

Andre, Simmons, and Gradison.
Commissioner Gilliam did not participate.

James H. Bayne,
Acting Secretary.

Appendix A

Title 49 CFR shall be amended by making the following changes:

1. Amend the center heading **PARTS 1240-1259—REPORTS** by removing the number 1240 and inserting in its place, the number 1241.

PART 1240—[REMOVED]

2. Remove 49 CFR Part 1240, *Classes of Carriers.*

[FR Doc. 83-1453 Filed 1-16-83; 8:45 am]

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Proposed Rules

Federal Register

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

[Docket No. AO-231-A49]

Milk in the Texas Marketing Area; Rescheduling of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Rescheduling of public hearing on proposed rules.

SUMMARY: This notice reschedules for February 1, 1983, a public hearing to consider proposals to amend the Texas milk order. The hearing was initially scheduled to begin on January 18, 1983. Cooperative associations representing a large segment of the dairy industry in the north central United States requested a postponement, indicating that they need additional time to prepare for the hearing.

ADDRESSES: Robert Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Agriculture Department, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert Groene, (202) 382-9376.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued December 27, 1982, published January 3, 1983 (48 FR 28).

A notice was issued on December 27, 1982 giving notice of a public hearing to be held January 18, 1983, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area.

Notice is hereby given, pursuant to the rules of practice applicable to these proceedings (7 CFR Part 900) that the said hearing is rescheduled to be held at the Sheraton Grand Hotel, Dallas-Ft. Worth Airport, Highway 114 and Esters Boulevard, Dallas, Texas 75261,

beginning at 9:30 a.m., local time, on February 1, 1983.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C. on January 14, 1983.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 83-1501 Filed 1-18-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-81-04]

Tertiary Incentive Program

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Analysis of Comments.

SUMMARY: The Economic Regulatory Administration (ERA) is publishing its analysis of the comments on the proposals set forth in the May 6, 1981 Notice of Proposed Rulemaking concerning the Tertiary Incentive Program. As announced previously, ERA decided not to adopt any of these proposals as a final rule. This analysis was initially prepared in the summer of 1981, but its publication was deferred pending resolution of the tertiary litigation.

FOR FURTHER INFORMATION CONTACT:

F. Scott Bush, Office of Fuels Programs, Economic Regulatory Administration, Room GA-017, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2202

William Funk, Assistant General Counsel for Regulatory Oversight, U.S. Department of Energy, Room 6A-141 (GC-12), 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6736

Jack Vandenberg (Office of Public Information), Economic Regulatory Administration, Room 4309, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 633-8108.

SUPPLEMENTARY INFORMATION: On March 17, 1981, ERA issued an advance notice of proposed rulemaking (46 FR 17566, March 19, 1981) announcing that

it would propose to rescind the Tertiary Incentive Program ("incentive program") with respect to allowed expenses that had not been incurred and paid on or before March 19, 1981. ERA stated that its basis for such action was its assumption that continuation of the incentive program beyond March 19 would not meaningfully increase the production of crude oil. This assumption was based on ERA's belief that expenses with respect to those enhanced oil recovery ("EOR") projects which the incentive program was intended to encourage most likely already had been incurred and paid.

On April 28, 1981, ERA issued a notice of proposed rulemaking (46 FR 25315, May 6, 1981) that proposed the action discussed in the advance notice. This notice also proposed to rescind the incentive program with respect to all in-house allowed expenses and with respect to those prepaid allowed expenses that were not incurred and paid prior to January 28, 1981. ERA's basis for such action was its assumption that many of the in-house and prepaid allowed expenses that had been incurred and paid in the months immediately following decontrol related to EOR activities that would have been undertaken on the same time schedule, without regard to the incentive program. With respect to in-house expenses, statements by some members of the industry indicated their belief that, in most instances, they represented no new commitment by a firm to EOR activity but merely accounting entries between affiliated entities that result in a "wash" between the two entities and a positive cash flow to a firm as a whole. With respect to prepaid expenses, statements by some members of the industry indicated their belief that most of the prepaid expenses incurred and paid after decontrol represented an attempt by producers to receive the market price for all their price-controlled crude oil without any corresponding new commitment to EOR activity.

