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Department of the Treasury
Office of Thrift Supervision

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In the attached interim regulation, the Office of Thrift Supervision (OTS) is conforming its risk-based capital standards to the requirements in sections 350 and 208 of the Riegle Community Development and Regulatory Improvement Act of 1994. These sections place limits on the amount of risk-based capital required for assets sold with recourse. Recourse usually occurs when an association sells a pool of loans and agrees to absorb all losses up to a designated limit.

OTS solicits public comment for 60 days on all aspects of its interim rule. OTS specifically seeks comment on its current approach for factoring associations' capital requirements under the low-level recourse approach into their total risk-based capital ratio and Tier 1 (core) risk-based capital ratio.

The current OTS risk-based capital regulation already does what Section 350 requires, and OTS believes no further change is needed. Section 350 and the current OTS capital rule both limit capital requirements to an association's actual amount of exposure, if the actual amount is less than the normal capital charge against the assets sold with recourse. For example, a savings association that sells a $100 loan with recourse must hold risk-based capital of 8 percent of the full amount of the loan, or $8. However, if the association limits its maximum loss exposure to $5, the association has to hold only $5 in risk-based capital.

Section 208 requires changes in the OTS capital regulation. Section 208 deals only with sales, with recourse, of small business loans and leases of personal property. If these two types of assets are sold with a limit on recourse, Section 208 limits the required capital to 8 percent of the actual loss exposure retained. For example, a savings association sells a $100 small business loan with recourse, but limits its loss exposure to $5. Section 208 limits the association's risk-based capital charge to 8 percent of the $5 exposure, or 40 cents. As noted above, under the previous OTS rule, the association's capital charge would be 8 percent of the $100 loan sold ($8) or its maximum loss exposure ($5). The OTS risk-based capital requirement of $5 in this example would be lowered to 40 cents to comply with Section 208. The total amount of recourse retained by a qualified savings association may not exceed 15 percent of the association's total capital.

To take advantage of the reduced capital requirement under Section 208, a thrift must be well capitalized as defined by the prompt corrective action (PCA) rule. If it is in the adequately capitalized category, it would have to get permission from OTS to use the proposed capital treatment. The total amount of recourse retained by a qualified savings association may not exceed 15 percent of the association's total capital. The more than 90 percent of OTS-regulated thrifts that are well capitalized will be able to use the Section 208 method in calculating their capital ratios under both capital and PCA standards.

Savings association have a choice as to whether or not to use the Section 208 capital approach.

OTS will not object if an association decides to apply the Section 208 capital treatment as of March 22, 1995, because that is the date by which the regulatory changes prescribed by the Riegle Act were to have become effective.

OTS does not expect Section 208 to have a major effect on savings associations' capital because of their limited amount of small business lending and sales of small business loans with partial recourse. Nev-

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ertheless, some associations should benefit from lower capital requirements and higher capital ratios. Section 208 also could give some associations an increased incentive to make small business loans and securitize them.

The interim rule was published in the August 31, 1995, edition of the *Federal Register*, Vol. 60, No. 169, pp. 45617–45622, and was effective on the date of publication. Written comments must be received on or before October 30, 1995, and should be addressed to: Chief, Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

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Attachment