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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 560, 563, 566, and 584

[No. 2001-13]

RIN 1550-AB42

Liquidity

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Thrift Supervision (OTS) is revising its regulations to implement the recent repeal of a statutory liquidity requirement. Today's rule removes the existing regulation that requires savings associations to maintain an average daily balance of liquid assets of at least four percent of its liquidity base. This rule also makes necessary conforming changes.

DATES: This interim rule is effective March 15, 2001. Written comments must be received by May 14, 2001.

ADDRESSES: *Mail:* Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001-13.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention Docket No. 2001-13.

Facsimile: Send facsimile transmissions, Attention Docket No. 2001-13, to FAX Number (202) 906-7755; or to FAX Number (202) 906-6956 (if comments are over 25 pages).

E-mail: Send e-mail to public.info@ots.treas.gov, Attention Docket No. 2001-13, and include your name and telephone number.

Public Inspection: You may inspect comments at the Public Reference Room, 1700 G Street, NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays. For a copy of comments and/or an index of comments by facsimile, telephone the Public Reference Room at (202) 906-5900 from 9 a.m. until 5 p.m. on business days. Comments and the related index also will be posted on the OTS Internet Site at www.ots.treas.gov.

FOR FURTHER INFORMATION CONTACT: Joe Casey, Program Analyst, Office of Supervision Policy, (202) 906-5741; Sally Warner Watts, Counsel (Banking and Finance), Regulations and Legislation Division, Office of Chief Counsel, (202) 906-7380; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Persons wishing to access any of these telephone numbers by text telephone (TTY) may call the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Changes Made by This Rule

A. Liquidity Requirement

Before its recent amendment, section 6 of the Home Owners' Loan Act (HOLA) required each savings association to maintain a minimum amount of liquid assets. 12 U.S.C. 1465 (1994). Section 6 required the Director of OTS to set this minimum amount at not less than four and not more than ten percent of each institution's liquidity base. OTS implemented this liquidity requirement at 12 CFR part 566, which establishes the percentage as "at least four percent." See existing § 566.2(b). Part 566 also imposes a general requirement that each savings association must maintain sufficient liquidity to ensure safe and sound operations (§ 566.2(a)), establishes related recordkeeping requirements (§ 566.4), and defines necessary terms (§ 566.1).

1. Statutory Liquidity Requirement

The original purpose of section 6 was "to provide a means for creating effective and flexible liquidity in savings associations which can be increased when mortgage money is plentiful, maintained in easily liquidated instruments, and reduced to add to the flow of funds to the mortgage market in periods of credit stringency." 12 U.S.C. 1465(a) (1994). Over the years,

the secondary market has developed to provide an adequate flow of funds to the mortgage market. Accordingly, section 1201 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Pub. L. 106-569, 114 Stat. 2944 (2000)) (FRREEA) repealed the statutory liquidity requirement for savings associations as unnecessary.¹ In light of this statutory repeal, OTS is removing part 566, except as discussed below.

2. Safety and Soundness Liquidity Requirement

As noted above, § 566.2(a) requires each savings association to maintain sufficient liquidity to assure its safe and sound operation. OTS imposed this requirement in 1997 to reflect OTS's position that the statutory liquidity requirement was not necessarily indicative of a safe level of liquidity, and to highlight that OTS determines the adequacy of an institution's liquidity on a case-by-case basis.²

OTS proposes to retain this regulatory liquidity requirement at § 563.161, Management and Financial Policies. This rule simplifies the language of current § 563.161(a), and adds a new paragraph codifying existing requirements that each savings association and service corporation maintain sufficient liquidity to ensure its safe and sound operation. The appropriate levels of liquidity will vary depending upon the types of activities in which the company engages.

We invite comment on whether OTS should provide further guidance on this safety and soundness requirement. For example, should the regulation describe or list the types of investments or activities that OTS will consider in determining whether a savings association or service corporation is maintaining sufficient liquidity for safe and sound operation?

B. Definition of Liquid Assets

Part 566 includes a definition of liquid assets and related definitions at § 566.1. The definition of liquid assets includes cash, deposits in insured banks, government issued or guaranteed obligations, banker's acceptances, shares in open-ended management investment companies, corporate debt and commercial paper, mortgage-related securities, and residential mortgage

¹ 146 Cong. Rec. H 11,991 (daily ed. Dec. 5, 2000).

