

## Press Releases

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### OTS 96-38 - OTS Proposes Overhauling More Regs as Burden Reduction Moves Forward

#### Office of Thrift Supervision

#### News Release

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### **OTS PROPOSES OVERHAULING MORE REGS AS BURDEN REDUCTION MOVES FORWARD**

WASHINGTON, D.C., June 10, 1996 -- The Office of Thrift Supervision (OTS) today proposed a major overhaul of three key areas of its regulations: those dealing with subsidiaries and equity investments; conflicts of interest, usurpation of corporate opportunity and hazard insurance and corporate governance.

In each case, the agency proposals would reduce the number of rules, remove whole sections of the regulations, rewrite them in user-friendly, clear and straightforward language and reorganize them in a more logical manner. The proposed changes are part of a comprehensive overhaul and reinvention of OTS regulations. The overarching goal, OTS said, is to reduce regulatory burden on savings associations to the greatest extent possible consistent with statutory requirements and safety and soundness. OTS said the proposed changes will "result in significant regulatory burden reduction."

The streamlining began in the spring of 1995 with a line-by-line review of OTS' rules that led to outright repeal of 8 percent of the agency's regulations. OTS consulted extensively with its own regional staff and representatives of the thrift industry who use the regulations on a daily basis. The undertaking will help implement Vice President Gore's National Performance Review and the Riegle Community Development and Regulatory Improvement Act of 1994.

The proposals will be published over the next few days in the Federal Register. The comment period will extend for 60 after the publication date of each proposal. Following is a summary of the changes proposed for each area of the regulations:

#### Subsidiaries and Equity Investments

The proposed overhaul of regulations dealing with setting up, investing in and operating savings associations' subsidiaries draws together in one new place (new part 559) provisions

that had been scattered throughout the regulations. It also rewrites them in the plain language style promoted by Vice President Gore's Regulatory Reinvention Initiative. The new regulations include a chart to allow easy comparison of the different requirements that apply to operating subsidiaries and service corporations. A service corporation is a type of subsidiary that can engage in a broader range of activities than its parent thrift as long as the activities are deemed by OTS to be reasonably related to banking.

To further clarify investment options, the proposed rule adds a section dealing with pass-through equity investments, that is, investments in entities such as limited partnerships or mutual funds that hold assets or engage exclusively in activities permitted for federal savings associations. Until now, these investments have been discussed only in legal opinions and policy statements. The proposal simplifies certain investment requirements while adding safeguards and puts them together in one place.

The list of preapproved service corporation activities has been revised. The proposal confirms that all activities permitted for federal savings associations, except deposit taking, are preapproved for service corporations. Also preapproved are additional activities that OTS has already routinely approved on a case-by-case basis.

Procedural requirements for thrifts to establish or acquire a new operating subsidiary have been streamlined. All savings associations would merely give OTS 30 days' notice under the proposal, instead of having to file an application and await decision. At present, only the financially strongest associations can avoid the application process and simply notify the agency.

Also simplified are rules that apply when a savings association wants to convert an existing service corporation to an operating subsidiary, or the reverse.

The proposal clarifies the calculation of a thrift institution's investment limits in a service corporation by simplifying the standards that determine when an institution's loans to a service corporation count toward these limits. The calculation of required capital to be held against investments in subsidiaries is also made less burdensome because the definition of a subsidiary under the capital rule is revised to more closely parallel Generally Accepted Accounting Principals (GAAP) and to be more consistent with the other banking agencies.

#### Conflicts of Interest, Corporate Opportunity and Hazard Insurance

OTS proposed totally removing five of eight sections of its regulations dealing with conflicts of interest, usurpation of corporate opportunity and hazard insurance, and updating and streamlining the remaining three. If the proposal is finally adopted, OTS will cut out five and a half of the current six pages of regulatory text devoted to these subjects. The remaining text also would be written in more user-friendly language.

Proposed for elimination, in addition to a hazard insurance section, are two sections on referral of insurance business and those on restrictions involving loan services and loans involving mortgage insurance. OTS also is proposing to narrow the scope of its regulation prohibiting loan procurement fees. As proposed, the regulation would apply only to natural persons who are officers, directors or controlling persons. Corporate affiliates would be free to receive fair compensation for loan solicitation services provided to thrifts.

