

*Supervisory goodwill.* The term *supervisory goodwill* means goodwill<sup>2</sup> resulting from the acquisition, merger, consolidation, purchase of assets, or other business combination (if such transaction occurred on or before April 12, 1989) of

(1) A savings association where the fair market value of assets was less than the fair market value of liabilities at the acquisition date; or

(2) A problem institution.

*Tier 1 capital.* The term *Tier 1 capital* means core capital as computed in accordance with § 567.5(a) of this part.

*Tier 2 capital.* The term *Tier 2 capital* means supplementary capital as computed in accordance with § 567.5 of this part.

*Total assets.* The term *total assets* means total assets as would be required to be reported for consolidated entities on period-end reports filed with the Office in accordance with generally accepted accounting principles.

*Traded position.* The term *traded position* means a position retained, assumed, or issued in connection with a securitization that is rated by a NRSRO, where there is a reasonable expectation that, in the near future, the rating will be relied upon by:

(1) Unaffiliated investors to purchase the security; or

(2) An unaffiliated third party to enter into a transaction involving the position, such as a purchase, loan, or repurchase agreement.

*Unconditionally cancelable.* The term *unconditionally cancelable* means, with respect to a commitment-type lending arrangement, that the savings association may, at any time, with or without cause, refuse to advance funds or extend credit under the facility. In the case of home equity lines of credit, the savings association is deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the line, and terminate the commitment to the full extent permitted by relevant Federal law.

<sup>2</sup>Goodwill that has been written off of an association's balance sheet for its GAAP financial statements or Thrift Financial Report cannot be counted as supervisory goodwill.

*United States Government or its agencies.* The term *United States Government or its agencies* means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government.

*United States Government-sponsored agency or corporation.* The term *United States Government-sponsored agency or corporation* means an agency or corporation originally established or chartered to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

[54 FR 49649, Nov. 30, 1989, as amended at 57 FR 12709, Apr. 13, 1992; 57 FR 33439, July 29, 1992; 58 FR 15086, Mar. 19, 1993; 59 FR 12810, Mar. 18, 1994; 60 FR 39232, Aug. 1, 1995; 60 FR 42028, Aug. 15, 1995; 61 FR 66579, Dec. 18, 1996; 62 FR 66263, Dec. 18, 1997; 63 FR 42678, Aug. 10, 1998; 64 FR 10200, Mar. 2, 1999; 66 FR 59661, Nov. 29, 2001; 67 FR 16979, Apr. 9, 2002; 67 FR 31726, May 10, 2002; 68 FR 56536, Oct. 1, 2003; 69 FR 44924, July 28, 2004]

#### **§ 567.2 Minimum regulatory capital requirement.**

(a) To meet its regulatory capital requirement a savings association must satisfy each of the following capital standards:

(1) *Risk-based capital requirement.* (i) A savings association's minimum risk-based capital requirement shall be an amount equal to 8% of its risk-weighted assets as measured under § 567.6 of this part.

(ii) A savings association may not use supplementary capital to satisfy this requirement in an amount greater than 100% of its core capital as defined in § 567.5 of this part.

(2) *Leverage ratio requirement.* (i) A savings association's minimum leverage ratio requirement shall be the amount set forth in § 567.8 of this part.

(ii) A savings association must satisfy this requirement with core capital as defined in § 567.5(a) of this part.

(3) *Tangible capital requirement.* (i) A savings association's minimum tangible capital requirement shall be the amount set forth in § 567.9 of this part.

(ii) A savings association must satisfy this requirement with tangible

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capital as defined in §567.9 of this part in an amount not less than 1.5% of its adjusted total assets.

(b) [Reserved]

(c) Savings associations are expected to maintain compliance with all of these standards at all times.

[54 FR 49649, Nov. 30, 1989, as amended at 57 FR 33440, July 29, 1992; 58 FR 45813, Aug. 31, 1993; 62 FR 66263, Dec. 18, 1997; 64 FR 10201, Mar 2, 1999; 66 FR 59663, Nov. 29, 2001]

#### §567.3 Individual minimum capital requirements.

(a) *Purpose and scope.* The rules and procedures specified in this section apply to the establishment of an individual minimum capital requirement for a savings association that varies from the requirement that would otherwise apply to the savings association under §567.2 of this part. Pursuant to 12 U.S.C. 1464(s), the OTS may establish such individual minimum capital requirements for savings associations as it deems necessary or appropriate on a case-by-case basis in light of the particular circumstances of each savings association.

(b) *Appropriate considerations for establishing individual minimum capital requirements.* Minimum capital levels higher than those required under §567.2 may be appropriate for individual savings associations. Increased individual minimum capital requirements may be established upon a determination that the savings association's capital is or may become inadequate in view of its circumstances. For example, higher capital levels may be appropriate for:

(1) A savings association receiving special supervisory attention;

(2) A savings association that has or is expected to have losses resulting in capital inadequacy;

(3) A savings association that has a high degree of exposure to interest rate risk, prepayment risk, credit risk, concentration of credit risk, certain risks arising from nontraditional activities, or similar risks; or a high proportion of off-balance sheet risk, especially stand-by letters of credit;

(4) A savings association that has poor liquidity or cash flow;

(5) A savings association growing, either internally or through acquisitions, at such a rate that supervisory

problems are presented that are not dealt with adequately by other Office regulations or other guidance;

(6) A savings association that may be adversely affected by the activities or condition of its holding company, affiliate(s), subsidiaries, or other persons or savings associations with which it has significant business relationships, including concentrations of credit;

(7) A savings association with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or that has loans in nonperforming status or on which borrowers fail to comply with repayment terms;

(8) A savings association that has inadequate underwriting policies, standards, or procedures for its loans and investments; or

(9) A savings association that has a record of operational losses that exceeds the average of other, similarly situated savings associations; has management deficiencies, including failure to adequately monitor and control financial and operating risks, particularly the risks presented by concentrations of credit and nontraditional activities; or has a poor record of supervisory compliance.

(c) *Standards for determination of appropriate individual minimum capital requirements.* The appropriate minimum capital level for an individual savings association cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based, in part, on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(1) The conditions or circumstances leading to the determination that a higher minimum capital requirement is appropriate or necessary for the savings association;

(2) The exigency of those circumstances or potential problems;

(3) The overall condition, management strength, and future prospects of the savings association and, if applicable, its holding company, subsidiaries, and affiliates;