

§ 559.5

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the welfare of low- and moderate-income communities or families (such as providing housing, services, or jobs);

(3) Investments in low-income housing tax credit and new markets 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 26 U.S.C. 501(c)(3) of the Internal Revenue Code 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 owners of the service corporation operate.

(i) Activities conducted on behalf of a customer on an other than “as principal” basis.

(j) Activities reasonably incident to those listed in paragraphs (a) through (i) of this section if the service corporation engages in those activities.

[61 FR 66571, Dec. 18, 1996, as amended by 66 FR 13007, Mar. 2, 2001; 66 FR 65824, Dec. 21, 2001; 69 FR 68249, Nov. 24, 2004; 70 FR 76675, Dec. 28, 2005]

§ 559.5 How much may a savings association invest in service corporations or lower-tier entities?

The amount that a federal savings association (“you”) may invest in a service corporation or any lower-tier entity depends upon several factors. These include your total assets, your capital, the purpose of the investment, and your ownership interest in the service corporation or entity.

(a) Under section 5(c)(4)(B) of the HOLA, you may invest up to 3% of your assets in the capital stock, obligations, and other securities of service corporations. Any investment you make under this paragraph that would cause your investment, in the aggregate, to exceed 2% of your assets 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) In addition to the amounts you may invest under paragraph (a) of this section, and to the extent that you have authority under other provisions of section 5(c) of the HOLA and part 560 of this chapter, and available capacity within any applicable investment limits, you may make loans to any service corporation and any lower-tier entity, subject to the following conditions:

(1) You and your GAAP-consolidated subsidiaries may, in the aggregate, make loans of up to 15% of your capital as defined in § 567.5(c) of this chapter to each subordinate organization that does not qualify as a GAAP-consolidated subsidiary. All loans made under this paragraph (b)(1) may not, in the aggregate, exceed 50% of your total capital, as defined in § 567.5(c) of this chapter.

(2) The Regional Director may limit the amount of loans to a GAAP-consolidated subsidiary, or may adjust the limits set forth in paragraph (b)(1) of this section where safety and soundness considerations warrant such action.

(c) For purposes of this section, the terms “loans” and “obligations” include all loans and other debt instruments (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 or debt instruments.

Subpart B—Regulations Applicable to All Savings Associations

§ 559.10 How must separate corporate identities be maintained?

(a) Each savings association and subordinate organization thereof must be

operated in a manner that demonstrates to the public that each maintains a separate corporate existence. 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 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 to the subordinate organization, all borrowings by the subordinate organization indicate that the parent is not liable.

(b) OTS regulations that apply both to savings associations and subordinate organizations shall not be construed as requiring a savings association and its subordinate organizations 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”) under part 516, subpart A 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 Federal Deposit Insurance Corporation (FDIC) requires under 12 CFR 362.15. 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 under the standard treatment processing procedures at part 516, subpart A and E of this chapter before establishing or acquiring the subsidiary or engaging in new activities in the subsidiary.

[61 FR 66571, Dec. 18, 1996, as amended at 64 FR 69185, Dec. 10, 1999; 66 FR 13007, Mar. 2, 2001]

§ 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”) may issue. 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 § 559.11 of this part at least 30 days before your first issuance of 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.

(c) For as long as any securities are outstanding, you must maintain all records generated through each securities issuance in the ordinary course of business, including a copy of any prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by OTS. Such records must include, but are not limited to:

(1) The amount of your assets or liabilities (including any guarantees you make with respect to the securities issuance) that have been transferred or made 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) issued by you or any third party;

(3) A description of the securities the subsidiary issued;

(4) 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 gross proceeds of the securities issuance; and the market