

its principal to pay or perform an obligation to a third person. Under a guaranty agreement, a Federal savings association agrees to satisfy the obligation of the principal only if the principal fails to pay or perform.

(b) *What requirements apply to suretyship and guaranty agreements under this section?* A Federal savings association may enter into a suretyship or guaranty agreement under this section, subject to each of the following requirements:

(1) The Federal savings association must limit its obligations under the agreement to a fixed dollar amount and a specified duration.

(2) The Federal savings association's performance under the agreement must create an authorized loan or other investment.

(3) The Federal savings association must treat its obligation under the agreement as a loan to the principal for purposes of §§ 560.93 and 563.43 of this chapter.

(4) The Federal savings association must take and maintain a perfected security interest in collateral sufficient to cover its total obligation under the agreement.

(c) *What collateral is sufficient?* (1) The Federal savings association must take and maintain a perfected security interest in real estate or marketable securities equal to at least 110 percent of its obligation under the agreement, except as provided in paragraph (c)(2) of this section.

(i) If the collateral is real estate, the Federal savings association must establish the value by a signed appraisal or evaluation in accordance with part 564 of this chapter. In determining the value of the collateral, the Federal savings association must factor in the value of any existing senior mortgages, liens or other encumbrances on the property, except those held by the principal to the suretyship or guaranty agreement.

(ii) If the collateral is marketable securities, the Federal savings association must be authorized to invest in that security taken as collateral. The Federal savings association must ensure that the value of the security is 110 percent of the obligation at all times during the term of agreement.

(2) The Federal savings association may take and maintain a perfected security interest in collateral which is at all times equal to at least 100 percent of its obligation, if the collateral is:

- (i) Cash;
- (ii) Obligations of the United States or its agencies;
- (iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or
- (iv) Notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank.

[64 FR 46565, Aug. 26, 1999]

Subpart B—Lending and Investment Provisions Applicable to all Savings Associations

§ 560.93 Lending limitations.

(a) *Scope.* This section applies to all loans and extensions of credit to third parties made by a savings association and its subsidiaries. This section does not apply to loans made by a savings association or a GAAP-consolidated subsidiary to subordinate organizations or affiliates of the savings association. The terms *subsidiary*, *GAAP-consolidated subsidiary*, and *subordinate organization* have the same meanings as specified in § 559.2 of this chapter. The term *affiliate* has the same meaning as specified in § 563.41 of this chapter.

(b) *Definitions.* In applying these lending limitations, savings associations shall apply the definitions and interpretations promulgated by the Office of the Comptroller of the Currency consistent with 12 U.S.C. 84. See 12 CFR part 32. In applying these definitions, pursuant to 12 U.S.C. 1464, savings associations shall use the terms *savings association*, *savings associations*, and *savings association's* in place of the terms *national bank* and *bank*, *banks*, and *bank's*, respectively. For purposes of this section:

(1) The term *one borrower* has the same meaning as the term *person* set forth at 12 CFR part 32. It also includes, in addition to the definition cited therein, a *financial institution* as defined at § 561.19 of this chapter.

(2) The term *company* means a corporation, partnership, business trust,

§ 560.93

12 CFR Ch. V (1–1–12 Edition)

association, or similar organization and, unless specifically excluded, the term *company* includes a *savings association* and a *bank*.

(3) *Contractual commitment to advance funds* has the meaning set forth in 12 CFR part 32.

(4) *Loans and extensions of credit* has the meaning set forth in 12 CFR part 32, and includes investments in commercial paper and corporate debt securities. The Office expressly reserves its authority to deem other arrangements that are, in substance, *loans and extensions of credit* to be encompassed by this term.

(5) The term *loans* as used in the phrase *Loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith* does not include an association's taking of a purchase money mortgage note from the purchaser *provided that*:

(i) No new funds are advanced by the association to the borrower; and

(ii) The association is not placed in a more detrimental position as a result of the sale.

(6) [Reserved]

(7) *Readily marketable collateral* has the meaning set forth in 12 CFR part 32.