ERA recognized the retroactive nature of the proposals. However, it indicated that adoption of these proposals might not be an impermissible retroactive final rule since very few firms may have acted in reliance on the regulations that were proposed to be rescinded. Moreover, ERA stated that in many situations where firms had relied, a firm might be able to undo the agreement

relating to the allowed expenses in question and thus would suffer no detrimental reliance damage.

On July 8, 1981, ERA issued a notice of its determination not to adopt any of these proposals as a final rule. (46 FR 36103, July 13, 1981). ERA made this decision after a careful review of the available data on the incentive program and the public comments on the proposals. This notice is intended to set forth ERA's analysis of the comments.¹

ERA received comments from sixty-one different sources. Comments from thirty-eight of these sources opposed the adoption of the proposals, while comments from twenty-two of these sources favored their adoption.² The opposition to the proposals came from independent crude oil producers, suppliers of goods and services to enhanced oil recovery ("EOR") projects, and some refiners. The support came from other refiners.³

In general, those refiners that favored the adoption of the proposals argued that, as a matter of law, Executive Order 12287 (46 FR 9909, January 30, 1981) terminated the incentive program after January 27, 1981. On the basis of this argument, refiners, tended to view the rulemaking as unnecessary, but supported adoption of the proposals relating to the period after January 27 as a means of clarifying the situation surrounding the incentive program. DOE's office of General Counsel had considered this argument and rejected it since Executive Order 12287 did not eliminate the then existing price and allocation regulations, but only exempted from those regulations crude oil and petroleum products sold after January 27. This position had been stated publicly in Ruling 1981-1 (46 FR 12945, February 18, 1981). Moreover, Ruling 1981-1 specifically considered

the effect of Executive Order 12287 on the incentive program and stated that crude oil sold on or before January 27 could be certified as tertiary incentive crude oil on the basis of allowed expenses incurred, paid and reported through March 31, 1981.⁴ Thus, rather than clarifying the situation surrounding the incentive program, proposed amendments would have represented a substantive change in the program. Accordingly, ERA did not find persuasive those arguments that treated the proposals as interpretative matters rather than as substantive changes in the regulations.

In a related vein, many refiners argued that the continued effectiveness of the regulations that related to the incentive program beyond January 27, 1981, would be contrary to the policy of Executive Order 12287 and the original intent of the incentive program.

With respect to Executive Order 12287, they argued that the President had intended to return the oil industry to a free market by terminating all aspects of the then existing price and allocation regulations, except for certain designated provisions, such as the Entitlements Program. The continuing effectiveness of the tertiary regulations after January 27, they said, would run counter to a free market since it would cause producers to make decisions concerning EOR projects not only on the basis of normal market forces but on the basis of governmentally created price incentives which had only a limited time to run. With respect to the original intent of the incentive program, they argued that since the program had been adopted to overcome the disincentives for EOR activity created by the crude oil price regulations, the removal of price controls from all crude oil sold after January 27 eliminated any regulatory disincentives for EOR activity. Furthermore, they argued that the continued effectiveness of the regulations after January 27 would be arbitrary and capricious since it would provide an unnecessary windfall to project operators able to attract private investment on their own merits, while also wasting scarce economic resources on projects unable to justify such investment in a free market.

ERA does not find the continued effectiveness of the tertiary regulations through March 1981 to be inconsistent with the return to a free market that occurred on January 28, 1981. These regulations did not affect crude oil sold

on or after that date, but only crude oil sold before that date. Thus, the continued effectiveness of the regulations operated to compensate for disincentives created by and suffered under the crude oil price regulations and did not distort free market forces in the sale of crude oil. More importantly, the continued effectiveness of the regulations carried out the Congressional mandate to provide "additional price incentives for bona fide tertiary recovery techniques". Energy Conservation and Production Act section 122, 15 U.S.C. 757(j)(1)(A).⁵ The removal of price controls on January 28 did not eliminate the results of price controls in effect prior to that date and, accordingly, did not terminate the regulatory basis for provisions intended to eliminate the disincentives created by the former price controls. In fact, the continued effectiveness of the tertiary regulations was not only consistent with the removal of price controls, but actually increased the volume of decontrolled oil in the marketplace prior to the President's Executive Order.