² 62 FR 62509-62513 62513 (Nov. 24, 1997).

loans. Since that definition is not needed for purposes of the repealed statutory liquidity requirement, OTS considered whether the definitions in § 566.1 are needed for purposes of various other statutory and regulatory cross-references.

1. Federal Savings Association Investment Authority

Section 1201 of FRREAA made a conforming change to section 5(c)(1)(M) of the HOLA, which authorizes investments for federal savings associations. 12 U.S.C. 1464(c)(1)(M). Before FRREAA, section 5 provided that investments that satisfy the liquidity requirement of section 6 of the HOLA are authorized investments for a federal savings association. OTS implemented section 5 of the HOLA by listing the categories of statutory investment authority in a chart in 12 CFR 560.30. The entry for liquidity investments in that chart refers, in a footnote, to assets that qualify under the definition of liquid assets in § 566.1(g).

Section 1201 of FRREAA revised this investment authority provision to permit federal savings associations to invest in “[i]nvestments (other than equity investments), identified by the Director, for liquidity purposes, including cash, funds on deposit at a Federal reserve bank or a Federal home loan bank, or bankers’ acceptances.”

OTS believes that the statutory investment authority under section 5 of the HOLA, referenced in part 560, including the revised statutory definition of liquidity investments, covers all categories of investments that are covered in the definition of liquid assets in § 566.1(g). Therefore, it is not necessary, at this time, to identify additional types of authorized liquidity investments to ensure that the investment authority still covers the categories listed in § 566.1(g). We specifically invite public comments, however, on whether the Director should exercise her authority under section 5(c)(1)(M) of the HOLA to identify other authorized investments for federal savings associations for liquidity purposes.

Because the statutory listing of authorized investments is complete, the rule implementing the investment authority provision does not need to refer to § 566.1(g). Accordingly, this interim rule removes the reference to § 566.1(g) from the footnote for liquidity investments in § 560.30(a).

2. QTL Requirement

Section 10(m) of the HOLA contains the qualified thrift lender (QTL) requirement for savings associations. 12

U.S.C. 1467a(m). This section provides that a savings association may fulfill the qualified thrift lender test by having at least 65 percent of its portfolio assets in qualified thrift investments. Before FRREAA, the statutory definition of “portfolio assets” referred to the value of liquid assets of the type that satisfy the statutory liquidity requirement.

Section 1201 of FRREAA revised the definition of portfolio assets in section 10(m)(4)(B)(iii) of the HOLA to refer to assets that satisfy the liquidity requirement as in effect the day before enactment of FRREAA. OTS construes this statutory change to apply the regulatory definition of liquid assets—as it existed before repeal of the liquidity requirement—to the portfolio asset element of the QTL test. While OTS regulations do not contain any provisions implementing the QTL test, OTS will make appropriate changes in guidance to incorporate this interpretation. OTS invites comment on this statutory interpretation.

3. Savings and Loan Holding Company Investment Authority

OTS regulations at § 584.2–1(a) address authorized investments for savings and loan holding companies (SLHCs). Specifically, this rule states that an SLHC, and any subsidiary that is not a savings association, may invest in “the types of securities specified in § 566.1.” The predecessor to this provision was added in 1974 in response to a request from commenters that the agency clarify that an SLHC and any non-insured subsidiary other than a service corporation could invest in various types of government securities.³

The types of securities listed in § 566.1 are authorized investments for SLHCs under section 10(c)(2)(F)(ii) of the HOLA because multiple SLHCs were permitted by regulation to hold such investments as of March 5, 1987. 12 U.S.C. 1467a(c)(2)(F)(ii). Therefore, we believe the cross-reference to § 566.1 in § 584.2–1(a) is unnecessary and can be removed. OTS has made an additional conforming change to ensure that these investment activities will not be subject to a notice requirement under § 584.2–1(c).

The definitions of liquid assets and associated terms currently found in § 566.1 are not needed in the regulations for the percentage liquidity requirement, the investment authority of savings associations, the QTL test, or the investment authority of SLHCs. Consequently, this interim rule removes § 566.1.

³ 39 FR 22943 (June 25, 1974).

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires federal banking agencies to use “plain language” in all proposed and final rules published after January 1, 2000. 12 U.S.C. 4809. All of the changes made in this rule, except for the revision of § 563.161, remove language or add a simple phrase. We invite comment on whether the changes in this rule make OTS regulations easier to understand.