(8) *Residential housing units* has the same meaning as the term *residential real estate* set forth in § 541.23 of this chapter. The term *to develop* includes the various phases necessary to produce housing units as an end product, to include: acquisition, development and construction; development and construction; construction; rehabilitation; or conversion. The term *domestic* includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands.

(9) *Single family dwelling unit* has the meaning set forth in § 541.25 of this chapter.

(10) A *standby letter of credit* has the meaning set forth in 12 CFR part 32.

(11) *Unimpaired capital and unimpaired surplus* means—

(i) A savings association's core capital and supplementary capital included in its total capital under part 567 of this chapter; plus

(ii) The balance of a savings association's allowance for loan and lease losses not included in supplementary capital under part 567 of this chapter; plus

(iii) The amount of a savings association's loans to, investments in, and advances to subsidiaries not included in calculating core capital under part 567 of this chapter.

(c) *General limitation*. Section 5200 of the Revised Statutes (12 U.S.C. 84) shall apply to savings associations in the same manner and to the same extent as it applies to national banks. This statutory provision and lending limit regulations and interpretations promulgated by the Office of the Comptroller of the Currency pursuant to a rulemaking conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553 et seq. (including the regulations appearing at 12 CFR part 32) shall apply to savings associations in the same manner and to the same extent as these provisions apply to national banks:

(1) The total loans and extensions of credit by a savings association to one borrower outstanding at one time and not fully secured, as determined in the same manner as determined under 12 U.S.C. 84(a)(2), by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 percent of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a savings association to one borrower outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 percent of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (c)(1) of this section.

(d) *Exceptions to the general limitation*—(1) *\$500,000 exception*. If a savings association's aggregate lending limitation calculated under paragraphs (c)(1) and (c)(2) of this section is less than

\$500,000, notwithstanding this aggregate limitation in paragraphs (c)(1) and (c)(2) of this section, such savings association may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed \$500,000.

(2) *Statutory exceptions.* The exceptions to the lending limits set forth in 12 U.S.C. 84 and 12 CFR part 32 are applicable to savings associations in the same manner and to the extent as they apply to national banks.

(3) *Loans to develop domestic residential housing units.* Subject to paragraph (d)(4) of this section, a savings association may make loans to one borrower to develop domestic residential housing units, not to exceed the lesser of \$30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, including all amounts loaned under the authority of the General Limitation set forth under paragraphs (c)(1) and (c)(2) of this section, *provided that:*

(i) The final purchase price of each single family dwelling unit the development of which is financed under this paragraph (d)(3) does not exceed \$500,000;

(ii) The savings association is, and continues to be, in compliance with its capital requirements under part 567 of this chapter.

(iii) OTS permits, subject to conditions it may impose, the savings association to use the higher limit set forth under this paragraph (d)(3). A savings association that meets the requirements of paragraphs (d)(3)(i), (ii), (iv) and (v) of this section and that meets the requirements for "expedited treatment" under § 516.5 of this chapter may use the higher limit set forth under this paragraph (d)(3) if the savings association has filed a notice with OTS that it intends to use the higher limit at least 30 days prior to the proposed use. A savings association that meets the requirements of paragraphs (d)(3)(i), (ii), (iv), and (v) of this section and that meets the requirements for "standard treatment" under § 516.5 of this chapter may use the higher limit set forth under this paragraph (d)(3) if the savings association has filed an application with OTS and OTS has approved the use the higher limit;

(iv) Loans made under this paragraph (d)(3) to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(v) Such loans comply with the applicable loan-to-value requirements that apply to Federal savings associations.

(4) The authority of a savings association to make a loan or extension of credit under the exception in paragraph (d)(3) of this section ceases immediately upon the association's failure to comply with any one of the requirements set forth in paragraph (d)(3) of this section or any condition(s) set forth in a Director's order under paragraph (d)(3)(iii) of this section.

