

RESCINDED

Department of the Treasury
Office of Thrift Supervision
Transmittal



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With the attached final rule, the Office of Thrift Supervision (OTS) is revising its requirement that all savings institutions obtain an annual independent audit. Instead, for large institutions, OTS will rely on a Federal Deposit Insurance Corporation (FDIC) rule requiring such audits for all thrifts and banks with assets exceeding \$500 million.


The change is not intended to discourage smaller, healthy institutions from obtaining an independent audit, but is leaving that decision up to each institution's management.

OTS retains the authority to require an independent audit of any savings association or thrift holding company if deemed advisable for safety and sound-

ness purposes. In addition, any savings institution receiving an examination rating of CAMEL 3, 4 or 5 and any savings and loan holding company whose subsidiaries have assets of \$500 million or more will continue to be subject to an annual independent audit requirement. These requirements may be waived or modified in appropriate circumstances.

The change promotes comparability and consistency among federal banking agencies by making the audit rules for savings associations more consistent with those for commercial banks.

The final rule is expected to be published in the November 23, 1994, edition of the *Federal Register*.


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Attachment

DEPARTMENT OF THE TREASURY
Office of Thrift Supervision
12 CFR Parts 550, 552, 562, 563 and 571
[No. 94-246]
RIN 1550-AA68
Annual Independent Audits

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting a final rule that amends its annual independent audit requirements for savings associations to be more consistent with those applicable to other federally insured depository institutions. Pursuant to Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) all insured depository institutions with total assets of \$500 million or more are required to obtain an annual independent audit. OTS is amending its rules in order to eliminate the mandatory annual independent audit requirement for small savings associations with composite CAMEL ratings of 1 or 2; to rely on the FDICIA section 112 independent audit requirements for savings associations with assets of \$500 million or more; and to adopt regulatory language to allow OTS to require an independent audit of any savings association with assets of less than \$500 million, as needed for purposes of safety and soundness.

EFFECTIVE DATE: [Insert date 30 days from date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

I. Background and Description of Proposal

On March 22, 1994, OTS published a notice of proposed rulemaking to amend the regulatory framework governing independent audits of savings associations' financial statements. The proposed amendments were designed to achieve comparability with the framework used by the other Federal banking agencies¹ for banks. Historically, OTS regulations and policies required

¹The term "other Federal banking agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

all savings associations and savings and loan holding companies to obtain an annual independent audit of their financial statements. In contrast, the regulations and policies of the other Federal banking agencies generally encourage all banks and bank holding companies to obtain an annual independent audit, but only mandate that certain institutions obtain audits. OTS' proposal recognized that a well planned and executed independent audit could improve the reliability of regulatory reports, such as the Thrift Financial Report (TFR). The proposal also recognized, however, that the current OTS audit requirement could be modified to reduce regulatory burden without increasing the risk of unsafe and unsound regulatory reporting.

Under the proposal, savings associations with assets of \$500 million or more would continue to be audited pursuant to Section 112 of FDICIA² and the FDIC's implementing regulation 12 CFR Part 363. The FDIC regulation requires audits of all FDIC-insured depository institutions with assets of \$500 million or more, includes financial statement and internal control reporting requirements, and sets minimum qualifications for independent public accountants and for members of the board of directors' audit committee.

Under the proposal, small savings associations (i.e., those with assets of less than \$500 million), were required to obtain annual independent audits of their financial statements whenever OTS believed an independent audit was necessary to supplement other safety and soundness supervisory activities. The proposal included a request for comment on the specific safety and soundness criteria that should be used to determine when such an audit would be appropriate. The proposal required that such audits utilize the same qualifications for independent public accountants as those applicable to institutions covered by the FDIC regulation. The proposal provided that when small savings associations obtained an audit voluntarily the audit would be conducted in accordance with generally accepted auditing standards (GAAS) and the resulting reports and supporting audit work papers would be made available to OTS upon request.

Finally, the proposal included specific requests for comment on the audit requirements for trust operations, holding company financial statements, and savings associations overall. The objective of these inquiries was to assist OTS in developing an audit approach for these types of audits that would be responsive to the safety and soundness needs and comparable to the approach

²This provision is codified at section 36 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1831m.

used by the other Federal banking agencies.

II. Summary of Comments and OTS Response

OTS received ten comments letters on the proposal. Commenters included seven savings associations, two trade associations, and a Federal banking agency. Overall, the commenters were supportive of the proposal and offered suggestions on implementing the approach. Only one commenter (a thrift) expressed significant opposition to the elimination of the mandatory audit requirement. Commenters also responded to the six specific requests for comment that were included in the proposal. The issues and comments raised by those responses are addressed below.

