find this approach helpful, OTS will expand the use of plain language drafting to encompass other regulatory projects. The goal of plain language drafting is to decrease industry frustration, inadvertent errors, the need to seek clarification in correspondence and phone calls, and the amount of staff time institutions must devote to understanding the regulations. Plain language drafting emphasizes the use of informative headings, lists and charts where appropriate, short sentences, sections and paragraphs, non-technical language (including the use of "you"), and sentences in the active voice.

B. Codify Pass-Through Investment Authority

Institutions and examiners have also expressed concern that OTS's subsidiary and equity investment regulations do not reflect all significant investment options. As a result, some institutions may not be aware of options that have been recognized in various OTS opinions and policy statements.

The most significant gap in the current regulations concerns pass-through investment authority. As is explained more fully below, federal savings associations have long been permitted to exercise pass-through investment authority, that is, to invest

in companies that engage exclusively in activities that federal savings associations may conduct directly. These companies generally are organized as mutual funds or limited partnerships. Indirect investments of this type often offer important benefits—such as risk spreading, enhanced liquidity, and greater investment security (due to any overcollateralization or recourse commitment offered by the organizer of the pass-through entity).

Because pass-through investment authority has been discussed in OTS opinions and policy statements (rather than the regulations), some institutions may be unaware of this investment option and applicable restrictions. Even institutions that are aware of the option frequently feel the need to write to OTS seeking confirmation or clarification of the circumstances under which they may exercise this authority. To resolve this uncertainty, OTS proposes to codify pass-through investment authority in proposed part 560.

C. Update the List of Preapproved Activities for Service Corporations

OTS's service corporation regulation contains a list of preapproved activities that service corporations of most federal savings associations may conduct after notifying OTS. Service corporations wanting to engage in activities not on the preapproved list must submit a formal application to OTS demonstrating, among other things, that the proposed activity is reasonably related to the business of a federal thrift. The list of pre-approved service corporation activities has not been updated for many years. As a result, institutions are often required to file applications for activities that are clearly reasonably related, but have not yet been added to the preapproved list.

The proposal updates the preapproved list in several respects. First, the list is being amended to confirm that all activities that federal savings associations may conduct directly are preapproved. This general authorization is substituted for the current detailed (but incomplete) listing of specific activities that thrifts may conduct directly. Second, the proposal broadens the universe of customers for whom certain services that are already preapproved may be provided. Third, the proposal adds activities that OTS has routinely approved on a case-by-case basis and other specific finance-related activities that have been authorized for bank service corporations and bank operating subsidiaries. Each of these changes is described in more detail below.

The proposal also reemphasizes OTS's longstanding position that federal thrifts may, on a case-by-case basis, apply for approval for their service corporations to engage in any activity not on the preapproved list that is reasonably related to the operation of a thrift. The preapproved list reflects the most common service corporation activities and is not intended to be a comprehensive statement of every conceivable reasonably related activity.

D. Streamline Subsidiary Notice and Application Procedures

The industry focus group made the agency aware of confusion over subsidiary notice and application requirements, including what procedures apply when converting a subsidiary from a service corporation to an operating subsidiary or the reverse. Regulations governing service corporations were first promulgated in 1965, finance subsidiaries in 1984, and operating subsidiaries in 1992. The procedures for establishing and operating each type of entity have never been thoroughly harmonized.

Thus, OTS has reviewed these procedural requirements with a view toward enhancing consistency and clarity and substituting notices for more burdensome applications (or recordkeeping for notices) wherever feasible. As a result, the proposal:

- *Allows all savings associations to establish or acquire operating subsidiaries upon 30 days notice to OTS.* Under current regulations, all but the strongest institutions must submit an application for prior OTS approval to establish an operating subsidiary. As part of this application, institutions must affirmatively demonstrate that the proposed operating subsidiary will improve the institution's financial and managerial condition. By contrast, the strongest institutions (*i.e.*, those eligible for expedited treatment under 12 CFR 516.3(a)) need only notify OTS 30 days before establishing an operating subsidiary and, unless OTS objects, can establish their subsidiaries at the end of that period. Based on the agency's experience with operating subsidiaries, we have concluded that the 30-day notice procedure provides adequate information and opportunity to object whenever an operating subsidiary is proposed by any federal thrift—especially since operating subsidiaries can only engage in activities that federal thrifts may conduct directly. Accordingly, OTS is proposing to apply the notice procedure to all federal thrifts who wish to form operating subsidiaries.

- *Clarifies the procedures for redesignating a subsidiary as an operating subsidiary or a service corporation.* The current regulations are unclear about how and when a service corporation may be converted into an operating subsidiary, or an operating subsidiary into a service corporation, and whether a notice or application must be filed with OTS. Both operating subsidiaries and service corporations are incorporated under state law. The distinctions based on ownership, control, and activities that separate an operating subsidiary from a service corporation for OTS regulatory purposes do not affect this underlying corporate form. OTS, therefore, has taken the position that merely redesignating a service corporation as an operating subsidiary or vice versa, without adding new activities, does not constitute an event requiring notice or application to OTS. The proposal makes this position clear by establishing explicit, streamlined recordkeeping provisions to document all such redesignations.

- *Streamlines salvage power procedures affecting service corporations.* Under the current regulations, a savings association must file an application and obtain formal OTS approval before using its salvage powers to make an additional investment to protect its interest in a troubled service corporation. The proposal allows a savings association to file a notice in lieu of a formal application. Under the proposal, institutions will be permitted to proceed with salvage investments in service corporations within 30 days of filing notice, unless the OTS raises objection.

E. Clarify and Simplify Computation of the Service Corporation Investment Limit

Section 5(c)(4)(B) of the Home Owners' Loan Act (HOLA) limits a federal savings association's aggregate investment in service corporations to 3% of total assets. The implementing regulations have long provided that all loans to service corporations count toward this investment limit, except for "conforming loans." The amount of conforming loans that qualify for exclusion from the 3% limit varies on the basis of whether the lending institution owns more than 10% of the stock of the borrowing service corporation.

Institutions have expressed frustration at the complexity and ambiguity of these service corporation investment rules. Accordingly, today's proposal clarifies which loans to service corporations may be considered separately from the general statutory

service corporation investment limit of 3% of assets (see the discussion of proposed § 559.4 below for details). The proposal also removes the confusing distinctions tied to a thrift's percentage ownership of the service corporation. A single rule regarding the amount of qualifying loans to service corporations that will be exempt from the 3% investment cap will be applied to all federal thrifts regardless of percentage of ownership of the service corporation.

F. Clarify What Constitutes a "Subsidiary" Under Various Regulatory Provisions and, in so Doing, Simplify Calculations of Capital

Another concern expressed by the industry focus group was the complexity of determining the appropriate amount of capital to be held against service corporation investments, especially when the service corporation itself has investments in lower-tier entities. A further complication is that the HOLA ties OTS regulations in the areas of transactions with affiliates, lending limits, and capital to a variety of banking statutes and regulations that in turn define "subsidiary" differently and not entirely consistently.

- *Defines "subsidiary" in a manner that is more consistent with the other banking agencies.* The proposal adopts the same definition of "subsidiary" used by the other banking agencies for purposes of transactions with affiliates, lending limits, and notices regarding subsidiaries. The proposal also modifies the capital definition of "subsidiary" to follow Generally Accepted Accounting Principles (GAAP) and to be more consistent with the other federal banking agencies. Currently, the OTS employs a definition of "subsidiary" for capital purposes that is far more encompassing than the definitions used by the other banking agencies and GAAP. This sometimes results in higher capital requirements for thrifts.

- *Defines "includable subsidiary" in a manner that eliminates overstatement of the risk presented by lower-tier nonincludable subsidiaries.* Under the current capital regulations (as interpreted by instructions in the Thrift Financial Report), a savings association's investment in a first-tier subsidiary engaged exclusively in activities permissible for national banks must be completely deducted from capital if a lower-tier subsidiary engages in any activity impermissible for a national bank. Deduction is required even when the first-tier subsidiary's investment in the lower-tier subsidiary constitutes a tiny portion of its total assets. Under the proposal, savings associations will only be required to

deduct the actual amount of their indirect investment in the lower-tier nonincludable subsidiary.

The OTS is hopeful that the foregoing reforms, taken as a whole, will result in a significant decrease in the regulatory burden associated with establishing and operating thrift subsidiaries and making pass-through equity investments. The remainder of this preamble provides a historical overview of the regulation of thrift subsidiaries and a detailed section-by-section description of the proposed amendments.

III. Historical Overview

Regulations affecting the ability of savings associations to invest in service corporations and other subsidiaries and to make limited equity investments have evolved over the past 30 years in response to changes in statutes, competition, and the financial markets. The result has been increased flexibility in service corporation activities and in the permissible form of corporate structures (e.g., finance subsidiaries and operating subsidiaries). With this increased flexibility, however, has come added complexity and elements of inconsistency.

In order to provide a context for OTS's current proposal, a brief history of key developments in the subsidiary and equity investment authority of federal thrifts is provided.

