

§ 565.10

a case where no hearing has been requested, the OTS shall grant or deny the request for reinstatement and notify the Respondent of the OTS's decision. If the OTS denies the request for reinstatement, the OTS shall set forth in the notification the reasons for the OTS's action.

[57 FR 44903, Sept. 29, 1992, as amended at 60 FR 66719, Dec. 26, 1995]

§ 565.10 Enforcement of directives.

(a) *Judicial remedies.* Whenever a savings association or company that controls a savings association fails to comply with a directive issued under section 38, the OTS may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies—(1) Failure to comply with directive.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OTS may assess a civil money penalty against any savings association or company that controls a savings association that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or non-compliance.

(2) *Failure to implement capital restoration plan.* The failure of a savings association to implement a capital restoration plan required under section 38, or this part, or the failure of a company having control of a savings association to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall subject the savings association or company to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OTS may seek enforcement of the provisions of section 38 or this part through any other judicial or administrative proceeding authorized by law.

PART 566—LIQUIDITY

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AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1465, 1467a; 15 U.S.C. 1691, 1691a.

SOURCE: 54 FR 49646, Nov. 30, 1989, unless otherwise noted.

§ 566.1 Definitions.

(a) *Cash.* The term *cash* means cash on hand and unpledged demand accounts in a Federal Home Loan Bank, an insured bank, a savings association, the Bank for Savings and Loan Associations (Chicago, Illinois), or the Savings Banks Trust Company (New York, New York), but not gold in any form.

(b) *Insured financial institution.* The term *insured financial institution* means a commercial or savings bank or savings association whose deposits are insured by the Federal Deposit Insurance Corporation and which is not under the control of any supervisory authority.

(c) *Liquidity base.* The term *liquidity base* means savings association's net withdrawable accounts plus the savings association's short-term borrowings.

(d) *Net withdrawable accounts.* The term *net withdrawable accounts* means withdrawable accounts less the unpaid balance of loans secured by such accounts. In computing net withdrawable accounts, a savings association may, at its option, exclude withdrawable accounts maturing in more than one year. Tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to any applicable regulations, U.S. Treasury General Accounts, and U.S. Treasury Time Deposit Open Accounts are not withdrawable accounts.

(e) *Short-term borrowings.* The term *short-term borrowings* means any portion of the principal amount thereof, payable on demand or in one year or less, but not including tax and loan accounts, note accounts, U.S. Treasury General Accounts, or U.S. Treasury Time Deposit Open Accounts.

(f) *Obligations of the United States.* The term *obligations of the United States* means evidences of indebtedness issued by the United States, or issued by an agency or instrumentality thereof and fully guaranteed as to principal and interest by the United States.

(g) *Liquid assets.* The term *liquid assets* means the total of cash, accrued

interest on unpledged assets which qualify as liquid assets under this section or would so qualify except for their maturities, and the book value of the following unpledged assets (including such assets held subject to repurchase agreement), as long as principal and interest on such assets are not in default and a savings association's investments in such assets do not exceed any applicable limitations on such investments by the savings association:

(1) Time deposits in a Federal Home Loan Bank, the Bank for Savings and Loan Associations, Chicago, Illinois, or the Savings Banks Trust Company, New York, New York;

(2) Except as the Office may otherwise direct in a specific case, obligations of the United States;

(3) Obligations issued or fully guaranteed as to principal and interest by:

(i) A Federal Home Loan Bank(s);

(ii) The Federal National Mortgage Association;

(iii) The Government National Mortgage Association;

(iv) A Bank(s) for Cooperatives, including the National Bank for Cooperatives or the United Bank for Cooperatives;

(v) A Farm Credit Bank(s);

(vi) The Tennessee Valley Authority;

(vii) The Export-Import Bank of the United States;

(viii) The Commodity Credit Corporation;

(ix) The Federal Financing Bank;

(x) The Student Loan Marketing Association;

(xi) The Federal Home Loan Mortgage Corporation; or

(xii) The National Credit Union Administration;

(4) Savings accounts of an insured financial institution, including loans of unsecured day(s) funds to an insured financial institution (i.e., Federal funds or similar unsecured loans), if:

(i) Except for loans of unsecured day(s) funds, such accounts are:

(A) Negotiable and will mature in one year or less;

(B) Not negotiable and will mature in 90 days or less; or

(C) Not withdrawable without notice and the notice periods do not exceed 90 days;

(ii) Loans of unsecured day(s) funds will mature in 6 months or less; and

(iii) The priority of claims of a lender of unsecured day(s) funds is not subordinate to claims of depositors in the borrower thereof;