Another argument made in support of the proposals was that the operation of the incentive program, especially those aspects of it that related to in-house or prepaid allowed expenses, had resulted in many firms being placed in a position in the Entitlements Program substantially more detrimental than their historical position. These refiners asserted that since the issuance of Executive Order 12287 there had been a remarkable increase in the volume of old and new crude oil certified or recertified as tertiary incentive crude oil and that most of these certifications resulted from in-house and/or prepaid allowed expenses incurred or paid after January 27, 1981. This certification of old and new crude oil as tertiary incentive crude oil meant that there was less deemed old oil whose benefit would be distributed by means of the Entitlements Program.

ERA agrees that the incentive program did operate to reduce the amount of deemed old oil whose benefit could be distributed by means of the Entitlements Program. However, ERA cannot agree that this situation in itself supported adoption of the proposals, since any action that decontrols crude oil has the same effect. The effect of the incentive program on the amount of deemed old oil in the Entitlements

¹ ERA originally intended to publish this analysis soon after its July 13, 1981 notice. However, prior to completion of the analysis for publication, that portion of Ruling 1981-1 relating to the tertiary program was held invalid by the District Court for the Central District of California on September 30, 1981. See *Union Oil Company of California v. Department of Energy*, 530 F. Supp. 717 (C.D. Cal. 1981). Since such a holding, if upheld, would have made the rulemaking essentially moot, ERA suspended its efforts to publish an analysis. On September 1, 1982, the Temporary Emergency Court of Appeals reversed the district court and upheld Ruling 1981-1. See *Union Oil Company of California v. Department of Energy*, 688 F.2d 797 (TECA 1982), petition for cert. filed, 51 U.S.L.W. 3380 [No. 82-771 November 4, 1982].

² One firm stated that it did not have sufficient information on which to make a decision to support or to oppose the proposals.

³ Among refiners, 14 out of the 16 small and independent refiners and 8 out of 15 major integrated refiners supported the proposals.

⁴ This position has been upheld by the Temporary Emergency Court of Appeals. *Union Oil Co. v. DOE*, 688 F.2d 797 (TECA 1982).

⁵ This conclusion was also reached by the Temporary Emergency Court of Appeals in *Union Oil Co. v. DOE*, *supra*.

program would have provided support for the adoption of the proposals only if the incentive program had not promoted the objectives of the Emergency Petroleum Allocation Act of 1973. ERA had proposed to rescind the tertiary provisions with respect to the allowed expenses in question because of its tentative assumption that the disallowance of recovery of such expenses would not be a disincentive to EOR activity, and thus that recovery of such expenses did not promote the objectives of the EPAA. Although many of the refiners that supported the proposals stated that they agreed with ERA's assumption, none offered any actual examples of situations in which the recovery of such expenses had not encouraged EOR activity.

Those firms that opposed the proposals disagreed strongly with ERA's assumptions concerning the operation of the incentive program in early 1981, especially with respect to the allowed expenses in question. They also disputed ERA's estimate that they would suffer only minor injury through retroactive rescission of the tertiary provisions.

While many of these comments acknowledged the large increase in the amount of allowed expenses reported in the first months of 1981, they did not accept the contention that this increase represented a "last-minute" attempt to participate in the program before Executive Order 12287 eliminated the possibility. They stated that because of the complex nature of most EOR activity, the long lead times involved, and the large overall investment, few, if any, of the recently reported allowed expenses could relate to EOR activity generated "overnight" in response to Executive Order 12287. In support of this position, several producers that only recently had begun to report allowed expenses detailed the degree and length of planning that was required in connection with the EOR project to which the expenses related.