A. Service Corporations

In 1964, Congress authorized federal savings associations to invest up to one percent of their assets in service corporations.² The statute did not limit the types of activities in which such service corporations could engage. The accompanying legislative history noted, however, that such investments were expected to be reasonably related in purpose to the savings and loan business.³ This standard was incorporated into the implementing regulations of the Federal Home Loan Bank Board (FHLBB), the predecessor regulatory agency to the OTS. The FHLBB regulations expressly indicated that certain service corporation activities met the reasonably related standard and established an application process for considering other proposed activities. This allowed federal savings associations and the agency to gain experience in identifying appropriate service corporation activities.

The HOLA was amended in 1980 to expand the authority of federal savings

²Pub. L. 88-560, section 905, amending 12 U.S.C. 1464.

³H. Rep. 1703, 1964 U.S. Code Congressional and Administrative News 3444.

associations "to act as one-stop family financial centers"⁴ and to increase the amount a federal savings association could invest in its service corporations from one percent to a maximum of three percent of its assets.⁵

In December 1980, the FHLBB proposed to update the list of preapproved activities for service corporations.⁶ In determining which activities were appropriate for preapproval, the FHLBB "examined activities that have been approved consistently for service corporations upon application to the Board, newly authorized activities for Federal associations, and the present needs of the residential mortgage market."⁷ This list of preapproved activities remains in effect today,⁸ with only a few additions and modifications, such as securities brokerage services (added in 1989).⁹

In 1989, the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) mandated that OTS adopt capital regulations requiring substantial amounts of additional capital to be held against thrifts' investments in subsidiaries, such as service corporations, that engaged as principal in activities not permissible for national banks. The OTS adopted these regulations in November, 1989.

No new activities have been added to the preapproved list since 1989, although the OTS has continued to receive, review, and process applications to engage in new activities on a case-by-case basis.

Thus, the same basic regulatory structure for service corporations first established in 1964—a list of preapproved activities, coupled with authorization to apply to engage in any other reasonably related activities—has continued until the present. Nothing in today's proposal would alter this basic structure. Instead, OTS is proposing to update the preapproved list, clarify how

to compute the service corporation investment limit, and simplify the capital treatment of investments in subsidiaries.

B. Finance Subsidiaries

In 1984, the FHLBB recognized a federal savings association's incidental authority to establish finance subsidiaries.¹⁰ These entities are dedicated financing vehicles created to issue securities that the parent association is authorized to issue and to remit the proceeds to the parent. The securities issued via finance subsidiaries have typically been collateralized mortgage obligations, mortgage-backed bonds or Eurobonds backed by mortgages or mortgage-related securities. The finance subsidiary regulation has fallen into disuse since OTS promulgated the operating subsidiary regulation. Operating subsidiaries can do all that finance subsidiaries can do and more. Thus, we are proposing to repeal the finance subsidiary rule.

C. Operating Subsidiaries

In October, 1992, the OTS authorized federal savings associations to establish operating subsidiaries.¹¹ Thrift operating subsidiaries were modeled on national bank operating subsidiaries. Under the OTS operating subsidiary regulation, a federal thrift may make unlimited investments in an operating subsidiary, provided the thrift is the majority owner and has effective operating control and the subsidiary engages only in activities that the thrift could conduct directly. Unlike service corporations, operating subsidiaries can issue minority ownership interests to investors that are not savings associations. Thus, operating subsidiaries offer federal thrifts greater structural flexibility. Unlike service corporations, however, operating subsidiaries can only do what a federal thrift could do directly.

D. Pass-Through Investments

Finance subsidiaries and operating subsidiaries are examples of pass-through investments. In both instances, a savings association acquires an interest in a company that in turn engages exclusively in activities that the savings association can perform directly. However, pass-through investment options have not been restricted to operating subsidiaries and finance subsidiaries.

In 1982, the FHLBB issued a legal opinion, which was followed by a

policy statement in 1986, recognizing that federal thrifts have incidental authority to invest indirectly in permissible investments.¹² In other words, federal thrifts can purchase shares of a mutual fund, a partnership interest in a limited partnership, or interests in a similar investment vehicle, *provided* the pass-through entity's activities are limited to those a federal thrift could conduct directly. At about the same time, the OCC, through legal opinions and guidance, authorized similar investments for national banks.

These types of pass-through investments do not count against service corporation limits, nor are they deemed to be operating subsidiaries. The pass-through entity must comply with the same restrictions that would apply if the thrift engaged in the activity or held the asset directly. Additional restrictions have been imposed on a case-by-case basis. These include limiting the amount of investment that a thrift can make in any one pass-through entity to the amount that would be permitted under the loans to one borrower (LTOB) rule. (Pass-through investment authority has recently proven to be an important vehicle for authorizing several community development investments, such as purchasing limited partnership interests in Low Income Housing Tax Credit partnerships.)

Several other legal opinions have authorized federal savings associations (like national banks) to invest, with certain restrictions, in certain "special purpose corporations" that engage exclusively in activities federal savings associations may conduct directly. To date, such corporations have been used to enable thrifts to pool resources with others to obtain basic support services (such as data processing and ATM operations) free from the operating subsidiary control requirement and the service corporation investment limits.

One of the key objectives of today's proposal is to rationalize and harmonize these various pass-through investment options. Codification of these options will ensure industry awareness, reduce confusion, and facilitate consistent application of relevant safety and soundness standards.

IV. Section-by-Section Analysis

A. New Part 559—Subsidiaries

OTS proposes to adopt a new part 559, Subsidiaries, that will include all of the agency's regulations affecting

¹² Memorandum T-79a, issued on June 10, 1986, memorialized this authority. T-memoranda issued by the FHLBB were the counterparts of OTS Thrift Bulletins. Memorandum T-79a has not been superseded by a later Thrift Bulletin.

⁴ S. Rep. 96-368 at 13, 1980 U.S. Code Congressional and Administrative News 248. See also 45 FR 85049 (Dec. 24, 1980).

⁵ Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 132, section 401, amending 12 U.S.C. 1464(c)(4)(B).

⁶ 45 FR 85048 (Dec. 24, 1980) (proposed rule); 46 FR 24526 (May 1, 1981) (final rule).

⁷ 45 FR at 85049.

⁸ In 1982, the FHLBB proposed a much broader list of potential preapproved activities, 47 FR 9855 (March 8, 1982), but did not adopt the proposal in the wake of the Garn-St Germain Depository Institutions Act of 1982 (DIA), which significantly expanded federal savings association activities. The FHLBB did add personal property leasing and commercial lending (activities that the DIA had authorized for federal savings associations) and rearranged the list for ease of reference, 48 FR 23032 (May 23, 1983).

⁹ 54 FR 32954 (Aug. 11, 1989).

¹⁰ 49 FR 29357 (July 20, 1984).

¹¹ 57 FR 48942 (Oct. 29, 1992).

federal thrift subsidiaries, that is, operating subsidiaries and service corporations. The agency believes this action will make it much easier for savings associations to find and use these regulations. This new part will utilize techniques of "plain language" drafting, employing simple expression and short sentences to the full extent possible.

Section 559.1 What Does This Part Cover? (Proposed)

This proposed section explains the scope of new part 559 and sets forth OTS's basic statutory authority over operating subsidiaries and service corporations. The section first explains which regulations in part 559 apply only to federal savings associations and which apply to all savings associations. It then incorporates into one place language from current §§ 545.74(b)(5) and 545.81(h) regarding limits that OTS may impose on subsidiary activities for supervisory, safety or soundness, or legal reasons.

Proposed § 559.1 also incorporates language from current § 545.81(i). That paragraph provides that the OTS may impose conditions in writing when authorizing a federal thrift to acquire or establish an operating subsidiary or to engage in new activities in an existing operating subsidiary and that such conditions are enforceable. This statement is true for conditions OTS imposes in all of its approvals and authorizations, not just those involving operating subsidiaries. The regulation merely makes explicit what is already implicit in OTS's safety and soundness jurisdiction.

Subpart A—Regulations Applicable to Federal Savings Associations (Proposed)

This subpart will contain regulations directly applicable only to operating subsidiaries and service corporations of federal savings associations. The subpart may indirectly apply to operating subsidiaries and service corporations of state-chartered savings associations by virtue of various statutory and regulatory provisions that tie state savings associations to certain requirements applicable to federal thrifts.¹³

Section 559.2 What Are the Characteristics of, and What Requirements Apply to, Operating Subsidiaries and Service Corporations of Federal Savings Associations? (Proposed)

Proposed § 559.2 authorizes federal savings associations to establish or acquire operating subsidiaries and service corporations. The introductory text explains that OTS may limit this authority for supervisory, legal, or safety and soundness reasons.

The majority of proposed § 559.2 takes the form of a chart that lists, in a side-by-side format, the different characteristics of, and requirements that apply to, operating subsidiaries and service corporations. These include ownership, activities, investment limits, the applicability of other federal statutes and regulations, and notices. The chart reiterates that in addition to preapproved service corporation activities, a federal thrift may continue to apply to the OTS for case-by-case approval to engage in any activity that is reasonably related to the operation of a thrift. The regulation also confirms that state law is preempted for operating subsidiaries to the same extent as it is for the parent federal savings association, as has been the case since operating subsidiaries were first authorized. However, state law is not preempted for service corporations.

