

§ 160.42

12 CFR Ch. I (1-1-24 Edition)

(i) The lease must be a net, full-pay-out lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease;

(ii) The portion of the estimated residual value of the property relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property; and

(iii) At the termination of a financing lease, either by expiration or default, property acquired must be liquidated or released on a net basis as soon as practicable. Any property held in anticipation of re-leasing must be reevaluated and recorded at the lower of fair market value or book value.

(d) *General leasing.* Pursuant to section 5(c)(2)(C) of the HOLA, a Federal savings association may invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for the purpose of leasing that property. In contrast to financing leases, lease investments made under this authority need not be the functional equivalent of loans.

(e) *Leasing salvage powers.* If, in good faith, a Federal savings association believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, it may:

(1) As the owner and lessor, take reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(2) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual right, or take any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) Include any provisions in a lease, or make any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (e)(1) and (e)(2) of this section.

§ 160.42 State and local government obligations.

(a) Pursuant to HOLA section 5(c)(1)(H), a Federal savings association may invest in obligations issued by any state, territory, possession, or political subdivision thereof ("governmental entity"), subject to appropriate underwriting and the following conditions:

| | Aggregate limitation | Per-issuer limitation |
|--|------------------------|---|
| (1) General obligations | None | None. |
| (2) Other obligations of a governmental entity (e.g., revenue bonds) if the issuer has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. | None | 10% of the institution's total capital. |
| (3) Obligations of a governmental entity that do not qualify under any other paragraph but are approved by the OCC. | As approved by the OCC | 10% of the institution's total capital. |

(b) *What is a political subdivision? Political subdivision* means a county, city, town, or other municipal corporation, a public authority, or a publicly-owned entity that is an instrumentality of a state or a municipal corporation.

(c) *What is a general obligation of a state or political subdivision? A general obligation* is an obligation that is guaranteed by the full faith and credit of a state or political subdivision that has

the power to tax. Indirect payments, such as through a special fund, may qualify as general obligations if a state or political subdivision with taxing authority has unconditionally agreed to provide funds to cover payments.

(d) For all securities, the institution must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated

with the investment activity and determine that such investment is appropriate for the institution. The institution must also determine that the obligor has adequate resources and willingness to provide for all required payments on its obligations in a timely manner.

[76 FR 49030, Aug. 9, 2011, as amended at 77 FR 35258, June 13, 2012]

§ 160.43 Foreign assistance investments.

Pursuant to HOLA section 5(c)(4)(C), a Federal savings association may make foreign assistance investments in an aggregate amount not to exceed one percent of its assets, subject to the following conditions:

(a) For any investment made under the Foreign Assistance Act, the loan agreement shall specify what constitutes an event of default, and provide that upon default in payment of principal or interest under such agreement, the entire amount of outstanding indebtedness thereunder shall become immediately due and payable, at the lender's option. Additionally, the contract of guarantee shall cover 100% of any loss of investment thereunder, except for any portion of the loan arising out of fraud or misrepresentation for which the party seeking payment is responsible, and provide that the guarantor shall pay for any such loss in U.S. dollars within a specified reasonable time after the date of application for payment.

(b) To make any investments in the share capital and capital reserve of the Inter-American Savings and Loan Bank, a Federal savings association must be adequately capitalized and have adequate allowances for loan and lease losses. The Federal savings association's aggregate investment in such capital or capital reserve, including the amount of any obligations undertaken to provide said Bank with reserve capital in the future (call-able capital), must not, as a result of such investment, exceed the lesser of one-quarter of 1% of its assets or \$100,000.

§ 160.60 Suretyship and guaranty.

Pursuant to section 5(b)(2) of the HOLA, a Federal savings association may enter into a repayable suretyship

or guaranty agreement, subject to the conditions in this section.

(a) *What is a suretyship or guaranty agreement?* Under a suretyship, a Federal savings association is bound with 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 12 CFR 31.2 and part 32 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 34, subpart C 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