The comments suggest that a combination of factors could explain the increase in the amount of crude oil certified as tertiary incentive crude oil in early 1981. One factor was the growing realization within the industry that the incentive program existed and that it could provide significant incentives to EOR activity. The major factor cited by the commenters, however, was a series of actions by DOE to clarify and expand the scope of the program with respect to prepaid

expenses,⁶ in-house expenses⁷ and arrangements to acquire price-controlled crude oil.⁸ In addition, they cited several mechanical aspects of the price regulations that probably had contributed to the increase in the volume of crude oil certified as tertiary incentive crude oil in early 1981.⁹

ERA has concluded on the basis of the comments, as well as its own projections of tertiary activity in 1981, that most of the expenses incurred and paid after January 27, 1981, would have been expended under the tertiary program absent immediate decontrol. Specifically, ERA has concluded that both on-going and incipient tertiary projects were accelerated during the period after January 27 in order to obtain some of the up-front financing that producers expected would be available through September 30, 1981, under phased decontrol. As a result of this increased activity, producers incurred and paid a larger volume of expenses during the period January 28 through March 31 than they would have absent immediate decontrol. These expenses, however, would likely have been incurred and paid before September 30 under phased decontrol. Thus, while these expenses permitted more crude oil to be decontrolled with respect to December and January than would otherwise have occurred, this

⁶ Many producers had hesitated to incur and pay prepaid expenses because they were not certain that such expenses were recoverable under the incentive program. ERA did not state publicly that the recovery of such expenses was permissible under the program until July 1980. 45 FR 40106, 40107 (Aug. 15, 1980).

⁷ Many producers believed that it would be more efficient for them to acquire goods and services internally rather than externally. ERA did not amend the regulations to permit the recovery of in-house expenses until January 5, 1981. 46 FR 1246 (Jan. 5, 1981).

⁸ Many producers did not possess sufficient quantities of price controlled crude oil to participate fully in the program. They were unable to conclude agreements to acquire access to sufficient quantities until DOE issued a series of interpretations concerning the acceptability of such agreements. The first two of these interpretations were not issued until September 1980. See *Barber Oil Corp.*, Interpretation 1980-22, 45 FR 61563 (September 16, 1980); *Mitchell Energy Corp.*, Interpretation 1980-23, 45 FR 61564 (September 16, 1980).

⁹ The price regulations provided for the gradual conversion of old (lower tier) oil to new (upper tier) oil. As a result of this shift in the composition of price-controlled oil, it would be expected that a greater volume of controlled crude oil would be certified as tertiary incentive crude oil since less additional revenue is generated on a per barrel basis by selling new oil at the market price than by selling old oil at the market price.

The price regulations also provided that a producer could sell at the market price that quantity of price-controlled crude oil necessary for a producer to recover its allowed expenses and to pay related Windfall Profit Tax liability. This provision had the effect of a multiplier on the amount of crude oil certified as tertiary incentive crude oil.

merely represented a compression into two months of a portion of the expenses that otherwise would have been spread out over several months. ERA has found no evidence of "bogus" projects that were initiated solely to obtain benefits during the period January 28 through March 31.

ERA considered the primary issue in this rulemaking to be whether the recovery of the allowed expenses in question promoted the original intent of the incentive program, that is, the encouragement of EOR activity. The commenters that opposed adoption of the proposals addressed this issue directly. In general, they stated that the ability to recover such expenses had encouraged them to participate in EOR projects and that retroactive rescission of the incentive program would cause them to reconsider their participation in those and, possibly other, EOR projects. In this regard, several of the major refiners disputed the notion that the incentive program was a windfall for them just because they did not have as much difficulty in raising capital as smaller producers. They pointed out that the amount of funds available to any firm for investment is finite and that EOR projects had to compete for available funds with more conventional and predictable crude oil production as well as other investment opportunities for the available funds. Thus, by making EOR projects better investment opportunities the incentive program encouraged major refiners to undertake some EOR projects that probably would not otherwise have been undertaken, at least during this time period.

Many of the comments that opposed the proposals challenged ERA's assumptions concerning the post-March 19, 1981 period and concerning in-house and prepaid allowed expenses. With respect to allowed expenses incurred or paid after March 19, 1981, the comments and ERA's analysis indicated that very few allowed expenses had been incurred and paid after that date. However, those comments from producers that had incurred and paid such expenses stated that they were made as part of an organized and continuing commitment to EOR activity. In fact, several of these producers indicated that it was adherence to a prior plan of investment that prevented these expenses from being incurred and paid at an earlier date.