Where appropriate, and for ease of reference, the subsidiaries chart cross-references other applicable OTS regulations that have been the subject of frequent questions to the agency. The chart is derived in large part from the current regulations at 12 CFR 545.74 and 12 CFR 545.81. OTS expects that this format will make it easier for a federal savings association to compare these two structures and determine which best fits the association's needs.

Section 559.3 What Activities Are Permissible for Service Corporations? (Proposed)

This section replaces the list of preapproved activities found in current § 545.74(c). OTS proposes to revise the list of preapproved activities to:

- Specifically affirm that any activity a federal thrift may conduct directly, except deposit-taking, is preapproved for a service corporation, when conducted in the same manner as allowed at the federal savings association level. This includes all activities listed in the HOLA and proposed part 560, as well as other incidental powers addressed in OTS legal opinions and guidance. As a result, OTS proposes to delete various

activities from the preapproved list that federal thrifts are obviously permitted to conduct (e.g., lending) and to reiterate only those activities the service corporation may conduct without being subject to the same limitations that would apply to the federal savings association (e.g., data processing services and leasing). As set forth in the subsidiaries chart at § 559.2(i), investments made by service corporations are not aggregated with the parent thrift for purposes of determining the parent thrift's compliance with any investment limits, such as those that appear in section 5(c) of the HOLA. For example, the educational loans made by a service corporation do not count against the parent thrift's educational lending cap (5% of assets).

- Include certain activities that the OTS already routinely approves on a case-by-case basis (i.e., foreign currency exchange, operating a collection agency, and distributing welfare benefits).
- Specifically include community development and charitable activities, including investing in community development financial institutions.
- Allow business and professional activities that involve financial documents, financial clients, or are generally finance-related to be performed for any person. These activities—clerical, accounting, and internal auditing services, advertising, liquidity management and credit analysis, developing personnel benefit plans, establishing and maintaining remote service units, and purchasing office supplies and equipment—currently have been preapproved only when performed for other financial institutions.

- Expand the list to include a limited number of services that have not been previously authorized, but are reasonably related to the operation of a federal savings association and have been permitted for bank operating subsidiaries and bank service corporations. These include financial courier services and check and credit card guaranty and verification services.

OTS seeks comment on whether certain other activities that have been permitted only upon application, such as acting as an insurance agent for private mortgage insurance, or underwriting insurance or reinsurance, should be preapproved activities for service corporations.

Section 559.4 How Much May a Savings Association Invest in Service Corporations? (Proposed)

This proposed section replaces current § 545.74(d). It reiterates that a savings association may invest in the

¹³ See 12 U.S.C. 1828(m) and 1831e, and 12 CFR 303.13.

aggregate 3% of its assets in one or more service corporations as long as the excess investment over 2% serves primarily community, inner city, or community development purposes. In addition, the proposal revises and significantly simplifies the rules governing when a federal savings association may make loans to service corporations separate from the 3% of assets limit. Such loans are only permitted when:

(1) The federal savings association has the authority elsewhere under the HOLA to make the loan;

(2) The thrift has adequate capacity under any applicable percentage of assets limit to make the loan (e.g., 10% of assets for commercial loans); and

(3) The loan complies with the loans-to-one borrower regulation.¹⁴

This proposed treatment is more consistent with the OCC's treatment of loans to bank service corporations. It would remove the current aggregate regulatory limit of 50% of capital on loans to multiple service corporations, but subjects loans to any one service corporation to the LTOB requirements. A thrift (like a bank) would be able to exceed this limit only when making loans to a service corporation that are secured with exceptionally high quality collateral.

Subpart B—Regulations Applicable to All Savings Associations (Proposed)

Section 559.10 What Must a Savings Association and Its Subsidiary Do To Maintain Separate Corporate Identities?

This section describes what a savings association and its subsidiaries must do to establish that they have separate identities. The purpose for these requirements is to reduce the potential for customer confusion or for a court to hold the parent liable for the subsidiary's conduct or obligations. The requirements are derived from current §§ 545.81(f), 563.37, and 571.21.

Section 559.11 What Notices Are Required To Establish or Acquire a New Subsidiary or Engage in New Activities Through an Existing Subsidiary?

This section combines and streamlines the overlapping notice requirements currently contained in §§ 545.74(b)(2), 545.81(c), and 563.37(c).

Section 559.12 How May a Subsidiary of a Savings Association Issue Securities?

This section replaces current § 563.132 and reiterates its basic

requirement: a savings association must notify OTS before a subsidiary issues securities. The section also incorporates requirements from existing § 545.82, requiring that securities issued by all subsidiaries indicate that they are not covered by federal deposit insurance and may not be called or accelerated in the event of the savings association's insolvency.

Section 559.13 How May a Savings Association Exercise Its Salvage Power in Connection With Its Service Corporation?

This section replaces the application procedure of current § 563.38 with a 30-day notice requirement. In its notice, an institution must fully document its additional investment in a manner that demonstrates how its action is consistent with safety and soundness and document other salvage alternatives considered. The agency may take objection to, or grant conditional approval of, a notice to exercise salvage power to assist a troubled service corporation.

B. Amendments to Proposed New Part 560—Lending and Investment

OTS is also proposing to add provisions dealing with subsidiary and equity-related investments to proposed new part 560—Lending and Investments.

Section 560.30 General Lending and Investment Powers for Federal Savings Associations

In the interest of completeness, OTS proposes to add several equity- and subsidiary-related investments to the lending and investment powers chart contained in this regulation. The chart will now include investments in small business investment corporations chartered pursuant to section 301(d) of the Small Business Act, open-end management investment companies, and service corporations.

Section 560.32 Pass-Through Investments

This new section will codify federal savings associations' authority to invest in entities, such as limited partnerships and mutual funds, that hold only assets, and engage only in activities, permissible for federal savings associations. Unlike an operating subsidiary, a thrift does not have effective operating control over such investments. To allow thrifts flexibility while maintaining effective OTS supervision of such investments, OTS proposes to establish a safe harbor. Investments made in accordance with the safe harbor standards will not

require advance notice to OTS. Under the safe harbor, a federal savings association may invest up to 15% of its capital without prior OTS approval in:

- (1) A limited partnership;
- (2) An open-end management investment company (mutual fund);
- (3) A closed-end investment trust; or
- (4) An entity in which the federal savings association invests primarily to use the services provided (e.g., data processing);

so long as the entity in which the investment is made:

(1) Is engaged solely in activities in which the federal savings association itself may engage directly; and

(2) Would not be controlled by the savings association;

and the thrift:

(1) Has liability limited to the amount of its investment;

(2) Has adequate capacity within the relevant HOLA investment category (e.g., 10% of assets for commercial loans);

(3) Is able to monitor internal managerial controls to ensure they are equivalent to those the thrift would be required to have in place if engaging in the activity directly; and

(4) Does not, after making the investment, have more than 50% of its capital invested in pass-through investments.

A savings association must provide written notice to OTS before making any pass-through investment that does not meet the foregoing standards. OTS will review these notices and may object or impose conditions for supervisory, legal, or safety and soundness reasons.

This structure will clarify the rules applicable to pass-through investments, thereby enhancing savings association access to this investment option and establishing uniform safety and soundness constraints. This structure will ensure that the OTS is aware of, and has opportunity to object, to any move by a thrift to place significant amounts of its assets under the operating control of third parties.

OTS solicits comments on whether other structures, such as limited liability companies, should be preapproved.

Section 560.33 De Minimis Investments

OTS and its predecessor have long recognized that a federal savings association's incidental powers include the ability to make charitable contributions that assist its community. In the past, thrifts have sometimes requested permission to make (and book) *de minimis* equity investments in community organizations in an amount

¹⁴The LTOB regulation is also being amended to clarify that it does apply to service corporations. It will remain inapplicable to a savings association's loans to its operating subsidiaries.

equal to what they could otherwise directly contribute. To further thrifts' community development activities, OTS proposes to add a section specifically confirming that a federal savings association may make these types of *de minimis* investments. The proposed regulation provides that the investments must be of a type that would be permissible for a national bank under 12 CFR Part 24 and in the aggregate may not exceed the greater of \$100,000 or one-fourth of 1% of a thrift's total capital.

C. Disposition of Existing Regulations

Part 545 Operations (Federal Savings Associations)

Section 545.74 Service Corporations

Paragraph (a) of § 545.74 defines terms specific to the service corporation section. The OTS is proposing to remove this paragraph. The operative provisions of new part 559 will cover the matters now addressed by the definitions.

Paragraph (b) begins by restating the broad statutory authority of federal savings associations under section 5(c)(4)(B) of the HOLA to invest in service corporations that are organized under the laws of the state in which the association's home office is located. This authority will be incorporated into the proposed lending/investment chart in part 560, with a cross-reference to the more extensive provisions contained in proposed part 559.