A. Benefits of Annual Independent Audits to Small Savings Associations

Five small savings associations commented on the issue of whether audits were beneficial to small savings associations and improved the accuracy of the Thrift Financial Report (TFR). Four of the commenters suggested that audits were of little or no benefit since they typically do not focus on the association's internal operations or the TFR process. In addition, these commenters suggested that audits often overlapped with OTS safety and soundness examinations in key areas. One commenter suggested that audits were quite valuable because they are often the only independent review of management's activities.

OTS believes that an independent audit can help address safety and soundness concerns regarding the accuracy of an institution's financial reports and the effectiveness of its internal controls over financial reporting. Nonetheless, OTS believes that decision should be left to the management of healthy savings associations that meet the size and composite rating criteria discussed above.

Therefore, the final rule eliminates the mandatory annual audit requirement for institutions with less than \$500 million in assets and composite CAMEL ratings of 1 or 2. The rule is intended to reduce the regulatory burden on those institutions while ensuring consistency between the audit requirements administered by the OTS and those administered by the FDIC. It is not intended to discourage such an institution from obtaining an annual independent audit. Management should carefully consider the value of the annual independent audit to the safety, soundness, and effectiveness of the institution's control systems in deciding whether to continue the practice.

OTS will retain its ability to require audits of any small savings associations that present certain safety and soundness concerns as discussed in Item B below.

B. Safety and Soundness Concerns

Most of the commenters suggested alternatives to the mandatory audit requirement that would mitigate the risk of unsafe and unsound regulatory reporting. Three commenters suggested that independent audits be required for all MACRO (CAMEL) 4 or 5 rated institutions or other supervisory measures of risk. These commenters also suggested that a waiver provision be included in any safety and soundness requirement. Two commenters suggested that OTS simply rely on the judgment of institution boards of directors to determine whether an audit is needed and specifically encourage boards of directors to obtain audits as part of a plan for sound financial reporting.

OTS has decided to use the CAMEL 3, 4 and 5 rating as a measure of risk to identify when an independent audit is required. An institution that receives a CAMEL 3 rating for safety and soundness concerns exhibits a combination of financial, operational, or compliance weaknesses. When weaknesses relate to financial condition, such institutions may be vulnerable to the onset of adverse business conditions and could easily deteriorate if concerted action is not effective in correcting the areas of weakness. An institution that receives a CAMEL 4 or 5 rating has a significant level of serious financial weaknesses or a combination of other conditions that are unsatisfactory. For these reasons, OTS believes that an audit requirement for CAMEL 3, 4 or 5 rated institutions is generally an effective use of independent audit resources. The rule thus requires a CAMEL 3, 4 or 5 rated institution to obtain an independent audit, unless notified otherwise by OTS.

OTS recognizes that an institution may receive a CAMEL 3, 4 or 5 rating for safety and soundness concerns unrelated to any issue that would be addressed by an independent audit. It also recognizes that the FDIC Board chose not to require independent audits of all troubled banks. As a result, the final rule provides that in certain cases, the OTS Director may determine that the independent audit is unnecessary, and the required audit would be waived for the institution in question. In addition, the OTS Director may modify the audit requirement by requiring procedures agreed to by OTS if such agreed upon procedures are effective to address specific safety and soundness concerns that a particular institution presents.

The Director's authority to require audits on a case-by-case

basis, or to waive or modify an audit requirement in appropriate circumstances may be delegated.

C. OTS Access to Work Papers of Small Savings Association Audits

Five commenters responded to the issue of whether OTS should have access to audit work papers in cases where a small savings association obtains an audit voluntarily. Most of the commenters were in favor of granting access to work papers if it increases the efficiency of the examination process. Two commenters were opposed to granting access to audit work papers based on the rationale that by rescinding the audit requirement, OTS is no longer an intended beneficiary of the audit process.

In the interest of eliminating duplicative efforts, OTS believes it would be beneficial for small savings associations, who voluntarily have audits, to have their independent auditors make audit work papers available to OTS as part of their audit engagement. OTS encourages candid communication between examiners and independent auditors. OTS policy encourages examiners to utilize independent audit work papers to plan examinations and to reduce duplicative efforts and to share examination work products with independent auditors. OTS believes that it would be extremely beneficial for examiners and auditors to continue to share their work products. Therefore, OTS will require that the engagement letters for required and voluntary audits contain a provision that gives OTS access to the audit work papers. This provision is a continuation of the current OTS policy in Public Accountant (PA) Bulletin 7a, "Audits of Insured Institutions, Service Corporations and Joint Ventures by Independent Public Accountants."