The agency has three objectives in issuing this particular proposal. First is elimination of duplication and overlap. The regulations involving the three subjects areas have existed

essentially unchanged for more than 20 years. Subsequent statutes and regulations have largely superseded these provisions.

The second objective is to move away from micromanaging thrift operations and to focus the regulations on issues "that are truly vital to safe and sound operations, leaving other matters for handbook guidance." Currently three pages of text are devoted to explaining when thrifts can refer customers to affiliates that sell insurance -- not a vital safety and soundness issue. OTS is proposing to repeal this text, leaving insurance referrals to be handled in the same way as other corporate opportunity issues.

The third objective is to enhance conciseness and clarity of the regulations. The three sections being retained have been revised to remove ambiguous and imprecise language. For example, the current 306-word policy statement on conflicts of interest is being converted to a 53-word regulation.

The preamble to the proposal also clarifies the circumstances under which OTS will apply the corporate opportunity concept to dealings between a thrift and its holding company -- an area of frequent inquiry. Barring egregious circumstances or instances where a thrift is undercapitalized or unprofitable, OTS generally will defer to holding company decisions regarding where to allocate lines of business within a holding company structure. This is conditioned on there being no violation of statutory provisions governing transactions with affiliates or general principles of safety and soundness. This approach is consistent with that of the other federal banking agencies.

#### Corporate Governance

The rules under which federal savings associations are organized and conduct business would be updated and streamlined for the first time since 1983.

OTS proposes to reduce the number of charter and bylaw rules and policy statements on corporate governance from 33 to 24, a 27 percent reduction.

One part of the proposal alone -- moving the standard federal mutual and stock thrift charters and model bylaws from regulations to the Application Processing Regulatory Handbook -- would result in 13.5 pages being cut from the Code of Federal Regulations (CFR). The move would make it easier for OTS to update the standard charters and model bylaws as needed.

Some regulations are being eliminated because they are outdated or unnecessary. They include rules dealing with mutual capital certificates, emergency preparedness, and the requirement that the president of an institution also be a director and CEO. Other regulations are being eliminated because they are covered elsewhere or they merely cross reference other regulations, including provisions regarding corporate titles (official institution names), mutual to stock conversions, charter amendments, and savings deposits.

Other sections were rewritten to clarify meaning or to give institutions more flexibility. The proposed changes would remove restrictions on the location of shareholder meetings and would authorize the gathering of proxies over the phone or electronically. Other provisions would exempt wholly owned stock associations from certain requirements designed to protect minority shareholders, such as providing notice of shareholders meetings and compiling shareholder voting lists.

In addition, all stock institutions would be permitted to take actions based on unanimous written consent of shareholders in lieu of a vote at a formal shareholders meeting. Other changes would enable institutions to simply notify OTS after adopting charter and bylaws amendments that have been preapproved by OTS. For example, a new preapproved charter amendment would be added enabling mutuals with old charters to increase up to 1,000 the maximum number of votes authorized for each member without filing an application with OTS. This is the charter amendment institutions most frequently ask OTS to approve.

While the regulations provide savings associations with a comprehensive set of clear, modern and flexible corporate governance rules, institutions may apply on a case-by-case basis to adopt non-standard charter and bylaw provisions.

OTS emphasized that today's proposed changes do not require any institution to change its current charter. Those institutions that wish to update their charters and bylaws to reflect the new provisions once they become final need only obtain director and shareholder approvals and then file an after-the-fact notice with OTS.

The agency also asked for comment on whether federal savings associations should have the option of following the corporate governance laws of their home state or certain other states in lieu of certain OTS regulations.

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The Office of Thrift Supervision (OTS), a bureau of the U.S. Treasury, regulates and supervises the nation's thrift industry. OTS' mission is to ensure the safety and soundness of thrift institutions and to support their role as home mortgage lenders and providers of other community credit and financial services. For copies of news releases or other documents call PubliFax at 202/906-5660, or visit the OTS web page at [www.ots.treas.gov](http://www.ots.treas.gov).