Paragraphs (b)(1)–(5) set forth general notice, application, examination, and activities provisos. The proposed subsidiaries chart at § 559.2(e)(2) incorporates the requirement in paragraph (b)(1) that a service corporation's activities be either pre-approved by regulation or specifically approved by application. The OTS proposes to move the notice requirements contained in paragraph (b)(2) into new § 559.11. Paragraph (b)(3) requires weaker savings associations to apply to OTS for permission to engage in any activities beyond what a federal savings association may conduct directly. This requirement has been incorporated into proposed § 559.2(e)(2)(ii). The examination requirement currently found in paragraph (b)(4) will be included in the subsidiaries chart at § 559.2(o)(2). The restriction on activities where OTS has supervisory objections contained in paragraph (b)(5) has been incorporated into the introductory text of § 559.1.

Paragraph (c) of § 545.74 first sets forth the OTS's general rule that federal savings associations may invest in

service corporations that can engage in such activities reasonably related to the activities of federal associations as the OTS may approve. The OTS proposes to retain this general rule and move it to the new subsidiaries chart at § 559.2(e)(2). Paragraph (c) next explains how to apply for approval to engage in such activities. OTS proposes to incorporate this requirement into the chart at § 559.2(e)(2)(iii).

The next sentence in paragraph (c) authorizes service corporations of most savings associations to engage in the listed preapproved activities upon satisfying a notice requirement. This requirement has been moved to § 559.2(e)(2)(i).

Finally, paragraph (c) lists the preapproved activities. The proposal would replace this list with a revised, updated compilation of new preapproved activities. For example, currently, a variety of activities that a federal savings association itself may conduct are scattered throughout the list as preapproved for service corporations. Instead of individually listing these activities, the proposal simply preapproves for service corporations all activities that a thrift may conduct directly, other than taking deposits. The list would be reorganized by grouping related activities and moving the list to proposed § 559.3, as discussed more fully in section IV.A. of this preamble.

Paragraph (c)(4) contains safeguards that apply to securities brokerage activities of service corporations. These safeguards will remain in that paragraph, with one exception, while OTS considers whether to incorporate them into new part 559, or modify the safeguards and apply them to all securities sales programs taking place on thrift premises by subsidiaries, affiliates, and broker dealers. OTS is proposing to remove paragraph (c)(4)(ii)(F), which has barred savings associations (not their service corporations) from contracting with third parties for securities brokerage activities. This restriction predates the 1994 Interagency Guidelines on Retail Sales of Nondeposit Investment Products. The Guidelines now contain safeguards to ensure that any contractual relationship with a third-party broker-dealer will be conducted in a proper manner. Thus, paragraph (c)(4)(ii)(F) has become unnecessary. Removing this restriction will provide thrifts with greater flexibility in structuring operations involving the sale of nondeposit investment products.

Paragraph (d) addresses the permissible aggregate amount of investments in, or loans to, service corporations by a federal thrift. The

HOLA specifically authorizes thrifts to invest up to 3% of their assets in the stock and obligations of service corporations (generally, 2% undesignated authority plus an additional 1% for community-development). Since 1970, the regulations have allowed a federal thrift to make additional loans to its service corporations if the thrift has the authority under the HOLA to make the same loan to a third party. This lending authority has been subject to limitations that changed over time, but has always been separate and apart from the 3% of assets limitation.

For example, the current regulatory provisions allow a federal thrift to make "conforming loans" of up to 100% of its capital to any service corporation in which the thrift has an ownership interest of less than 10%, with no aggregate limit. A separate aggregate limit of 50% of capital applies to loans made to all other service corporations. "Conforming loans" is broadly defined at § 545.74(a)(2) as any type of loan a federal savings association may make except for nonconforming real estate loans and unsecured construction loans. Thus, if a thrift currently has only one wholly-owned service corporation, it may, to the extent it has commercial loan authority available under the statutory 10% of assets limit, make commercial loans to its service corporation of up to 50% of its capital.

When these provisions were last substantively amended in 1985, the 100% of capital limit paralleled the then-existing LTOB limit. The percentage limits in the regulation do not reflect the new lower LTOB limit of 12 CFR 563.93, although paragraph (d) does state that these loans are subject to any applicable LTOB requirements. The LTOB regulation itself, however, states that it does not apply to loans made to subsidiaries.

As the foregoing overview indicates, the rules governing service corporation investment limits and conforming loans are needlessly complex and confusing, and in some respects inconsistent. The OTS proposes to substantially revise and simplify these rules and incorporate them into new § 559.4, as discussed more fully in Section IV.A. of this preamble.

Paragraph (e) describes the circumstances under which a federal savings association must dispose of its investment in a service corporation. The OTS proposes to retain this paragraph in the new subsidiaries chart as § 559.2(q)(2).

Section 545.76 Investment in Open-End Management Investment Companies

Paragraph (a) reiterates the HOLA's statutory grant of authority to federal savings associations to buy, sell or otherwise deal in registered securities of any open-end management investment company that restricts its portfolio to investments that federal savings associations may buy, sell or otherwise deal in without limitation as to percentage of assets.¹⁵ The OTS proposes to incorporate this provision into the lending and investment chart in proposed § 560.30. An endnote to that chart will indicate that federal thrifts may be able to invest limited amounts in a broader range of pass-through investments under proposed new § 560.32.

Paragraph (b) provides that the maximum investment a federal thrift may make in any one open-end management investment company is limited to 5% of total assets. Paragraph (b) also applies the regulatory limitations imposed on a federal thrift's investments in commercial paper and corporate debt securities to the commercial paper and corporate debt securities investments of open-end management investment companies in which thrifts invest. The OTS proposes to remove paragraph (b) because its subject matter will be covered by the pass-through investment provisions of proposed new § 560.32.

Section 545.80 Small Business Investment Corporations

Section 545.80 reiterates section 5(c)(4)(D) of the HOLA's grant of statutory authority for federal savings associations to invest in small business investment corporations pursuant to section 301(d) of the Small Business Investment Company Act of 1958. The proposal moves this section into the proposed lending and investment powers chart in § 560.30.

Section 545.81 Operating Subsidiaries

Paragraph (a) sets forth federal savings associations' authority to establish or acquire operating subsidiaries subject to certain requirements. The OTS proposes to incorporate this paragraph into the introductory text of § 559.2.

Paragraph (b) defines the term "operating subsidiary." The substance of this definition would be covered in the proposed subsidiaries chart as § 559.2 (c)(1) and (e)(1).

Paragraph (c) spells out the notice and application requirements that a federal savings association must meet to acquire

or establish an operating subsidiary. Paragraph (c)(1) contains requirements for federal savings associations that are eligible for "expedited treatment" in the processing of applications as defined in § 516.3. Paragraph (c)(2) covers requirements for all other federal savings associations. In general, institutions that qualify for expedited treatment need only give 30 days notice to OTS before establishing an operating subsidiary, whereas other institutions must file an application and obtain advance approval. OTS proposes to apply the notice procedure to all institutions. Because operating subsidiaries can only engage in activities that are permissible for federal thrifts themselves, requiring a formal application and advance approval seems unduly burdensome. OTS can always object during the 30-day notice period in the unlikely event that an operating subsidiary proposal raises concerns.

Paragraph (c)(3) addresses the additional notice requirements of section 18(m) of the FDIA, the regulations associated with section 18(m) and all applicable clearances under those requirements. The notice requirements will be consolidated with similar requirements for all subsidiaries and moved into the new notice § 559.11.

Paragraph (d) details the conditions under which a federal savings association may convert its service corporation to an operating subsidiary. The OTS proposes to substantially simplify this paragraph and incorporate the conditions in new § 559.2(p).

Paragraph (e) indicates that all federal laws, regulations and policies of the OTS covering the operations of federal thrifts apply to the operations of operating subsidiaries. The paragraph also requires consolidation of the parent association and its operating subsidiary for application of statutory and regulatory requirements and limitations, unless otherwise provided by statute, regulation or OTS policy. OTS proposes to incorporate the substance of this paragraph into the subsidiaries chart at § 559.2(h)(1).

Paragraph (f) subjects operating subsidiaries and their parent federal savings associations to the same separate corporate existence requirements as apply to service corporations of savings associations under 12 CFR 571.21 and 563.37. As discussed below, OTS proposes to consolidate these overlapping sections into a new § 559.10.

Paragraph (g) subjects each operating subsidiary to the same examination and supervision authority as its parent federal savings association. This

requirement will be included in the subsidiaries chart at § 559.2(o)(1).

Paragraph (h) provides that OTS may limit, at any time, the activities of an operating subsidiary for supervisory or legal reasons. OTS proposes to place this provision in § 559.1(a).

Paragraph (i) sets forth OTS's authority to impose conditions on an operating subsidiary for supervisory, legal or safety and soundness reasons. This authority has also been inherent in the review of the establishment of, or commencement of new activities by, service corporations, but has not been specifically set forth in regulation. The OTS proposes to move this paragraph to § 559.1(b), where it will explicitly apply to all conditions contained in all approvals affecting subsidiaries.

