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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

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

[No. 96-48]

RIN 1550-AA89

Conflicts of Interest, Corporate Opportunity and Hazard Insurance

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS or agency) is proposing to update and substantially streamline its regulations and policy statements concerning conflicts of interest, usurpation of corporate opportunity and hazard insurance. This notice of proposed rulemaking is based on a detailed staff review of each pertinent regulation and policy statement to determine whether they are necessary, impose the least possible burden consistent with safety and soundness and statutory requirements and are 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 [Insert 60 days from publication in the Federal Register].

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 96-48. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Program Manager, (202) 906-5751; or Francis Raue, Policy Analyst, (202) 906-5750, Supervision Policy; or Dorene Rosenthal, Counsel (Banking and Finance), (202) 906-7268, Regulations and Legislation Division, Chief Counsel's Office.

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I. Background of the Proposal

In a comprehensive review of the agency's regulations in the spring of 1995, OTS identified numerous obsolete or redundant regulations that could be quickly repealed. OTS also identified several key regulatory areas for a more intensive, systematic regulatory burden review. These areas -- lending and investment authority, subsidiaries and equity investments, corporate governance, conflicts of interest, corporate opportunity and hazard insurance -- were selected because they have a significant impact on 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 regulations and policy statements on conflicts of interest, corporate opportunity and hazard insurance.

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] Burden reduction proposals regarding corporate governance and subsidiaries and equity investments will be issued in the near future.

Today's proposal regarding conflicts of interest, corporate opportunity and hazard insurance will also result in significant regulatory burden reduction. The proposal affects the following regulatory sections:

Section 545.126 -- Referral of insurance business

Section 556.16 -- Insurance agencies - usurpation of corporate opportunity

Section 563.35 -- Restrictions involving loan services

Section 563.40 -- Restrictions on loan procurement fees, kickbacks and unearned fees

Section 563.44 -- Loans involving mortgage insurance

Section 571.4 -- Hazard insurance

Section 571.7 -- Conflicts of interest

Section 571.9 -- Corporate opportunity in savings associations

OTS is proposing to repeal five of these provisions in their entirety. The remaining three provisions -- loan procurement fees, conflicts of interest, and

[1] 61 FR 1162 (January 17, 1996).

corporate opportunity -- will be retained in the form of regulations, but streamlined and clarified. The proposed changes will, if adopted in final form, reduce the amount of CFR text devoted to conflicts, corporate opportunity and hazard insurance from six pages to half a page.

In developing this proposal, we have consulted with those who use the regulations on a daily basis, including OTS regional staff and representatives of the thrift industry. A focus group of five thrift institutions and an industry trade association discussed staff's initial recommendations. We have also reviewed the other federal banking agencies' regulations and policy statements concerning conflicts, corporate opportunity and hazard insurance.

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 conflicts, corporate opportunity and hazard insurance, we believe maximum burden reduction can be achieved by pursuing three specific objectives.

First, we are attempting to eliminate duplication and overlap. The conflicts, corporate opportunity and hazard insurance regulations have existed essentially unchanged for over 20 years. During this time, there have been significant statutory and regulatory advances, including enactment of the Real Estate Settlement Procedures Act of 1974 (RESPA),[2] amendments to the Home Owners' Loan Act of 1933 ("HOLA")[3] and promulgation of the Interagency Real Estate Lending Guidelines.[4] As a result, much of OTS's conflicts of interest, corporate opportunity and hazard insurance regulations and policy statements have become outdated or obsolete. For example, the policy statement regarding hazard insurance (§ 571.4) has been largely superseded by the Interagency Real Estate Lending Guidelines. Similarly, the regulatory provisions prohibiting a savings association from conditioning the extension of credit on the borrower obtaining certain other services from the institution (tying arrangements) (§ 563.35) have been superseded by tying prohibitions in HOLA section 5(q). Additionally, the regulatory provisions governing kick-backs and unearned fees for loans (§ 563.40) are largely duplicative of RESPA. Redundant regulatory coverage causes confusion and wastes both industry and government resources. Today's proposal eliminates duplication wherever possible.

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[2] Pub. L. 93-533, 88 Stat. 1724, Dec. 22, 1974.

[3] 12 U.S.C. 1461, <u>et seq</u>.

[4] 57 FR 62901 (December 31, 1992).