D. Holding Company Audit Requirements

A few commenters presented suggestions on the manner in which OTS should determine whether a savings and loan holding company is required to obtain an audit for safety and soundness purposes. One commenter suggested OTS utilize the same requirements that are applicable to bank holding companies. Currently, the rules and policies applicable to bank holding companies require an annual independent audit of all holding companies with consolidated assets of \$150 million or more. Other commenters suggested that savings and loan holding companies be required to obtain an audit if they are a multiple holding company (*i.e.*, owner of more than one depository institution) or have assets in excess of \$1 billion.

An objective in developing the overall OTS audit approach

was to attain comparability with the other Federal banking agencies. Because the Federal Reserve's bank holding company audit requirement and the FDIC's insured depository institution audit requirement differ, OTS weighed the advantages and disadvantages of each agency's asset threshold. Setting a lower asset threshold (*i.e.*, \$150 million) at the holding company level would, in effect, require certain insured subsidiary institutions to obtain an audit that would otherwise not have been required by the FDIC.

In determining the exposure to a thrift posed by its parent holding company, the OTS focuses primarily on the relationship and transactions between the thrift and its affiliates. OTS believes that its current holding company regulatory structure limits the risks from intercompany transactions that may not be in the best interests of the thrift.

To avoid situations where the holding company audit requirement would essentially create an audit requirement for the subsidiary institution, OTS has decided against adopting the Federal Reserve's \$150 million threshold for bank holding companies. Instead, OTS will require audits of holding companies whose subsidiary savings association(s) have aggregate assets of \$500 million or more. OTS selected the \$500 million asset threshold to achieve comparability with the approach utilized in the FDIC regulation. This requirement has also been incorporated into the instructions to the annual/current holding company report H-(b)11.

The final rule provides that the Director of OTS may require, at any time, an independent audit of any savings and loan holding company, with aggregate assets of less than \$500 million, when needed for purposes of safety and soundness.

E. Alternatives to Auditing Procedures for Bank Secrecy Act and Third Party Reviews of Service Bureaus that Could be Used to Address Safety and Soundness Concerns

A few commenters responded to the issue of whether OTS should continue to have independent auditors perform procedures to test compliance with the Bank Secrecy Act (BSA) and apply OTS standards for third-party reviews of service bureau internal controls. Commenters indicated that BSA compliance and service bureau internal controls should be tested in more detail by an institution's internal audit staff and OTS examiners.

OTS initially required independent auditors to test savings associations' compliance with the BSA as part of a strategy to closely monitor currency transactions. Since that time, OTS has

expanded the scope of examination procedures in this area and required their application in all types of examinations. OTS believes that BSA compliance is now adequately tested through the internal audit functions of institutions and the examination process. In December of 1993, OTS rescinded PA Bulletin 7a-3, "Auditors' and Accountants' Responsibilities Under Currency and Foreign Transactions Reporting Act (Bank Secrecy Act)". No audit requirements for testing compliance with the BSA are included in the final rule.

OTS issued its standards for third party reviews of service bureaus at a time when there was limited supervisory and professional auditing guidance on the subject. Since that time, OTS and the other banking agencies have developed a uniform examination approach for EDP functions including service bureaus. The auditing profession has also revised its standards on several occasions to address testing of service bureau internal controls. In addition, under the proposed OTS Standards for Safety and Soundness regulations, promulgated pursuant to section 39 of the FDI Act, associations would be required to maintain an internal audit system that adequately tests and reviews internal controls and information systems, including service bureaus. OTS believes that service bureau internal controls are adequately tested through an institution's internal audit function and the OTS examination process. Therefore, PA Bulletin 7-1a, "Standards for Audits of Insured Institutions Using Electronic Data Processing" will be rescinded.

F. Trust Audits

Several commenters presented suggestions on the requirements for audits of savings association trust departments. Two commenters suggested that trust departments should be audited based on the volume or dollar value of trust assets managed. Commenters indicated that trust department audits could be performed by internal auditors, external auditors, or OTS examiners. Commenters also suggested that trust department audits were generally more beneficial to the institution when performed by the internal audit function or as part of an OTS compliance review.

OTS believes that the approach for trust audits outlined in the proposal combined with examination procedures is responsive to safety and soundness concerns. Therefore, the final rule will implement the approach outlined in the proposal.