Paragraph (j) authorizes parent savings associations to own a deposit-taking operating subsidiary under certain conditions. This authority would be retained and included in the proposed subsidiaries chart at § 559.2(e)(1)(ii).

Paragraph (k) addresses changing from an operating subsidiary to a service corporation. The OTS proposes to incorporate this provision into the subsidiaries chart at § 559.2(p), where the rules governing changes from a service corporation to an operating subsidiary will also be stated.

Section 545.82 Finance Subsidiaries

Section 545.82 authorizes federal savings associations to establish subsidiaries solely for the purpose of issuing securities that the thrift may issue directly. Thrifts were authorized to establish finance subsidiaries before being authorized to establish operating subsidiaries. Because operating subsidiaries may perform the same activities as finance subsidiaries without as many restrictions, the OTS proposes to delete this section as redundant and obsolete, except for paragraphs (d)(2) and (d)(3). Paragraph (d)(2) of current § 545.82 prohibits a finance subsidiary from issuing or dealing in the deposits or savings accounts of its parent federal savings association and from representing in any way that securities issued by it are insured by the Federal Deposit Insurance Corporation. Paragraph (d)(3) prohibits a finance subsidiary from issuing any security that would permit accelerated payment, maturity or redemption upon the condition that its parent federal savings association was insolvent or had been placed in receivership. The agency believes both of these restrictions should apply to the issuance of securities by any subsidiary of a federal savings association.

¹⁵ 12 U.S.C. 1464(c)(1)(Q).

Therefore, it proposes to incorporate them into proposed § 559.12, which will replace current § 563.132 and cover those issuances, as discussed below.

Because the requirements for finance subsidiaries go beyond those applicable to operating subsidiaries, OTS proposes to deem all existing finance subsidiaries to be operating subsidiaries for all purposes.

Part 563—Operations

Section 563.37 Operation of Service Corporation, Liability of Savings Association for Debt of Service Corporation

Paragraphs (a) and (b) of section 563.37 require savings associations and their service corporations to maintain a separate corporate existence and insulate the thrift from liability for debt of its service corporation. The OTS proposes to combine these requirements with those of 12 CFR 571.21, the policy statement regarding separate corporate existence of a service corporation, and move them into a new § 559.10.

Paragraph (c), which sets forth notice requirements for all savings association service corporations (not just service corporations of federal thrifts), would be incorporated in the new notice section, § 559.11, where the notice requirements applicable to federal thrift service corporations will also appear.

Section 563.38 Salvage Power of Savings Association To Assist Service Corporation

Section 563.38 addresses a savings association's use of its salvage power to assist a troubled service corporation. The salvage power doctrine permits a thrift to exceed applicable investment limitations where an infusion of additional capital is necessary to preserve the existing investment.

Paragraph (a) prohibits a savings association from exercising its salvage power to assist a troubled service corporation without prior OTS approval. Paragraph (b) conditions such approval on the OTS receiving an application demonstrating that the proposed action "is for the protection of the savings association's investment and is consistent with safe, sound, and economical home financing." The application must also address alternative solutions, including those not involving financial assistance, to the service corporation's financial problem, and contain other information as the OTS deems necessary.

While it is important for the OTS to have advance knowledge of proposed salvage investments in service corporations, the OTS proposes to

reduce burden by substituting a notice for the current application. While the notice would still contain much of the current information, the change would allow the savings association to make the salvage investment if OTS had not objected to the notice or imposed conditions within 30 days. The notice requirement will appear as new § 559.13.

Section 563.41 Loans and Other Transactions With Affiliates and Subsidiaries.

OTS proposes to modify the definition of "subsidiary" in this regulation to mirror the statutory definition of section 23A of the Federal Reserve Act, 12 U.S.C. 371c, rather than the OTS capital regulation. This will make it clear that the scope of the subsidiaries covered by the regulation is the same for thrifts as for banks.

Section 563.93 Lending Limitations

Similarly, the OTS proposes to amend the scope of its loans-to-one-borrower regulation to better conform with the scope of the OCC's lending limits regulation. This section will not apply to loans to a thrift's operating subsidiaries, but will apply to loans to its service corporations.

Section 563.132 Securities Issued Through Subsidiaries

This section requires savings associations to notify OTS when issuing securities through a subsidiary. OTS proposes to remove outdated provisions from this section and transfer the remaining notice requirements to new § 559.12.

Paragraph (a), which defines terms for this section, is being deleted as those terms are no longer necessary. Paragraph (b), which excludes certain securities in addressing the amount of securities issued by a subsidiary, is being removed as obsolete. The proposed regulation does not limit the amount of securities a subsidiary may issue.

Paragraph (c) sets forth the notice and application requirements that a parent savings association must satisfy prior to establishing a finance subsidiary, transferring additional assets to an existing finance subsidiary, or issuing securities through a subsidiary defined in paragraph (a)(1)(ii) of the section. The OTS proposes to modify the notice requirements of paragraph (c) by removing the references and requirements pertaining to finance subsidiaries and by reducing the application requirements to uniform notice requirements.

Part 567—Capital

Section 567.1 Definitions

OTS proposes to amend two definitions in its capital regulation. First, § 567.1(dd), which defines subsidiary, is being amended to mirror the OCC's definition of a subsidiary in its risk-based capital regulation, 12 CFR Part 3, Appendix A. This definition is more consistent with GAAP, defining a subsidiary as a company where the institution owns a majority of the stock. Currently, OTS employs a much broader definition of subsidiary, which can sometimes result in higher capital requirements. Proposed § 567.1(dd) includes language from the footnote currently located in § 567.1(dd), which provides that OTS reserves the right to review investments on a case-by-case basis to determine whether the investment is more appropriately treated as a subsidiary or as an equity investment.

Second, § 567.1(l), which defines "includable subsidiary," currently encompasses subsidiaries that "directly or indirectly" engage in any activity not permissible for a national bank. The regulatory reference to "indirect" activities, which does not appear in the statutory provision upon which the regulation is based,¹⁶ has been interpreted (in the Thrift Financial Report) as requiring a savings association's entire investment in a subsidiary engaged exclusively in activities permissible for national banks to be deducted from capital if a lower-tier subsidiary engages in any activity impermissible for a national bank. Deduction is required even when the first-tier subsidiary's investment in the lower-tier subsidiary constitutes a minute portion of its total assets. Eliminating the regulatory reference to "indirect" activities will enable OTS to revise the instruction in the Thrift Financial Report. Thereafter, savings associations will only be required to deduct the actual amount of their indirect investment in the lower-tier nonincludable subsidiary.

Part 571—Statements of Policy

Section 571.21 Separate Corporate Existence of a Service Corporation

Paragraph (a) sets forth the attributes of corporate separateness that should be maintained by a savings association and its service corporation. Maintaining this separate corporate identity is important to minimize the risks that a court, for equitable reasons, might pierce the corporate veil of a service corporation and hold the parent savings association

¹⁶ 12 U.S.C. 1464(t)(5)

liable for the obligations or conduct of its service corporation. Paragraph (b), in addressing operation of service corporations and monitoring their compliance with paragraph (a),

references § 563.37(a) and reiterates the potential for serious risk to the savings association from failure to maintain corporate separateness. The proposal would incorporate the substantive

requirements of § 571.21 and § 563.37 into new § 559.10, which will apply to all subsidiaries.

V.—CHART SHOWING THE PROPOSED DISPOSITION OF REGULATIONS

Original provision	New provision	Comment
545.74(a) .....	.....	Removed
545.74(b) introductory text	560.30	Incorporated into lending and investment powers chart.
545.74(b)(1)	559.2(e)(2)	
545.74(b)(2)	559.11	
545.74(b)(3)	559.2(e)(2)(ii)	
545.74(b)(4)	559.2(o)(2)	
545.74(b)(5)	559.1(a)	
545.74(c) introductory text	559.2(e)(2)	
545.74(c)(1)–(7)	559.3	
545.74(d)	559.4	Substantially revised.
545.74(e)	559.2(q)(2)	
545.76(a)	560.30	
545.76(b) .....	.....	Removed.
545.80	560.30	
545.81(a)	559.2	
545.81(b)	559.2(c)(1), (e)(1)	
545.81(c)(1),(2)	559.2(a)(1)	
545.81(c)(3)	559.11	
545.81(d)	559.2(p)	
545.81(e)	559.2(h)(1)	
545.81(f)	559.10	
545.81(g)	559.2(o)(1)	
545.81(h)	559.1(a)	
545.81(i)	559.1(b)	Modified.
545.81(j)	559.2(e)(1)(ii)	
545.81(k)	559.2(p)	
545.82 .....	.....	Removed.
563.37(a), (b)	559.10	Modified.
563.37(c)	559.11	
563.38	559.13	Modified.
563.41(b)(4) .....	.....	Modified.
563.93(a) .....	.....	Modified.
563.132(a),(b) .....	.....	Removed.
563.132(c)	559.12	Modified.
567.1(l) .....	.....	Modified.
567.1(dd) .....	.....	Modified.
571.21	559.10	Modified.

VI. Request for Comment

The OTS requests comments on all aspects of this proposal.