(5) Bankers' acceptances of an insured financial institution if:

(i) The total of all such acceptances of the same financial institution held by the same savings association does not exceed one-fourth of 1 percent of total deposits of such financial institution (as shown by its last published statement of condition preceding the date of acceptance);

(ii) Such acceptances will mature in 9 months or less;

(6) Obligations of or obligations issued by (other than gold-related obligations) any state, territory or possession of the United States or political subdivision thereof, including any agency, corporation or instrumentality of a state, territory, possession or political subdivision: *Provided*, That:

(i) Such obligations continue to meet the requirements of § 560.42 of this chapter; and

(ii) Such obligations will mature in 2 years or less;

(7) Promissory notes issued to and made to the order of an insured financial institution by the Savings Association Insurance Fund or the Bank Insurance Fund;

(8) Shares or certificates in any open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders, to investments described in the other provisions of paragraphs (g)(1) through (g)(7), (g)(9), (g)(12), and (g)(13) of this section;

(9) Corporate debt obligations and commercial paper denominated in dollars, *Provided*, That:

(i) Such corporate debt obligations:

(A) Continue to be rated in one of the four highest categories by the most recently published rating of such obligations by a nationally recognized investment rating service;

(B) Are marketable as defined by § 541.7 of this chapter;

(C) Will mature in three years or less; and

(D) Are not convertible to common stock;

(ii) Such commercial paper:

(A) Continues to be rated in one of the two highest categories by the most recently published rating of such paper by two nationally recognized investment rating services, or, if unrated, is guaranteed by a company having outstanding paper that is so rated; and

(B) Will mature in 270 days or less; and

(iii) An amount not in excess of one percent of such institution's assets invested in eligible corporate debt obligations or commercial paper of a single issuer shall be counted as a liquid asset;

(10) Reserves required to be maintained pursuant to title I of the Depository Institution Deregulation and Monetary Control Act of 1980 (94 Stat. 132) and established pursuant to 12 CFR part 204, whether in the form of:

(i) Vault cash, as defined in 12 CFR 204.2, provided that vault cash shall be included only once in calculating the aggregate amount of liquid assets;

(ii) Balances maintained directly with the Federal Reserve Bank in the district in which the savings association is located; or

(iii) A pass through account as defined in 12 CFR 204.2;

(11) Any obligation that would qualify as a liquid asset under paragraph (g)(2), (g)(3), (g)(6) or (g)(9) of this section but for its maturity: *Provided*, That the obligation:

(i) Is hedged, at a value equal to or exceeding its book value, with a firm forward commitment (including a commitment represented by a repurchase agreement) to purchase the obligation issued by a member of the Association of Primary Dealers in United States Government Securities ("Association member") or, an insured financial institution, as defined in paragraph (b) of this section, and the commitment must be fulfilled within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under paragraph (g) of this section;

(ii) Is hedged, at a value equal to or exceeding its book value, with a finan-

cial futures contract under which the obligation is of deliverable grade and the delivery date is at or before the maximum maturity necessary for the obligation (the deliverable security) to qualify as a liquid asset under paragraph (g) of this section;

(iii) Is hedged, at a value equal to or exceeding its book value, with a long put option and the time period within which the option may be exercised does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under paragraph (g)(11)(iii); or

(iv) Provides that the holder has the right to redeem the obligation with the issuer of the obligation at the stated or par value and that this right may be exercised within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under this paragraph (g)(11)(iv);

*Provided further*, That the amount of any obligation qualifying under paragraphs (g)(11)(i), (g)(11)(ii) or (g)(11)(iii) of this section that may be counted in satisfaction of the requirements imposed by § 566.2 of this part shall be the obligation's book value at the time of hedging; and *Provided finally*, That the board of directors of a savings association shall review on at least an annual basis the financial condition of each insured financial institution, and Association members from which it regularly obtains forward commitments;

(12) Mortgage-related securities as described in 12 U.S.C. 1465(b)(1)(C)(vi); and

(13) Mortgage loans on the security of a first lien on residential real property as described in 12 U.S.C. 1465(b)(1)(C)(vii).

[54 FR 49646, Nov. 30, 1989, as amended at 61 FR 50984, Sept. 30, 1996; 62 FR 62512, Nov. 24, 1997; 63 FR 71213, Dec. 24, 1998]

#### § 566.2 Requirements.

(a) *Safety and soundness requirement.* In addition to meeting the minimum requirement under paragraph (b) of this section, each savings association must maintain sufficient liquidity to ensure its safe and sound operation.

(b) *Minimum statutory liquidity requirement.* (1) Except as otherwise provided in paragraph (c) of this section, each