

§ 560.42

12 CFR Ch. V (1-1-98 Edition)

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.

§ 560.42 State and local government obligations.

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, subject to the following conditions:

(a) A Federal savings association may not invest more than 10% of its total capital in obligations of any one issuer, exclusive of general obligations of the issuer.

(b) Except as provided in paragraph (c) of this section, the obligations must:

(1) Continue to hold one of the four highest national investment grade ratings; or

(2) Must be issued by a public housing agency and backed by the full faith and credit of the United States.

(c) Notwithstanding the limitations in paragraph (b) of this section, a Federal savings association may invest:

(1) In the aggregate, up to one percent of its assets in the obligations of a state, territory, possession, or political subdivision in which the association's home office or a branch office is located; or

(2) In any obligations approved by the Office.

§ 560.43 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.

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 in 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, 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 § 541.20 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—