VII. Paperwork Reduction Act

The reporting requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Comments are invited on (i) whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility, (ii) the accuracy of the estimate of the burden of the collection of information, (iii) ways to enhance the quality of the information collected, and (iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

The reporting requirements in this proposed rule are currently found in 12 CFR 545.74, 545.81, 563.38, and 563.132. These requirements will be now be found in §§ 559.2, 559.3, 559.11, 559.12, and 559.13. These requirements are currently addressed in the following OMB approved packages: Control Nos. 1550–0013; 1550–0077; and 1550–0065.

We are proposing to repeal § 545.82 (finance subsidiaries) and the related OMB package (Control No. 1550–0033).

The requirements in new § 560.32 will be reflected in the OMB approved package No. 1550–0078. The package has been amended to reflect the following data for the requirements in new § 560.32.

The information is needed by the OTS to assist in regulating savings associations and their subsidiaries.

Estimated number of respondents: 1,460.

Estimated average burden per respondent: 8 hours.

Estimated annual frequency of responses: 1.

Estimated total annual reporting burden: 11,680.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these proposed regulations will be displayed in the table at 12 CFR 506.1(b).

VIII. 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.

IX. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal reorganizes the regulation to make it easier for small savings associations to locate applicable rules. It streamlines requirements for all savings associations. It simplifies the applicable requirements when savings associations create, invest in, or conduct new activities through subsidiaries and clarifies the statutorily required notices for such actions.

X. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this proposed rule streamlines and reduces requirements on savings associations. The OTS has therefore determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, sections 202 and 205 do not require a budgetary impact statement or discussion of regulatory alternatives to this proposal.

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 559

Savings associations, Subsidiaries.

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 567

Capital, Savings associations.

12 CFR Part 571

Accounting, Conflict of interests, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, and for the reasons set forth in the preamble, 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.

§ 545.74 [Amended]

2. Section 545.74 is amended by removing and reserving paragraphs (a), (b), (d) and (e), by amending paragraph (c) by removing and reserving the introductory text and paragraphs (c)(1) through (c)(3) and (c)(5) through (c)(7), by removing and reserving paragraph (c)(4)(ii)(F), and by amending the introductory text to paragraph (c)(4)(i) by removing the words "Execution of" and adding in their place "A service corporation may execute".

§§ 545.76, 545.80 through 545.82 [Removed]

3. Sections 545.76, 545.80, 545.81, and 545.82 are removed.

4. Part 559 is added to read as follows:

PART 559—SUBSIDIARIES

Sec.

559.1 What does this part cover?

Subpart A—Regulations Applicable to Federal Savings Associations

559.2 What are the characteristics of, and what requirements apply to, operating subsidiaries and service corporations of federal savings associations?

559.3 What activities are preapproved for service corporations?

559.4 How much may a savings association invest in service corporations?

Subpart B—Regulations Applicable to All Savings Associations

559.10 What must a savings association and its subsidiary do to maintain separate corporate identities?

559.11 What notices are required to establish or acquire a new subsidiary or engage in new activities through a subsidiary?

559.12 How may a subsidiary of a savings association issue securities?

559.13 How may a savings association exercise its salvage power in connection with its service corporation?

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

§ 559.1 What does this part cover?

(a) Subpart A of this part 559 contains requirements applicable to operating subsidiaries and service corporations of federal savings associations. Subpart B of this part 559 applies to subsidiaries of all savings associations. OTS is issuing this part 559 pursuant to its general rulemaking and supervisory authority under the Home Owners' Loan Act, 12 U.S.C. 1462 *et seq.*, and its specific authority under section 18(m) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(m). OTS may at any time limit a savings association's investment in a subsidiary or service corporation, or may limit or refuse to permit any activities of a subsidiary or service corporation for supervisory, legal, or safety and soundness reasons.

(b) Notices under this part are deemed to be applications for purposes of statutory and regulatory references to "applications." Any conditions that OTS imposes for supervisory, legal, or safety and soundness reasons in approving any application shall be enforceable as a condition imposed in writing by the OTS in connection with the granting of a request by a savings association within the meaning of 12 U.S.C. 1818(b) or 1818(i).

Subpart A—Regulations Applicable to Federal Savings Associations

§ 559.2 What are the characteristics of, and what requirements apply to, operating subsidiaries and service corporations of federal savings associations?

A federal savings association ("you") that meets the requirements of this section, as detailed in the following chart, may establish, acquire, or acquire

in an interest in an operating subsidiary or a service corporation. For ease of reference, this section cross-references other regulations in this chapter affecting subsidiaries. You should refer to those regulations for the details of how they apply to an operating subsidiary or a service corporation. The chart follows:

	Operating subsidiaries	Service corporations
(a) How may a savings association establish an operating subsidiary or a service corporation?	(1) To establish an operating subsidiary, you must file a notice satisfying § 559.11	(2) To establish a service corporation, you must file a notice satisfying § 559.11. Depending upon your condition and the activities in which the service corporation will engage, you may have to submit an application under § 559.2(e)(2).
(b) Who may own stock?	(1) Anyone may own stock in an operating subsidiary	(2) Only savings associations with home offices in the state where you have your home office may own stock in any service corporation in which you invest.
(c) What are the ownership requirements?	(1) You must hold at least 50% of the voting stock of the operating subsidiary. No one else may exercise effective operating control	(2) You are not required to hold a particular amount of stock and need not have control of the service corporation.
(d) Where may the subsidiary be incorporated?	(1) There are no geographic restrictions on where an operating subsidiary may be incorporated.	(2) A service corporation must be incorporated in the state where your home office is located.
(e) What activities are permissible?	(1)(i) After you have notified OTS in accordance with § 559.11, an operating subsidiary may engage in any activity that you may conduct directly. (ii) You may hold another insured depository institution as an operating subsidiary. (iii) Any finance subsidiary that existed on [insert effective date of final rule] shall be deemed an operating subsidiary.	(2) (i) If you are eligible for expedited treatment under § 516.3(a) of this chapter, and notify OTS as required by § 559.11, your service corporation may engage in activities listed in § 559.3. (ii) If you are subject to standard treatment under § 516.3(b) of this chapter, you must apply and receive OTS approval for your service corporation to engage in any activities except those authorized by § 559.3(a). (iii) A service corporation may also engage in any activity reasonably related to the activities of financial institutions, but not preapproved under § 559.3, after applying to OTS in accordance with § 516.1 of this chapter and receiving OTS's prior written approval.
(f) May the subsidiary invest in other entities?	(1)(i) An operating subsidiary may itself hold an operating subsidiary. All of the requirements of this part 559 apply equally to such a lower tier operating subsidiary. In applying the regulations in this part, operating subsidiaries should substitute "operating subsidiary" wherever this part refers to "you" or "savings association." (ii) An operating subsidiary may invest in a service corporation. Such a service corporation is subject to all of the requirements of this part.	(2) A service corporation may invest in other entities, including corporations, partnerships, and other joint ventures. All of the requirements of this part apply equally to such entities except for paragraphs (b)(2), (d)(2), and (g)(2) of this section.
(g) Are there any limits on how much a savings association may invest?	(1) There are no limits on the amount you may invest in your operating subsidiaries, either separately or in the aggregate..	(2) You may invest up to the amounts set forth in § 559.4 in service corporations.
(h) Do federal statutes and regulations that apply to the savings association also apply to its subsidiaries?	(1) Unless otherwise specifically provided by statute, regulation, or OTS policy, all federal statutes and regulations apply to operating subsidiaries in the same manner as they apply to you. You and your operating subsidiary are generally consolidated and treated as a unit for statutory and regulatory purposes.	(2) (i) If the federal statute or regulation specifically refers to "service corporation," it applies to all service corporations, regardless of whether you control the service corporation or whether it would be a subsidiary under GAAP. (ii) If the federal statute or regulation refers to "subsidiary," it applies only to service corporations that you control.
(i) Do the investment limits that apply to federal savings associations (HOLA section 5(c) and part 560 of this chapter) apply to subsidiaries?	(1) Your assets and those of your operating subsidiary are aggregated when calculating investment limitations.	(2) Your service corporation's assets are not subject to the same investment limitations that apply to you.
(j) How does the capital regulation (part 567 of this chapter) apply?	(1) Your assets and those of your operating subsidiary are consolidated for all capital purposes.	(2) The capital treatment of a service corporation depends upon whether it is an includable subsidiary. That determination is based upon factors set forth in part 567 of this chapter, including your percentage ownership of the service corporation and the activities in which the service corporation engages.