(5) Notwithstanding the limit set forth in paragraphs (c)(1) and (c)(2) of this section, a savings association may invest up to 10 percent of unimpaired capital and unimpaired surplus in the obligations of one issuer evidenced by:

(i) Commercial paper rated, as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services in the highest category; or

(ii) Corporate debt securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value, and that are rated in one of the two highest categories by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security.

(e) *Loans to finance the sale of REO.* A savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith shall not, when aggregated with all other loans to such borrower, exceed the General Limitation in paragraph (c)(1) of this section.

(f) *Calculating compliance and record-keeping.* (1) The amount of an association's unimpaired capital and unimpaired surplus pursuant to paragraph (b)(11) of this section shall be calculated as of the association's most recent periodic report required to be filed with OTS prior to the date of granting or purchasing the loan or otherwise creating the obligation to repay funds, unless the association knows, or

has reason to know, based on transactions or events actually completed, that such level has changed significantly, upward or downward, subsequent to filing of such report.

(2) If a savings association or subsidiary thereof makes a loan or extension of credit to any one borrower, as defined in paragraph (b)(1) of this section, in an amount that, when added to the total balances of all outstanding loans owed to such association and its subsidiary by such borrower, exceeds the greater of \$500,000 or 5 percent of unimpaired capital and unimpaired surplus, the records of such association or its subsidiary with respect to such loan shall include documentation showing that such loan was made within the limitations of paragraphs (c) and (d) of this section; for the purpose of such documentation such association or subsidiary may require, and may accept in good faith, a certification by the borrower identifying the persons, entities, and interests described in the definition of one borrower in paragraph (b)(1) of this section.

(g) [Reserved]

(h) *More stringent restrictions.* The Director may impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the savings association.

APPENDIX TO § 560.93—INTERPRETATIONS

Section 560.93–100 Interrelation of General Limitation With Exception for Loans To Develop Domestic Residential Housing Units

1. The § 560.93(d)(3) exception for loans to one person to develop domestic residential housing units is characterized in the regulation as an “alternative” limit. This exceptional 30 percent or 30 percent limitation does not operate *in addition to* the 15 percent General Limitation or the 10 percent additional amount an association may loan to one borrower secured by readily marketable collateral, but serves as the uppermost limitation on a savings association's lending to any one person once an association employs this exception. An example will illustrate the Office's interpretation of the application of this rule:

Example: Savings Associations A's lending limitation as calculated under the 15 percent General Limitation is \$800,000. If Association A lends Y \$800,000 for commercial purposes, Association A cannot lend Y *an additional*

\$1,600,000, or 30 percent of capital and surplus, to develop residential housing units under the paragraph (d)(3) exception. The (d)(3) exception operates as the uppermost limitation on all lending to one borrower (for associations that may employ this exception) *and includes any amounts loaned to the same borrower under the General Limitation.* Association A, therefore, may lend only an additional \$800,000 to Y, provided the paragraph (d)(3) prerequisites have been met. The amount loaned under the authority of the General Limitation (\$800,000), when added to the amount loaned under the exception (\$800,000), yields a sum that does not exceed the 30 percent uppermost limitation (\$1,600,000).

2. This result does not change even if the facts are altered to assume that some or all of the \$800,000 amount of lending permissible under the General Limitation's 15 percent basket is not used, or is devoted to the development of domestic residential housing units.

In other words, using the above example, if Association A lends Y \$400,000 for commercial purposes and \$300,000 for residential purposes—both of which would be permitted under the Association's \$800,000 General Limitation—Association A's remaining permissible lending to Y would be: first, an additional \$100,000 under the General Limitation, and then another \$800,000 to develop domestic residential housing units if the Association meets the paragraph (d)(3) prerequisites. (The latter is \$800,000 because in no event may the total lending to Y exceed 30 percent of unimpaired capital and unimpaired surplus). If Association A did not lend Y the remaining \$100,000 permissible under the General Limitation, its permissible loans to develop domestic residential housing units under paragraph (d)(3) would be \$900,000 instead of \$800,000 (the total loans to Y would still equal \$1,600,000).

3. In short, under the paragraph (d)(3) exception, the 30 percent or 30 percent limit will always operate as the uppermost limitation, unless of course the association does not avail itself of the exception and merely relies upon its General Limitation.