II. Justification for Interim Rule

A. Notice and Comment Requirement

Section 553 of the Administrative Procedure Act (APA) permits an agency to issue rules without prior notice and comment if the agency finds good cause and explains its finding when it publishes the rule. 5 U.S.C. 553(b)(B). A finding that notice and comment are impracticable, unnecessary, or contrary to the public interest constitutes good cause.

As discussed more fully above, OTS has examined the need for the liquidity regulation and has determined that the regulation is no longer necessary. The safety and soundness liquidity requirement currently found in part 566, however, is preserved in part 563.

Elimination of the rule implementing the statutory liquidity requirement decreases burden on the industry and permits savings associations more flexibility in responding to the marketplace for financial services. Accordingly, OTS concludes that it is unnecessary and contrary to the public interest to solicit public notice and comment on these changes before making the rule effective. Nonetheless, OTS invites comments on this interim rule during the 60-day period following publication. In developing a final rule, OTS will consider all public comments it receives within that period.

B. Effective Date Requirement

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) requires that new OTS regulations and amendments to existing regulations take effect on the first day of a calendar quarter that begins on or after the date of publication of the rule. 12 U.S.C. 4802. The delayed effective date provision applies only if the rule imposes additional reporting, disclosure, or other new requirements on insured depository institutions. As a related matter, section 553 of the APA states that a rule must not be made effective before 30 days after its publication. 5 U.S.C. 553(b)(B). This APA provision does not apply, however,

if the rule grants or recognizes an exemption or relieves a restriction.

OTS concludes that neither CDRIA nor the APA precludes the publication of this rule with an immediate effective date. This rule makes only burden reducing, clarifying, and technical conforming amendments to OTS rules.

III. Findings and Certifications

A. Executive Order 12866

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

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires the OTS to prepare an Initial Regulatory Flexibility Analysis when the agency must publish a general notice of proposed rulemaking. 5 U.S.C. 603. As noted previously, OTS has determined that it is not necessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis.

Nonetheless, OTS has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities. This interim rule imposes no new requirements, and makes only burden reducing, clarifying, and technical conforming amendments to OTS current regulations.

C. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMA) applies only when an agency is required to issue a general notice of proposed rulemaking or when it publishes a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, OTS has determined, for good cause, that publication of a proposed rule is not necessary. Accordingly, OTS has concluded that the UMA does not require OTS to conduct an unfunded mandates analysis of this interim rule.

Moreover, OTS finds that this interim rule will not 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. Rather, the rule imposes no new requirements and makes only burden reducing, clarifying, and technical conforming amendments to current OTS regulations. Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

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, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision amends parts 506, 560, 563, 566, and 584 in Title 12, Chapter V, Code of Federal Regulations, as set forth below:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

§ 506.1 [Amended]

2. Amend § 506.1(b) by removing the entry for 566.4.

PART 560—LENDING AND INVESTMENT

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

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

§ 560.30 [Amended]

4. Amend the table in § 560.30 by removing footnote 10 and by redesignating footnotes 11 through 20 as footnotes 10 through 19, respectively.

PART 563—OPERATIONS

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

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 42 U.S.C. 4106.

6. In § 563.161, revise paragraph (a) to read as follows:

§ 563.161 Management and financial policies.

(a) (1) For the protection of depositors and other savings associations, each savings association and each service corporation must be well managed and operate safely and soundly. Each also must pursue financial policies that are safe and consistent with economical home financing and the purposes of savings associations. In implementing this section, OTS will consider that service corporations may be authorized to engage in activities that involve a higher degree of risk than activities permitted to savings associations.

(2) As part of meeting its requirements under paragraph (a)(1) of this section, each savings association and service corporation must maintain sufficient liquidity to ensure its safe and sound operation.

* * * * *

PART 566—[REMOVED]

7. Remove part 566.

PART 584—REGULATED ACTIVITIES

8. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 584.2–1 [Amended]

9. Amend § 584.2–1 by removing the last sentence of paragraph (a); and by adding to paragraph (c)(1), the phrase “(other than purchase or sale of a government debt security)” after the phrase “this section”.

Dated: March 2, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–6399 Filed 3–14–01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 544 and 552

[No. 2001–15]

RIN 1550–AB39

Federal Savings Association Bylaws; Integrity of Directors

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.