	Operating subsidiaries	Service corporations
(k) How does the loans-to-one-borrower (LTOB) regulation (§ 563.93 of this chapter) apply?	(1) The LTOB regulation does not apply to loans from you to your operating subsidiary or loans from your operating subsidiary to you. Other loans made by your operating subsidiary are aggregated with your loans for LTOB purposes.	(2) The LTOB regulation applies to loans from you to your service corporation, but does not apply to loans from your service corporation to you. Other loans made by your service corporation are aggregated with your loans for LTOB purposes.
(l) How do transactions with affiliates (TWA) apply to subsidiaries?	(1) Section 563.41 of this chapter explains how TWA applies to subsidiaries.	(2) Section 563.41 of this chapter explains how TWA applies to subsidiaries.
(m) How do the Qualified Thrift Lender (QTL) test apply to subsidiaries?	(1) Under 12 U.S.C. 1467a(m)(5), you may determine whether you wish to consolidate the assets of a particular subsidiary for purposes of calculating your qualified thrift investments. Section 563.51 of this chapter contains the calculations that follow from this determination.	(2) Under 12 U.S.C. 1467a(m)(5), you may determine whether you wish to consolidate the assets of a particular subsidiary for purposes of calculating your qualified thrift investments. Section 563.51 of this chapter contains the calculations that follow from this determination.
(n) Does state law apply?	(1) State law applies to operating subsidiaries only to the extent it applies to you.	(2) State law applies to service corporations regardless of whether it applies to you.
(o) Is the subsidiary subject to examination by OTS?	(1) An operating subsidiary is subject to examination by OTS.	(2) A service corporation must agree in writing to permit and to pay the cost of such examinations as OTS deems necessary.
(p) What must be done to redesignate an operating subsidiary as a service corporation or a service corporation as an operating subsidiary.	(1) Before redesignating an operating subsidiary as a service corporation, you should consult with the OTS Regional Director for the Region in which your home office is located. You must maintain adequate internal records, available for examination by OTS, demonstrating that the redesignated subsidiary meets all of the applicable requirements of this part and that your board of directors has approved the redesignation.	(2) Before redesignating a service corporation as an operating subsidiary, you should consult with the OTS Regional Director for the Region in which your home office is located. You must also maintain adequate internal records, available for examination by OTS, demonstrating that the redesignated subsidiary meets all of the applicable requirements of this part and that your board of directors has approved the redesignation.
(q) What happens if the subsidiary fails to comply with the requirements of this part.	(1) If an operating subsidiary fails to continue to qualify as an operating subsidiary for any reason, you must notify OTS. Unless otherwise advised by OTS, if the subsidiary cannot comply within 90 days with all of the requirements for either an operating subsidiary or a service corporation under this section, you must promptly dispose of your investment in the subsidiary.	(2) If a service corporation, or any entity in which the service corporation invests pursuant to paragraph (f)(2) of this section, fails to meet any of the requirements of this section, you must notify OTS. Unless otherwise advised by OTS, if the subsidiary cannot comply within 90 days with all of the requirements for either an operating subsidiary or a service corporation under this section, you must promptly dispose of your investment in the subsidiary.

§ 559.3 What activities are preapproved for service corporations?

To the extent permitted by § 559.2(e)(2), a service corporation may engage in the following activities:

- (a) Any activity that all federal savings associations may conduct directly, except taking deposits.
- (b) Business and professional services. The following services are preapproved for service corporations only when they are limited to financial documents or financial clients or are generally finance-related:
 - (1) Accounting or internal audit;
 - (2) Advertising, marketing research and other marketing;
 - (3) Clerical;
 - (4) Courier;
 - (5) Data processing;
 - (6) Data storage facilities operation and related services;
 - (7) Office supplies, furniture, and equipment purchasing and distribution;
 - (8) Personnel benefit program development or administration;
 - (9) Relocation of personnel;
 - (10) Remote service unit operation, leasing, ownership or establishment;

- (11) Research studies and surveys; and
- (12) Software development and systems integration.
- (c) Credit related activities:
 - (1) Abstracting;
 - (2) Appraising;
 - (3) Collection agency;
 - (4) Credit analysis;
 - (5) Check or credit card guaranty and verification;
 - (6) Escrow agent or trustee (under deeds of trust, including executing and deliverance of conveyances, reconveyances and transfers of title);
 - (7) Leasing; and
 - (8) Loan inspection.
 - (d) Consumer services:
 - (1) Financial advisory or consulting;
 - (2) Foreign currency exchange;
 - (3) Home ownership counseling;
 - (4) Income tax return preparation;
 - (5) Postal services;
 - (6) Stored value instrument sales; and
 - (7) Welfare benefit distribution.
 - (e) Real estate related services:
 - (1) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale

- or leasing to others for such construction, or for use as manufactured home sites, in accordance with a prudent program of property development;
- (2) Acquiring improved real estate or manufactured homes to be held for rental or resale, for remodeling, renovating, or demolishing and rebuilding for sale or rental, or to be used for offices and related facilities of a stockholder of the service corporation;
- (3) Maintaining and managing real estate; and
- (4) Real estate brokerage for property owned by an association that owns capital stock of the service corporation, the service corporation, or a joint venture in which the service corporation participates.
- (f) Securities brokerage, insurance and related services:
 - (1) Nondeposit investment product brokerage. Execution of transactions in securities or other nondeposit investment products on an agency or riskless principal basis solely upon the order of and for the account of customers, provided that the service

corporation complies with the provisions of § 545.74(c)(4) of this chapter;

(2) Investment advice, provided that the service corporation complies with the provisions of § 545.74(c)(4) of this chapter;

(3) Insurance brokerage or agency for liability, casualty, automobile, life, health, accident or title insurance;

(4) Liquidity management;

(5) Issuing notes, bonds, debentures or other obligations or securities; and

(6) Purchase or sale of coins issued by the U.S. Treasury.

(g) Investments:

(1) Tax-exempt bonds used to finance residential real property for family units;

(2) Tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(3) Small business investment companies licensed by the U.S. Small Business Administration to invest in small businesses engaged exclusively in the activities listed in paragraphs (a) through (i) of this section; and

(4) Investing in savings accounts of a stockholder thrift.

(h) Community development and charitable activities:

(1) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character;

(2) Investments that meet the community development needs of, and primarily benefit, low- and moderate-income communities;

(3) Investments in low-income housing tax credit projects and entities authorized by statute (e.g., Community Development Financial Institutions) to promote community, inner city, and community development purposes; and

(4) Establishing a corporation that is recognized by the Internal Revenue Service as organized for charitable purposes under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) and making a reasonable contribution to capitalize it, *provided* that the corporation engages exclusively in activities designed to promote the well-being of communities in which the shareholders of the service corporation operate.

(i) Activities reasonably incident to those listed in paragraphs (a) through (h) of this section for service corporations engaged in those activities.

§ 559.4 How much may a savings association invest in service corporations?

(a) A federal savings association ("you") may invest in the capital stock,

obligations, and other securities of a service corporation. Your aggregate investment in all such service corporations may not exceed 3% of your assets. If you have an aggregate outstanding investment in excess of 2% of your assets, that excess investment must serve primarily community, inner city, or community development purposes. You must designate the investments serving those purposes, which include:

(1) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character;

(2) Investments for the preservation or revitalization of either urban or rural communities;

(3) Investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or

(4) Other community, inner city, or community development-related investments approved by OTS.

(b) Except as provided in paragraph (c) of this section, your aggregate investment in service corporations includes all loans (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take out commitments of such loans to a service corporation and to any entity in which the service corporation invests, whether or not you hold stock in that entity.

(c) In addition to the amounts you may invest under paragraph (a) of this section, and to the extent you have authority under section 5(c) of the HOLA and part 560 of this chapter, you may make loans to any service corporation in which you hold stock. Such loans are subject to the loans-to-one-borrower regulation, § 563.93 of this chapter. For purposes of the investment limits of section 5(c) of the HOLA and part 560 of this chapter, loans under this paragraph (c) will be aggregated with any other loans of that type you make.

Subpart B—Regulations Applicable to All Savings Associations

§ 559.10 What must a savings association and its subsidiary do to maintain separate corporate identities?

(a) Each savings association and subsidiary thereof must be operated in a manner that demonstrates to the public the separate corporate existence of the savings association and subsidiary. Each must operate so that:

(1) Their respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of their separate corporate procedures;

(3) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise; and

(5) Unless the parent savings association has guaranteed a loan by the subsidiary, all borrowings by the subsidiary indicate that the parent is not liable.

(b) OTS regulations that apply both to savings associations and subsidiaries shall not be construed as requiring a savings association and its subsidiaries to operate as a single entity.

§ 559.11 What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?

When required by section 18(m) of the Federal Deposit Insurance Act, a savings association ("you") must file a notice ("Notice") in accordance with § 516.1(c) of this chapter at least 30 days before establishing or acquiring a subsidiary or engaging in new activities in a subsidiary. The Notice must contain all of the information the FDIC requires pursuant to 12 CFR 303.13. Providing OTS with a copy of the notice you file with the FDIC will satisfy this requirement. If OTS notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive OTS's prior written approval in accordance with § 516.1(c) of this chapter before establishing or acquiring the subsidiary or engaging in new activities in the subsidiary.

§ 559.12 How may a subsidiary of a savings association issue securities?

(a) A subsidiary may issue, either directly or through a third party intermediary, any securities that its parent savings association ("you") are authorized to issue (or if you are a mutual savings association, would be authorized to issue if you converted to the stock form). The subsidiary must not state or imply that the securities it issues are covered by federal deposit insurance. A subsidiary may not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that you are insolvent or have been placed into receivership.