Section 560.93–101 Interrelationship Between the General Limitation and the 150 Percent Aggregate Limit on Loans to all Borrowers To Develop Domestic Residential Housing Units

1. The Office has already received numerous questions regarding the allocation of loans between the different lending limit “baskets,” *i.e.*, the 15 percent General Limitation basket and the 30 percent Residential Development basket. In general, the inquiries concern the manner in which an association may “move” a loan from the General

Limitation basket to the Residential Development basket. The following example is intended to provide guidance:

Example: Association A's General Limitation under section 5(u)(1) is \$15 million. In January, Association A makes a \$10 million loan to Borrower to develop domestic residential housing units. At the time the loan was made, Association A had not received approval under a Director order to avail itself of the residential development exception to lending limits. Therefore, the \$10 million loan is made under Association A's General Limitation.

2. In June, Association A receives authorization to lend under the Residential Development exception. In July, Association A lends \$3 million to Borrower to develop domestic residential housing units. In August, Borrower seeks an additional \$12 million commercial loan from Association A. Association A cannot make the loan to Borrower, however, because it already has an outstanding \$10 million loan to Borrower that counts against Association A's General Limitation of \$15 million. Thus, Association A may lend only up to an additional \$5 million to Borrower under the General Limitation.

3. However, Association A may be able to reallocate the \$10 million loan it made to Borrower in January to its Residential Development basket provided that: (1) Association A has obtained authority under a Director's order to avail itself of the additional lending authority for residential development and maintains compliance with all prerequisites to such lending authority; (2) the original \$10 million loan made in January constitutes a loan to develop domestic residential housing units as defined; and (3) the housing unit(s) constructed with the funds from the January loan remain in a stage of "development" at the time Association A reallocates the loan to the domestic residential housing basket. The project must be in a stage of acquisition, development, construction, rehabilitation, or conversion in order for the loan to be reallocated.

4. If Association A is able to reallocate the \$10 million loan made to Borrower in January to its Residential Development basket, it may make the \$12 million commercial loan requested by Borrower in August. Once the January loan is reallocated to the Residential Development basket, however, the \$10 million loan counts towards Association's 150 percent aggregate limitation on loans to all borrowers under the residential development basket (section 5(u)(2)(A)(ii)(IV)).

5. If Association A reallocates the January loan to its domestic residential housing basket and makes an additional \$12 million commercial loan to Borrower, Association A's totals under the respective limitations would be: \$12 million under the General Limitation; and \$13 million under the Residen-

tial Development limitation. The full \$13 million residential development loan counts toward Association A's aggregate 150 percent limitation.

[61 FR 50976, Sept. 30, 1996, as amended at 61 FR 66579, Dec. 18, 1996; 62 FR 66262, Dec. 18, 1997; 66 FR 13007, Mar. 2, 2001; 69 FR 76602, Dec. 22, 2004]

§ 560.100 Real estate lending standards; purpose and scope.

This section, and § 560.101 of this subpart, issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribe standards for real estate lending to be used by savings associations and all their includable subsidiaries, as defined in 12 CFR 567.1, over which the savings associations exercise control, in adopting internal real estate lending policies.

[61 FR 50971, Sept. 30, 1996, as amended at 62 FR 66262, Dec. 18, 1997]

§ 560.101 Real estate lending standards.

(a) Each savings association shall adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate.

(b)(1) Real estate lending policies adopted pursuant to this section must:

(i) Be consistent with safe and sound banking practices;

(ii) Be appropriate to the size of the institution and the nature and scope of its operations; and

(iii) Be reviewed and approved by the savings association's board of directors at least annually.

(2) The lending policies must establish:

(i) Loan portfolio diversification standards;

(ii) Prudent underwriting standards, including loan-to-value limits, that are clear and measurable;

(iii) Loan administration procedures for the savings association's real estate portfolio; and

(iv) Documentation, approval, and reporting requirements to monitor compliance with the savings association's real estate lending policies.