III. Description of Final Rule

A. General

The final rule generally follows the approach outlined in the proposal. Savings associations and savings and loan holding companies are no longer required to have independent audits except in cases where: (1) FDIC rule 12 CFR Part 363 requires independent audits of savings associations; (2) OTS requires independent audits of savings and loan holding companies (*i.e.*, holding companies with aggregate insured depository assets of \$500 million or more); or, (3) OTS requires an independent audit, or agreed-upon procedures, of a savings association or savings and loan holding company due to safety and soundness concerns (*e.g.*, CAMEL 3, 4 or 5 examination rating for savings associations or other identified safety and soundness concerns).

The final rule also includes two technical corrections to 12 CFR 562.3 - Statements of Condition - that were not included in the proposal. First, the final rule amends 12 CFR 562.3(b)(2) to eliminate language requiring savings associations to make their audited financial statements available to depositors upon request. This change was necessary due to the fact that the final rule eliminates the mandatory audit requirement. Any member of the public may obtain a copy of the audited financial statements of a savings association, or other FDIC-insured depository institution, that files a report with the FDIC pursuant to FDIC rule 12 CFR Part 363 simply by making a request to the institution.

Second, the final rule amends 12 CFR 562.3(d) to eliminate a cross reference to 12 CFR 571.2. This change was necessary due to the fact that the final rule eliminates 12 CFR 571.2.

B. Securities Filings

The final rule does not affect any of the auditing standards, accounting standards, or other requirements for financial statements contained in securities filings submitted to OTS pursuant to the Securities Exchange Act of 1934 (1934 Act) or OTS regulations parts 563b, 563d, or 563g (Securities filings). Applicable federal securities laws and regulations require securities filings to comply with generally accepted accounting principles (GAAP) and to include financial statements and other information that have been audited by independent public accountants in accordance with GAAS. Savings associations anticipating a conversion from mutual to stock form of ownership, or any other transaction governed by the federal securities laws and regulations, should note that the accounting or auditing requirements for such securities filings continue to apply.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities. The rule is expected to relieve a regulatory burden on savings associations with assets of less than \$500 million. The overall economic impact is not expected to be significant because it is anticipated that many of these institutions will continue on a voluntary basis to obtain annual independent audits. Therefore, Regulatory Flexibility Act analysis is not required.

V. Paperwork Reduction Act

The reporting requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget under OMB Control No. 1550-0082 for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The reporting requirements in this proposal are found in 12 CFR 550.7(a) and 12 CFR 562.4(a). The information is needed by OTS to provide an orderly mechanism for expeditiously processing requests for non-public information while ensuring confidentiality. The likely recordkeepers are Federal savings associations.

VI. Executive Order 12866

OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

VII. Effective Date

OTS has provided for a 30-day delayed effective date for this rule. See 5 U.S.C. 553(d). The Riegle Community Development and Regulatory Improvement (CDRI) Act of 1994, which was signed by the President on September 23, 1994, imposes further effective date requirements with respect to regulations issued by the Federal banking agencies. Section 302(b) of that law requires the agencies to delay the effective date of new regulations that "impose additional reporting, disclosures, or other new requirements on insured depository institutions" until the first day of the first calendar quarter after the regulations are published in final form. An exception to this requirement is available if the agency determines, "for good cause published with the regulation," that the regulation should become effective

sooner.

Although the principal effect of today's rule is to relieve restrictions rather than to impose "new requirements" on insured depository institutions, certain of its provisions arguably fall within the scope of coverage of the CDRI Act's effective date provision. For the following reasons, however, the OTS has concluded that good cause exists to accelerate the effective date that would be required by the CDRI Act.

Application of this CDRI Act effective date provision would cause today's rule to take effect on January 1, 1995. OTS's current rules require all savings associations to be audited at least once in each calendar year. If the effective date of today's rule is delayed until January 1, 1995, then it will not exempt any savings associations from their obligation to obtain an audit in calendar year 1994. The result would be to require those associations that are relieved of the annual audit requirement under today's rule to incur the burden and expense of an annual independent audit for no reason other than the timing imposed by the CDRI Act's delayed effective date provision. This result would be inconsistent with the purpose of section 302 of the CDRI Act, which is generally to reduce regulatory burden and the cost of compliance. See H.R. Conf. Rep. No. 103-652, 103d Cong., 2d Sess. 168 (1994). Accordingly, the OTS finds good cause for the rule to become effective earlier than the date that the CDRI Act would otherwise require.

Finally, the OTS notes that the CDRI Act effective date provision applies only to regulations affecting insured depository institutions. Regulations applicable to holding companies are therefore beyond the scope of the provision.