(b) You must file a notice with OTS in accordance with § 516.1 of this chapter at least 30 days before issuing any securities through an existing subsidiary or in conjunction with establishing or acquiring a new subsidiary. If OTS notifies you within

30 days that the notice presents supervisory concerns or raises significant issues of law or policy, you must receive OTS's prior written approval before issuing securities through your subsidiary. The notice must contain:

(1) The amount of your assets or liabilities (including any guarantees you make with respect to the securities issuance) that you will transfer or make available to the subsidiary; the percentage that such amount represents of the current book value of your assets on an unconsolidated basis; and the current book value of all such assets of the subsidiary;

(2) The terms of any guarantee(s) to be issued by you or any third party;

(3) A description of the securities the subsidiary will issue;

(4) An estimate of the net proceeds from the issuance of securities (or the pro rata portion of the net proceeds from securities issued through a jointly owned subsidiary); the anticipated amount of gross proceeds of the securities issuance; and the current market value of assets collateralizing the securities issuance (any assets of the subsidiary, including any guarantees of its securities issuance you have made);

(5) The anticipated interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(6) The minimum denomination of the subsidiary's securities;

(7) Where the subsidiary intends to market the securities; and

(8) A statement that within 10 days after the issuance of any securities through a subsidiary, you will notify the OTS in writing that you have issued the securities and provide a copy of any prospectus, offering circular, or similar document concerning such issuance.

(c) Sales of the subsidiary's securities to retail customers must comply with § 545.74(c)(4) of this chapter.

§ 559.13 How may a savings association exercise its salvage power in connection with its service corporation?

(a) In accordance with this section, a savings association ("you") may exercise your salvage power to make a contribution or a loan (including a guarantee of a loan made by any other person) to your service corporation ("salvage investment") that exceeds the maximum amount otherwise permitted under law or regulation. You must notify OTS at least 30 days before making a salvage investment in a service corporation. This notice must demonstrate that:

(1) The salvage investment protects your interest in the service corporation;

(2) The salvage investment is consistent with safety and soundness; and

(3) You considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (a)(1) and (a)(2).

(b) If OTS notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive OTS's prior written approval in accordance with § 516.1(c) of this chapter before making a salvage investment in a service corporation.

PART 560—LENDING AND INVESTMENT

5. Part 560 as proposed to be added at 61 FR 1177 is amended as follows:

a. The authority citation for part 560 continues to read as follows:

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

b. Section 560.30 is revised to read as follows:

§ 560.30 General lending and investment powers of federal savings associations.

Pursuant to section 5(c) of the Home Owners Loan Act (HOLA), 12 U.S.C. 1464(c), a federal savings association may make, invest in, purchase, sell, participate in, or otherwise deal in (including brokerage or warehousing) all loans and investments allowed under section 5(c) of the HOLA including, without limitation, the following loans, extensions of credit, and investments, subject to the limitations indicated and any such terms, conditions, or limitations as may be prescribed from time to time by 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)(L)	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
Open-end management investment companies ^a	5(c)(1)(Q)	None. ⁵
Service corporations	5(c)(4)(B)	3% of total assets, as long as any amount in excess of 2% of total assets furthers community, inner city, or community development purposes. ^b
Small business investment companies ^c	5(c)(4)(D)	1% of total assets.

LENDING AND INVESTMENT POWERS CHART—Continued

Category	HOLA authorization	Statutory percentage of assets limitations (endnotes contain applicable regulatory limitations)
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.

^a This authority is limited to investments in open-end management investment companies that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940. The portfolio of the investment company must be restricted by the company's investment policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in. Separate and apart from this authority, a Federal savings association may make pass-through investments to the extent authorized by § 560.32.

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

^c A Federal savings association may only invest in small business investment companies formed pursuant to section 301(d) of the Small Business Investment Act of 1958.

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.

C. Sections 560.32 and 560.33 are added to read as follows:

§ 560.32 Pass-Through Investments

(a) A federal savings association ("you") may make pass-through investments. A pass-through investment is one where you invest in an entity ("company") that engages only in activities that you may conduct directly. You must comply with all the statutes and regulations that would apply if you were engaging in the activity directly. For example, your proportionate share of the company's assets will be aggregated with the assets you hold directly in calculating investment limits (e.g., 10% of assets for commercial loans).

(b) You may make a pass-through investment without prior notice to OTS if all of the following conditions are met:

(1) You do not invest more than 15% of your capital in one company;

(2) You have not invested more than 50% of your total capital in pass-through investments;

(3) Your investment would not give you direct or indirect control of the company;

(4) Your liability is limited to the amount of your investment;

(5) The company falls into one of the following categories:

(i) A limited partnership;

(ii) An open-end mutual fund;

(iii) A closed-end investment trust; or

(iv) An entity in which you are investing primarily to use the company's services (e.g., data processing).

(c) If you want to make other pass-through investments, you must provide OTS with 30 days' advance notice. If within that 30-day period OTS notifies

you that an investment presents supervisory, legal, or safety and soundness concerns, you must file an application with OTS in accordance with § 516.1 of this chapter and may not make the investment without first receiving OTS's prior written approval. Notices under this section are deemed to be applications for purposes of statutory and regulatory references to "applications." Any conditions that OTS imposes for supervisory, legal, or safety and soundness reasons on any pass-through investment shall be enforceable as a condition imposed in writing by the OTS in connection with the granting of a request by a savings association within the meaning of 12 U.S.C. 1818(b) or 1818(i).

§ 560.33 De minimis investments.

A federal savings association may invest in the aggregate up to the greater of one-fourth of 1% of its capital or \$100,000, in community development investments of the type permitted for a national bank under 12 CFR Part 24.

PART 563—OPERATIONS

6. 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; 42 U.S.C. 4106.

§§ 563.37, 563.38, 563.132 [Removed]

7. Sections 563.37, 563.38, and 563.132 are removed.

8. Section 563.41 is amended by revising paragraph (b)(4) to read as follows:

§ 563.41 Loans and other transactions with affiliates and subsidiaries.

* * * * *

(b) * * *

(4) The term *subsidiary* with respect to a specified savings association means a company that is controlled by such specified savings association;

* * * * *

9. Section 563.93 is amended by revising paragraph (a) to read as follows:

§ 563.93 Lending limitations.

(a) *Scope.* This section applies to all loans and extensions of credit to third parties made by a savings association and its subsidiaries or service corporations. This section does not apply to loans made by a savings association to operating subsidiaries or affiliates of the savings association. The term *operating subsidiary* has the same meaning indicated in § 559.2 of this chapter. The terms *subsidiary* and *affiliate* have the same meanings as those terms are defined in § 563.41.

* * * * *

PART 567—CAPITAL

10. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

11. Section 567.1 is amended by removing in paragraph (l)(1) the phrase "(either directly or through ownership of a subsidiary)", and by revising paragraph (dd) to read as follows:

§ 567.1 Definitions.

* * * * *

(dd) *Subsidiary.* The term *subsidiary* means any corporation, partnership, business trust, joint venture, association or similar organization in which a savings association directly or indirectly

holds more than a 50% ownership interest.¹ This definition does not include ownership interests that were taken in satisfaction of debts previously contracted, provided that the reporting association has not held the interest for more than five years or a longer period approved by the OTS.

* * * * *

PART 571—STATEMENTS OF POLICY

12. 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.

§ 571.21 [Removed]

13. Section 571.21 is removed.

Dated: May 28, 1996.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 96-13828 Filed 6-12-96; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-CE-21-AD]

RIN 2120-AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Model PA31T2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD), which would have required rerouting the landing gear emergency extension air line on The New Piper Aircraft, Inc. (Piper) Model PA31T2 airplanes that have Parker Hannifin Wheel and Brake Conversion Kit 199-111 incorporated in accordance with Supplemental Type Certificate (STC) SA599GL. Three incidents of the brake cylinder contacting the landing gear emergency extension air line on both wheel wells of the affected

¹ The Office reserves the right to review a savings association's investment in a subsidiary on a case-by-case basis. If the Office determines that such investment is more appropriately treated as an equity security or an ownership interest in a subsidiary it will make such determination regardless of the percentage of ownership held by the savings association.

airplanes prompted the proposal. Since issuance of the proposal, the Federal Aviation Administration (FAA) has determined that additional serial numbers of Piper Model PA31T2 airplanes should be included in the Applicability section of the proposed AD, and that revised service information should be incorporated. The actions specified by the proposed AD are intended to prevent the brake cylinder from chafing against the landing gear emergency extension air line when the gear is in the up and locked position, which could result in damage to the air line and subsequent loss of emergency gear extension capability. Since the comment period for the original proposal has closed and the change described above goes beyond the scope of what was originally proposed, the FAA is allowing additional time for the public to comment.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-21-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Parker Hannifin Corporation, Aircraft Wheel & Brake, 1160 Center Road, P.O. Box 158, Avon, Ohio 44011; telephone (216) 937-6211; facsimile (216) 937-5409. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Nick Miller, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294-7837; facsimile (847) 294-7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this