

<sup>13</sup> If the wheels and axles of the manufactured home have been removed and it is permanently affixed to a foundation, a loan secured by a combination of a manufactured home and developed residential lot on which it sits may be treated as a home loan.

<sup>14</sup> Without regard to any limitations of this part, a Federal savings association may make or invest in the fully insured or guaranteed portion of nonresidential real estate loans insured or guaranteed by the Economic Development Administration, the Farmers Home Administration, or the Small Business Administration. Unguaranteed portions of guaranteed loans must be aggregated with uninsured loans when determining an association's compliance with the 400% of capital limitation for other real estate loans.

<sup>15</sup> This authority is limited to investments in open-end management investment companies that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940. The portfolio of the investment company must be restricted by the company's investment policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in. Separate and apart from this authority, a Federal savings association may make pass-through investments to the extent authorized by § 560.32.

<sup>16</sup> A Federal savings association may invest in service corporations subject to the provisions of part 559 of this chapter.

<sup>17</sup> A Federal savings association may only invest in small business investment companies formed pursuant to section 301(d) of the Small Business Investment Act of 1958.

<sup>18</sup> This category includes obligations issued by any state, territory, or possession of the United States or political subdivision thereof (including any agency, corporation, or instrumentality of a state or political subdivision), subject to § 560.42.

<sup>19</sup> A Federal savings association may invest in state housing corporations subject to the provisions of § 560.121.

<sup>20</sup> Payments on accounts in excess of the account balance (overdrafts) on commercial deposit or transaction accounts shall be considered commercial loans for purposes of determining the association's percentage of assets limitation.

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**§ 560.31 Election regarding categorization of loans or investments and related calculations.**

(a) If a loan or other investment is authorized under more than one section of the HOLA, as amended, or this part, a Federal savings association may designate under which section the loan or investment has been made. Such a loan or investment may be apportioned among appropriate categories, and may be moved, in whole or part, from one category to another. A loan commitment shall be counted as an investment and included in total assets of a Federal savings association for purposes of calculating compliance with HOLA section 5(c)'s investment limitations only to the extent that funds have been advanced and not repaid pursuant to the commitment.

(b) Loans or portions of loans sold to a third party shall be included in the calculation of a percentage-of-assets or percentage-of-capital investment limitation only to the extent they are sold with recourse.

(c) A Federal savings association may make a loan secured by an assignment of loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loans.

**§ 560.32 Pass-through investments.**

(a) A federal savings association ("you") may make pass-through investments. A pass-through investment occurs when you invest in an entity ("company") that engages only in activities that you may conduct directly and the investment meets the require-

ments of this section. If an investment is authorized under both this section and some other provision of law, you may designate under which authority or authorities the investment is made. When making a pass-through investment, you must comply with all the statutes and regulations that would apply if you were engaging in the activity directly. For example, your proportionate share of the company's assets will be aggregated with the assets you hold directly in calculating investment limits (e.g., no more than 400% of total capital may be invested in non-residential real property loans).

(b) You may make a pass-through investment without prior notice to OTS if all of the following conditions are met:

(1) You do not invest more than 15% of your total capital in one company;

(2) The book value of your aggregate pass-through investments does not exceed 50% of your total capital after making the investment;

(3) Your investment would not give you direct or indirect control of the company;

(4) Your liability is limited to the amount of your investment; and

(5) The company falls into one of the following categories:

(i) A limited partnership;

(ii) An open-end mutual fund;

(iii) A closed-end investment trust;

(iv) A limited liability company; or

(v) An entity in which you are investing primarily to use the company's services (e.g., data processing).

(c) If you want to make other pass-through investments, you must provide