List of Subjects

12 CFR Part 550

Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 562

Accounting, Reporting and recordkeeping requirements.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, OTS hereby amends subchapters C and D, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER C -- REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 550 -- TRUST POWERS OF FEDERAL SAVINGS ASSOCIATIONS

1. The authority citation for part 550 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1735f-7.

2. Section 550.7 is revised to read as follows:

§ 550.7 Audit of trust department.

(a) A committee of directors of the Federal savings association who are independent of its management shall make, or cause to be made, a suitable audit of the association's trust department annually. The audit shall, at a minimum, ascertain whether the department has internal control policies and procedures in place to provide reasonable assurance that:

(1) Fiduciary activities are administered in accordance with applicable laws and regulations, governing trust instruments, and sound fiduciary principles;

(2) Fiduciary assets are properly safeguarded; and

(3) Transactions are accurately recorded in the appropriate accounts in a timely manner.

(b) The audit shall be conducted in accordance with generally accepted standards for attestation engagements and any other standards established by the OTS. The audit may be conducted by internal auditors, external auditors or other qualified persons who are responsible only to the board of directors.

**PART 552 -- INCORPORATION, ORGANIZATION, AND CONVERSION OF
FEDERAL STOCK ASSOCIATIONS**

3. The authority citation for part 552 continues to read as follows:

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

§ 552.6-4 [Removed and Reserved].

4. Section 552.6-4 is removed and reserved.

**SUBCHAPTER D -- REGULATIONS APPLICABLE TO ALL SAVINGS
ASSOCIATIONS**

PART 562 -- REGULATORY REPORTING STANDARDS

5. The authority citation for part 562 continues to read as follows:

Authority: 12 U.S.C. 1463.

6. Section 562.3 is amended by removing paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(2), and revising paragraph (d) to read as follows:

§ 562.3 Statements of condition.

* * * * *

(d) Alternative annual statement of condition. The requirement of paragraph (a)(2) of this section is satisfied when a savings association makes copies of its audited financial statements conspicuously available to the public in its home office and each of its branch locations.

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7. Section 562.4 is added to read as follows:

§ 562.4 Audit of savings associations and savings association holding companies.

(a) General. The OTS may require, at any time, an independent audit of the financial statements of, or the application of procedures agreed upon by the OTS to a savings association, savings and loan holding company, or affiliate (as defined by 12 CFR 563.41(b)(1)) by qualified independent public accountants when needed for any safety and soundness reason identified by the

Director.

(b) Audits required for safety and soundness purposes. The OTS requires an independent audit for safety and soundness purposes:

(1) If, as of its most recent report of examination, a savings association has received a composite rating of 3, 4 or 5 on the CAMEL financial institutions' rating scale; or

(2) If, as of the beginning of its fiscal year, a savings and loan holding company controls savings association subsidiary(ies) with aggregate consolidated assets of \$500 million or more.

(c) Procedures. (1) When the OTS requires an independent audit because such an audit is needed for safety and soundness purposes, the Director shall determine whether the audit was conducted and filed in a manner satisfactory to the OTS.

(2) The Director may waive the independent audit requirement for a savings association that, as of its most recent report of examination, has received a CAMEL rating of 3, 4 or 5, if the Director determines that an audit would not address the safety and soundness issues that caused the examination rating.

(3) When the OTS requires the application of procedures agreed upon by the OTS for safety and soundness purposes, the Director shall identify the procedures to be performed. The Director shall also determine whether the agreed upon procedures were conducted and filed in a manner satisfactory to the OTS.

(d) Qualifications for independent public accountants. The audit shall be conducted by an independent public accountant who:

(1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the savings association's or holding company's principal office is located;

(2) Agrees in the engagement letter to provide the OTS with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct and meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

(4) Has received, or is enrolled in, a peer review program that

meets guidelines acceptable to the OTS.

(e) Voluntary audits. When a savings association, savings and loan holding company, or affiliate (as defined by 12 CFR 563.41(b)(1)) obtains an independent audit voluntarily, it shall be performed only by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (d)(2), and (d)(3) of this section.

PART 563 -- OPERATIONS

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

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

§ 563.170 [Amended]

9. Section 563.170 is amended by removing paragraph (a)(2) and the paragraph designation of (a)(1).

PART 571 -- STATEMENTS OF POLICY

10. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.2 [Removed and Reserved].

11. Section 571.2 is removed and reserved.

DATED:

By the Office of Thrift Supervision.

Jonathan L. Fiechter
Acting Director