

company's list of policymaking positions, and the employee does not, in fact, exercise any policymaking function with the savings and loan holding company.

(4) The employee:

(i) Is not an institution-affiliated party of the savings and loan holding company other than by virtue of the employment described in paragraph (a) of this section.

(ii) Does not own or control, directly or indirectly, the savings and loan holding company; and

(iii) Does not participate, directly or indirectly, in the conduct of the affairs of the savings and loan holding company.

(b) *Temporary exemption.* (1) Any prohibited person who was an institution-affiliated party with respect to a savings and loan holding company, who owned or controlled, directly or indirectly a savings and loan holding company, or who otherwise participated directly or indirectly in the conduct of the affairs of a savings and loan holding company on October 13, 2006, may continue to hold the position with the savings and loan holding company.

(2) This exemption expires on March 1, 2008, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 585.110 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

(i) The date of issuance of an OTS order approving the application under § 585.130(a);

(ii) The expiration of the 20-day period for filing a request for hearing under § 585.130(b) provided there is no timely request for hearing following the issuance of an OTS order denying the application under that section;

(iii) The date that OTS denies a timely request for hearing under § 585.140(a) following the issuance of an OTS order denying the application under § 585.130(b);

(iv) The date that the Director issues a decision under § 585.140(d); or

(v) The date an applicant withdraws the application.

[72 FR 25955, May 8, 2007, as amended at 72 FR 50645, Sept. 4, 2007]

§ 585.110 How do I apply for a case-by-case exemption?

(a) *Who may file.* (1) A savings and loan holding company or a person who was convicted of a criminal offense described in § 585.40 or who has agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such a criminal offense ("you") may file an application seeking an OTS order granting an exemption from the prohibitions in this part.

(2) You may seek an exemption only for a designated position (or positions) with respect to a named savings and loan holding company.

(3) You may not file an application less than one year after the latter of the date of OTS's denial of the same exemption under § 585.130(b), § 585.140(a)(2) or § 585.140(d).

(b) *Application and review procedures.* You may seek OTS approval by filing your application with OTS under the standard treatment described in 12 CFR part 516, subpart A of this chapter. OTS will review your application under 12 CFR part 516, subpart E of this chapter (excluding 12 CFR 516.270 and 516.280).

(c) *Prohibition pending OTS action.* Unless you are exempt under § 585.100(b), the prohibitions in § 585.30 continue to apply pending OTS action on your application.

§ 585.120 What factors will OTS consider in reviewing my application?

(a) *OTS review.* (1) In determining whether to approve an exemption application filed under § 585.110, OTS will consider the extent to which the position that is the subject of your application enables a person to:

(i) Participate in the major policymaking functions of the savings and loan holding company; or

(ii) Threaten the safety and soundness of any insured depository institution that is controlled by the savings and loan holding company, the interests of its depositors, or the public confidence in the insured depository institution.

(2) OTS will also consider whether you have demonstrated the person's fitness to hold the described position. Some positions may be approved without an extensive review of a person's

§ 585.130

fitness because the position does not enable a person to take the actions described in paragraph (a)(1) of this section.

(b) *Factors.* In making the determinations under paragraph (a) of this section, OTS will consider the following factors:

- (1) The position;
- (2) The amount of influence and control a person holding the position will be able to exercise over the affairs and operations of the savings and loan holding company and the insured depository institution;
- (3) The ability of the management of the savings and loan holding company to supervise and control the activities of a person holding the position;
- (4) The level of ownership that the person will have at the savings and loan holding company;
- (5) The specific nature and circumstances of the criminal offense. The question whether a person who was convicted of a crime or who agreed to enter into a pretrial diversion or similar program for a crime was guilty of that crime is not relevant;
- (6) Evidence of rehabilitation; and
- (7) Any other relevant factor.

§ 585.130 How will I know if my application is approved?

(a) *Approval.* If OTS approves your application, OTS will issue an approval order. An approval order will include a summary of the relevant factors that OTS considered under § 585.120, will require fidelity bond coverage for the position to the same extent as similar positions with the SLHC. The approval order may include such other conditions as may be appropriate.

(b) *Denial.* If OTS denies your application, OTS will issue a denial order. The denial order will include the following written information:

- (1) A summary of the relevant factors that OTS considered under § 585.120; and
- (2) A statement indicating that you may file a written request demonstrating good cause for a hearing on the denial of your application, and that you must file this request with OTS within 20 days of the date of issuance of the order.

12 CFR Ch. V (1–1–08 Edition)

§ 585.140 What procedures govern a hearing on my application?

(a) *OTS review of hearing request.* OTS will review your hearing request to determine if you have demonstrated good cause for a hearing on your application. Within 30 days after the filing of a timely request for a hearing, OTS will notify you in writing of its decision to grant or deny the hearing request. If OTS grants your request for a hearing, it will order a hearing to be commenced within 60 days of the issuance of the notification. Upon the request of a party, the OTS may order a later hearing date.

(b) *Hearing procedures.* Hearing procedures are set out at 12 CFR part 509, subpart D of this chapter.

PART 590—PREEMPTION OF STATE USURY LAWS

Sec.

- 590.1 Authority, purpose, and scope.
- 590.2 Definitions.
- 590.3 Operation.
- 590.4 Federally-related residential manufactured housing loans—consumer protection provisions.
- 590.100 Status of Interpretations issued under Public Law 96-161.
- 590.101 State criminal usury statutes.

AUTHORITY: 12 U.S.C. 1735f-7a.

SOURCE: 54 FR 49715, Nov. 30, 1989, unless otherwise noted.

§ 590.1 Authority, purpose, and scope.

(a) *Authority.* This part contains regulations issued under section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 161.

(b) *Purpose and scope.* The purpose of this permanent preemption of state interest-rate ceilings applicable to Federally-related residential mortgage loans is to ensure that the availability of such loans is not impeded in states having restrictive interest limitations. This part applies to loans, mortgages, credit sales, and advances, secured by first liens on residential real property, stock in residential cooperative housing corporations, or residential manufactured homes as defined in § 590.2 of this part.