With respect to in-house expenses, many of the comments objected to the characterization of these expenses as accounting entries. These comments stated that in-house expenses represented a real commitment to EOR

activity since in order to supply the goods or services to which the expenses related, the firm would have to expend a portion of the limited internal resources available to it. Moreover, many firms indicated that these in-house expenses related to EOR activity that had been undertaken as a result of the incentive program. These firms stated that they would have utilized the incentive program to undertake this activity by means of external suppliers, had not the in-house option been available and more economically efficient; thus, they would be harmed by a retroactive rescission.

With respect to prepaid expenses, many firms disagreed with the assumption that a large portion of such expenses represented a major abuse of the program. Firms stated they had been encouraged to make an expanded commitment to EOR activity because of the ability to recover prepaid expenses. Some of these firms also offered an explanation for the increasingly large amount of prepaid expenses reported, reasoning that since the incentive program had a fixed duration and since most EOR expenses related to items that normally were acquired over a much longer period of time, the only practical way for many firms to utilize the incentive program was to prepay expenses. Many firms also noted they could recover only seventy-five percent of the cost of the good or service for which they had prepaid and, thus, that they had made a substantial current commitment to future EOR activity that they most likely would not have been made in the absence of the incentive program.

Most of the comments in opposition also argued that the adoption of the proposals concerning in-house and prepaid allowed expenses would result in a retroactive final rule that would adversely affect them.¹⁰ They disagreed with ERA's assumption that they may not have relied on the recoverability of the allowed expenses and that it might

not be difficult to rescind arrangements that related to such expenses. These producers stated that the recoverability of such expenses was a determinative consideration in their participation of EOR projects. In addition, they stated that if the program was rescinded with respect to these allowed expenses they would be forced to reconsider their commitment to these EOR projects. Further, even if they decided to continue these particular projects, the rescission of the program could affect their decision to undertake or to continue other EOR projects. Moreover, they stated that they had entered into contracts at the time they incurred and paid the allowed expenses, and any attempt to terminate or amend these contracts would be subject to substantial legal controversy. In this regard, some suppliers of EOR equipment opposed the proposals on the ground that they had relied on the contracts with project operators and had expended substantial sums to produce the needed equipment. Thus, they would be financially harmed if project operators were able to terminate these contracts.

In light of the many statements that firms had acted in reliance on the recoverability of the allowed expenses in question and that many of these firms would be substantially harmed if the incentive program was rescinded with respect to such expenses, ERA decided that it would not be appropriate to adopt these proposals retroactively. As previously stated, the comments persuaded ERA that the recovery of these allowed expenses had promoted EOR activity and that there was no regulatory reason to rescind retroactively the provisions in question.

Upon consideration of these comments on the allowed expenses in question, ERA decided that its assumptions about these expenses had been erroneous since the rulemaking record and its own analysis strongly indicated that the recovery of these expenses did promote new or expanded commitments to EOR activity. Moreover, it was clear that participants had relied on the program and that its termination prior to March 31 would detrimentally affect not only many of the participating firms but also future tertiary production. Accordingly, ERA decided that the program had made a positive contribution to EOR activity and, thus, that it would not have been appropriate to rescind it with respect to these allowed expenses.

Issued in Washington, D.C., January 11, 1983.

Rayburn Hanzlik,
Administrator, Economic Regulatory
Administration.

[FR Doc. 83-1467 Filed 1-19-83; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 523, 526, 541, 545, 555,
561 and 563

[No. 82-813]

Implementation of New Powers; Limitations on Loans to One Borrower

Dated: December 16, 1982.

AGENCY: Federal Home Loan Bank
Board.

ACTION: Proposed rule.

SUMMARY: The Board is proposing amendments to its regulations to implement the expanded authority for Federal savings and loans contained in the Garn-St Germain Depository Institutions Act of 1982. The proposed regulations would permit Federal associations to offer demand deposit accounts and governmental unit NOW accounts, and to engage in leasing and commercial lending; and expand the authority of Federal associations to offer consumer loans, educational loans, real estate loans and to invest in government obligations. In addition, the Board proposed to revise Part 545 of its regulations governing the general operations of Federal associations in order to remove obsolete or unnecessary provisions and to facilitate use by improving the organization of the Part. These amendments would expand the investment authority of, and services offered by, Federal savings and loan associations.

