

require the savings association to divest the loan, unwind the transaction, or take other appropriate action.

(2) *Purchases or investments in securities.* A savings association may not purchase or invest in securities issued by any affiliate other than with respect to shares of a subsidiary. For the purposes of this paragraph (c)(2), subsidiary includes a bank and a savings association.

(3) *Recordkeeping.* A savings association must make and retain records that reflect, in reasonable detail, all transactions between the savings association and its affiliates and any other person to the extent that the proceeds of a transaction are used for the benefit of, or transferred to, an affiliate. At a minimum, these records must:

- (i) Identify the affiliate;
- (ii) Specify the dollar amount of the transaction and demonstrate that this amount is within the quantitative limits in 12 CFR 223.11 and 223.12, or that the transaction is not subject to those limits;
- (iii) Indicate whether the transaction involves a low-quality asset;
- (iv) Identify the type and amount of any collateral involved in the transaction and demonstrate that this collateral meets the requirements in 12 CFR 223.14 or that the transaction is not subject to those requirements;
- (v) Demonstrate that the transaction complies with 12 CFR part 223, subpart F or that the transaction is not subject to those requirements;
- (vi) Demonstrate that all loans and extensions of credit to affiliates comply with paragraph (c)(1) of this section; and
- (vii) Be readily accessible for examination and supervisory purposes.

(4) *Notice requirement.* (i) OTS may require a savings association to notify the agency before the savings association may engage in a transaction with an affiliate or a subsidiary (other than exempt transactions under 12 CFR part 223). OTS may impose this requirement if:

- (A) The savings association is in troubled condition as defined at § 563.555 of this part;
- (B) The savings association does not meet its regulatory capital requirements;

(C) The savings association commenced *de novo* operations within the past two years;

(D) OTS approved an application or notice under 12 CFR part 574 involving the savings association or its holding company within the past two years;

(E) The savings association entered into a consent to merge or a supervisory agreement within the past two years; or

(F) OTS or another banking agency initiated a formal enforcement proceeding against the savings association and the proceeding is pending.

(ii) OTS must notify the savings association in writing that it has imposed the notice requirement and must identify the circumstance listed in paragraph (c)(4)(i) of this section that supports the imposition of the notice requirement.

(iii) If OTS has imposed the notice requirement under this paragraph, a savings association must provide a written notice to OTS at least 30 days before the savings association may enter into a transaction with an affiliate or a subsidiary. The written notice must include a full description of the transaction. If OTS does not object during the 30-day period, the savings association may proceed with the proposed transaction.

[68 FR 57797, Oct. 7, 2003, as amended at 68 FR 75110, Dec. 30, 2003]

**§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.**

Pursuant to 12 U.S.C. 1463(a) and 1468, a savings association, its subsidiaries and its insiders (as defined) shall be subject to the restrictions contained in 12 CFR Part 215, subparts A and B of the Federal Reserve Board's Regulation O, with the exception of 12 CFR 215.13, in the same manner and to the same extent as if the association were a bank and a member bank of the Federal Reserve System, except that:

- (a) Such provisions shall be administered and enforced by the OTS;
- (b) References to the term "bank holding company" shall be deemed to refer to "savings and loan holding company";
- (c) References to "report of condition filed under 12 U.S.C. 1817(a)(3)" shall be

deemed to refer to “Thrift Financial Report”;

(d) The term *subsidiary* includes a savings association that is controlled by a company (including for this purpose an insured depository institution) that is a savings and loan holding company. A company has control over a saving association if it: directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities; or would be deemed to control the company under § 574.4(a) of this chapter or presumed to control the company under § 574.4(b) of this chapter, and in the latter case, control has not been rebutted. Notwithstanding any other provision of this section, no company shall be deemed to own or control another by virtue of its ownership or control of shares in a fiduciary capacity. When used to refer to a subsidiary of a savings association, the term *subsidiary* means a “subsidiary” that is controlled by the savings association within the meaning of 12 CFR part 574 of this chapter.

(e) References to the Reserve Bank or the Comptroller shall be deemed to include the Director of OTS; and

(f) References to the term “unimpaired capital and unimpaired surplus” shall be deemed to refer to “unimpaired capital and unimpaired surplus” as defined at § 560.93(b)(11) of this part.

[57 FR 45980, Oct. 6, 1992, as amended at 59 FR 53571, Oct. 25, 1994; 60 FR 66869, Dec. 27, 1995; 67 FR 77918, Dec. 20, 2002; 68 FR 57798, Oct. 7, 2003; 69 FR 76602, Dec. 22, 2004]

#### § 563.47 Pension plans.

(a) *General.* No savings association or service corporation thereof shall sponsor an employee pension plan which, because of unreasonable costs or any other reason, could lead to material financial loss or damage to the sponsor. For purposes of this section, an employee pension plan is defined in section 3(2) of the Employee Retirement Income Security Act of 1974, as amended. The prospective obligation or liability of a plan sponsor to each plan participant shall be stated in or determinable from the plan, and, for a defined benefit plan, shall also be based

upon an actuarial estimate of future experience under the plan.

(b) *Funding.* Actuarial cost methods permitted under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, shall be used to determine plan funding.

(c) *Plan amendment.* A plan may be amended to provide reasonable annual cost-of-living increases to retired participants: *Provided, That*

(1) Any such increase shall be for a period and amount determined by the sponsor’s board of directors, but in no event shall it exceed the annual increase in the Consumer Price Index published by the Bureau of Labor Statistics; and

(2) No increase shall be granted unless (i) anticipated charges to net income for future periods have first been found by such board of directors to be reasonable and are documented by appropriate resolution and supporting analysis; and (ii) the increase will not reduce the association’s regulatory capital below its regulatory capital requirement.

(d) *Termination.* The plan shall permit the sponsor’s board of directors and its successors to terminate such plan. Notice of intent to terminate shall be filed with the OTS at least 60 days prior to the proposed termination date.

(e) *Records.* Each savings association or service corporation maintaining a plan not subject to recordkeeping and reporting requirements of the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1954, as amended, shall establish and maintain records containing the following:

- (1) Plan description;
- (2) Schedule of participants and beneficiaries;
- (3) Schedule of participants and beneficiaries’ rights and obligations;
- (4) Plan’s financial statements; and
- (5) Except for defined contribution plans, an opinion signed by an enrolled actuary (as defined by the Employee Retirement Income Security Act of 1974) affirming that actuarial assumptions in the aggregate are reasonable, take into account the plan’s experience