

§567.13

12 CFR Ch. V (1-1-04 Edition)

reflect decay rates (past and projected) in the acquired customer base.

(h) *Exemption for certain subsidiaries.*—

(1) *Exemption standard.* An association holding purchased mortgage servicing rights in separately capitalized, non-includable subsidiaries may submit an application for approval by the OTS for an exemption from the deductions and limitations set forth in this section. The deductions and limitations will apply to such purchased mortgage servicing rights, however, if the OTS determines that:

(i) The thrift and subsidiary are not conducting activities on an arm's length basis; or

(ii) The exemption is not consistent with the association's safe and sound operation.

(2) *Applicable requirements.* If the OTS determines to grant or to permit the continuation of an exemption under paragraph (h)(1) of this section, the association receiving the exemption must ensure the following:

(i) The association's investments in, and extensions of credit to, the subsidiary are deducted from capital when calculating capital under this part;

(ii) Extensions of credit and other transactions with the subsidiary are conducted in compliance with the rules for covered transactions with affiliates set forth in sections 23A and 23B of the Federal Reserve Act, as applied to thrifts; and

(iii) Any contracts entered into by the subsidiary include a written disclosure indicating that the subsidiary is not a bank or savings association; the subsidiary is an organization separate and apart from any bank or savings association; and the obligations of the subsidiary are not backed or guaranteed by any bank or savings association and are not insured by the FDIC.

[59 FR 4788, Feb. 2, 1994, as amended at 60 FR 39232, Aug. 1, 1995; 62 FR 66264, Dec. 18, 1997; 63 FR 42678, Aug. 10, 1998; 66 FR 59666, Nov. 29, 2001]

§567.13 Obligations of acquirors of savings associations to maintain capital.

(a) *Definitions.* As used in this section, the following definitions apply, unless the context otherwise requires:

(1) *Acquiror* means a person or company that controls a savings association.

(2) *Control* means control as determined under §574.4(a) or (b) of this chapter.

(3) *Capital* means the measure of capital used in the applicable capital maintenance obligation.

(4) *Capital maintenance obligation* means an obligation to maintain the capital of a savings association imposed by means of a resolution issued or condition imposed by the Federal Savings and Loan Insurance Corporation ("FSLIC"), the Federal Home Loan Bank Board ("Board"), the Office, or any of their delegates, a stipulation to the FSLIC, the Board, the Office, or any of their delegates, or an agreement between the acquiror and the FSLIC, the Board, the Office, or any of their delegates.

(5) *Deficiency* means the amount by which the level at which the acquiror is required to maintain the association's capital pursuant to a capital maintenance obligation exceeds the savings association's capital.

(6) *Divestiture* or *divest* means any action or conduct that would result in the acquiror no longer being in control of the savings association.

(7) *Savings association* means a Federal savings and loan association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association, and shall include any savings bank or cooperative bank which is deemed by the Office to be a savings association under 12 U.S.C. 1467a(1).

(8) *Savings and loan holding company* means a savings and loan holding company as defined in §574.2(q) of this chapter.

(b) *Notice.* Prior to divestiture of a savings association, an acquiror that is subject to a capital maintenance obligation shall provide written notice of such divestiture to the Office on Form DV, including the certifications required therein. If the acquiror is unable to provide such certifications, the acquiror may submit alternative certifications addressing the subjects of each certification, in a form acceptable to the Office.

(c) *Determination of deficiency.* Upon receipt of the notice required under paragraph (b) of this section, the Office will conduct a full or limited scope examination of the savings association, as deemed appropriate, to ascertain whether a deficiency exists as of the date of the examination. If such examination is not completed within 90 days of the notice required under paragraph (b) of this section, or the Office has not communicated the results of the examination to the acquiror within such period, the deficiency, if any, shall be calculated based on the savings association's most recent Thrift Financial Report, filed prior to the notice of divestiture, *provided, however*, that if the failure to complete an examination within 90 days is caused by any failure of the association or the acquiror to cooperate, the 90 day period may be extended by the Director of the Office for additional periods, including such time as may be needed to base a deficiency on the results of a completed examination. Notwithstanding any other provision of this section, if the Office determines that fraud or misrepresentation occurred during the course of an examination conducted to determine the association's capital, compliance with the procedures set forth in this section shall not be deemed to have extinguished an acquiror's capital maintenance obligation and the Office will seek appropriate enforcement remedies.

(d) *Divestiture.* (1) In the event that the examination conducted under paragraph (c) of this section indicates that no deficiency exists, the acquiror may divest control of the savings association to which the capital maintenance obligation relates upon receiving written notice of the results of the examination. Where the examination was

not completed or the results not communicated to the acquiror in a timely manner, and the savings association's most recent Thrift Financial Report filed before the filing of the notice of divestiture indicates no deficiency existed at that time, the acquiror may divest control of the savings association to which the capital maintenance obligation relates 91 days after the receipt of the notice by the Office, or such longer period as established under paragraph (c) of this section.

(2) In the event that a deficiency exists, the acquiror may not divest control of the savings association to which the capital maintenance obligation relates unless:

(i) The acquiror provides the office with an agreement to infuse into the savings association the amount necessary to remedy the deficiency and make arrangements, satisfactory to the Office, to assure payment of the deficiency; or

(ii) The deficiency is satisfied.

(3) An acquiror may divest control of a savings association to which a capital maintenance obligation relates prior to the completion of the examination conducted under paragraph (c) of this section if the acquiror provides the Office with an agreement to infuse into the savings association the amount necessary to remedy the deficiency and makes arrangements, satisfactory to the Office, to assure payment of any deficiency.

(e) *Effect of regulation on terms of capital maintenance obligations.* This regulation does not supercede any liability imposed by a capital maintenance obligation.

(f) *Exceptions.* The Director of the Office may, upon application or upon his or her own initiative, grant or deny exemptions from this section.

[55 FR 7478, Mar. 2, 1990, as amended at 60 FR 66720, Dec. 26, 1995]

§§ 567.14–567.19 [Reserved]

PART 568—SECURITY PROCEDURES UNDER THE BANK PROTECTION ACT

Sec.

568.1 Authority, purpose, and scope.

568.2 Designation of security officer.

568.3 Security program.