DATE: Comments must be received by March 10, 1983. Due to the complexity of the proposal, no late comments will be considered.

ADDRESS: Send comments to Director, Information Services, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available at this address for public inspection.

FOR FURTHER INFORMATION CONTACT: Michael D. Schley, Attorney, Office of General Counsel (202-377-6444) for information on leasing, commercial lending, letters of credit, manufactured home lending, and loans-to-one borrower limitations.

¹⁰ Most of the comments on the retroactivity issue referred to *Retail, Wholesale and Department Store Union v. NLRB*, 468 F. 2d 380 (D.C. Cir. 1972) in which the court set forth five factors to be considered in determining whether it was permissible to adopt a rule on a retroactive basis. These five factors are: (1) Whether the particular case is one of first impression; (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law; (3) the extent to which the party against whom the new rule is applied relied on the former rule; (4) the degree of the burden which a retroactive order imposes on a party; and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard. The commenters that analyzed these factors indicated that in their view each of these factors cut against adopting the proposals retroactively.

Neil R. Crowley, Attorney, Office of General Counsel (202-377-6417) for information on real estate lending.

Robert H. Ledig, Attorney, Office of General Counsel (202-377-7057) for information on Demand Deposit Accounts and Governmental Unit NOW Accounts.

Wendy B. Samuel, Deputy Director, Policy & Projects Division, Office of General Counsel (202-377-6465) for information on Consumer lending, educational loans, and investment in government securities.

Wendy B. Samuel (202-377-6465), Deputy Director, or Peter M. Barnett (202-377-6445), Director, Policy and Projects Division, Office of General Counsel for information on all other aspects not specifically listed above.

SUPPLEMENTARY INFORMATION: On October 15, 1982, President Reagan signed into law the Garn-St Germain Depository Institutions Act of 1982 ("Act"), Pub. L. No. 97-320, 96 Stat. 1469, which included broad new powers for Federally chartered savings and loans and mutual savings banks ("Federal associations"). Among the purposes of this legislation is to revitalize the housing industry, to strengthen home mortgage lenders and to ensure the availability of mortgage loans. Title III of the Act is specifically designed to give associations the flexibility necessary to maintain their role of providing credit for housing. To this end, the legislation amended the Home Owners' Loan Act of 1933, 12 U.S.C. 1461-1470, to permit Federally chartered thrift institutions to exercise new powers, and to increase the scope of existing authorizations. The Act permits Federal associations to offer demand deposit accounts, including overdraft privileges, to offer NOW accounts to governmental units, to make time deposits in institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("insured institutions"), to make commercial loans, and to engage in leasing operations. Existing powers were extended in the areas of real estate lending, investment in governmental securities, investment in commercial paper and corporate debt securities, educational lending, and consumer lending. Certain of these authorities have already been implemented by the Board on an interim basis. Board Resolution No. 82-730 (November 4, 1982), 47 FR 51732 (November 17, 1982). The Board now proposes these regulations as the first step in fully implementing the new powers. The temporary authorizations will remain in effect until permanent regulations are adopted.

Federal Preemption

The proposal would add a new section stating specifically the Board's intention that these regulations preempt any state laws or regulations purporting to affect the operations of Federally chartered institutions. This would codify a long-standing position taken by the Board and supported by a line of court decisions from *People v. Coast Federal Savings and Loan Association*, 98 F. Supp. 311 (S.D. Cal. 1951) through the recent Supreme Court decision in *Fidelity Federal Savings and Loan Association v. De La Cuesta*, 102 S. Ct. 3014 (1982).

Savings Accounts

The proposal would revise substantially the various regulations governing the issuance of savings accounts by Federal associations, thus completing the process begun by Board Resolution No. 82-193 (47 FR 13778 (1982)) to grant Federal associations the ability to structure savings accounts as required by the financial marketplace. The proposal would authorize Federal associations to issue savings accounts as permitted by their charters and bylaws subject to regulatory requirements applicable to all insured institutions. These are the requirements of the Board's Bank System Regulations (12 CFR Part 526) and Insurance Regulations (12 CFR Part 563) and the regulations of the Depository Institutions Deregulation Committee (12 CFR part 1204). The proposal would delete from the Federal Regulations provisions regarding rates of return and renewal of fixed-term accounts that currently only apply to Federal associations.

The proposal also would eliminate the prohibition on collateralization of savings deposits at Federal associations contained in 12 CFR 545.24 (1982). Currently, Federal associations are authorized to give security for public deposits (12 CFR 545.24-2), for Eurodollar certificates (12 CFR 545.1-4, 563.3-3), for outside borrowings (12 CFR 563.8), and in their capacity as a depository and fiscal agent of the government (12 CFR 545.24-3). The Board believes that the extension of the power to give security would enhance the ability of Federal Associations to attract large savings deposits which exceed FSLIC insurance coverage. The amendment also would equalize the authority of Federal associations and state-chartered insured institutions.

To limit the risk exposure of the FSLIC, the Board proposes to require that the FSLIC have the same right to purchase the collateral securing savings

deposits as provided by current regulations concerning Eurodollar certificates and outside borrowings, which require an association to provide the FSLIC the right upon the default of an obligation to be given 30 days, subsequent to notification, to purchase the collateral at the price set by sale or other means. The FSLIC right to purchase would not extend to liquid assets, as defined in 12 CFR 523.10, or to assets which would be liquid but for their remaining term to maturity.

Furthermore, the proposal would make express the authority of Federal associations to issue savings accounts in book-entry form. Current regulations already have been interpreted to permit the issuance of certificate accounts in book entry form, and the proposal would codify this interpretation. By permitting such accounts to be issued, without a requirement that a formal certificate or document be presented to the depositor, the Board believes that a cost savings to depositors and institutions will result and that the development of a secondary market will be facilitated.

The Board is also proposing to consolidate present 12 CFR 545.24-2, "Public deposits or investments," and § 545.24-3, "Tax and loan depositories; depositories of public money and fiscal agents," into a single section, § 545.1-5, to be entitled "Public deposits, depositories, and fiscal agents." The substance of the present regulations would not be changed by this amendment. With respect to the "Additional suretyship" provision of the proposed § 545.1-5(c), the Board requests public comment on the issue of a Federal association's authority to act as surety, subject to Board approval, on, for example, industrial development bonds. Specifically, the Board request comment on the most appropriate procedures to be used in granting an association authority to act as surety under this provision.

Governmental Unit NOW Accounts

Section 706 of the Act authorizes member institutions of the Federal Home Loan Bank System to offer NOW accounts for deposit of public funds by a unit of a Federal, state or local government. The proposal would amend 12 CFR 526.1(l) (as amended by 47 FR 13781 (1982)) to implement this authority.

Demand Deposits

Section 312 of the Act permits Federal associations to accept non-interest-bearing demand accounts under certain circumstances. The proposal would

implement this new power by authorizing associations to accept demand accounts from persons or organizations with a business, corporate, commercial or agricultural loan relationship with the association. The proposal specifies that a business, corporate, commercial or agricultural loan relationship is any loan other than a loan on a home to be occupied by the borrower or a loan to a natural person for personal, family or household use. A loan relationship would be defined to include any outstanding loan, the establishment of a line of credit, or a previous loan and a reasonable expectation of the renewal of a lending relationship. Associations also would be permitted to accept demand accounts from a commercial, corporate, business, or agricultural entity for the sole purpose of effectuating payments to the entity by nonbusiness customers of the entity; the nonbusiness customers need not have any relationship with the association. This provision is not intended to prevent a business from making a payment to such an account when acting in a capacity equivalent to that of an individual consumer. For example, a utility company with or without a loan relationship with a Federal association could maintain a demand account to allow all of its customers, including corporate customers, to pay their monthly bills.

The Act also authorizes associations to offer overdraft privileges on demand accounts. The proposal would implement the overdraft loan authority subject to the percentage-of-assets and other limitations on commercial loans. The Board solicits comments regarding whether there is a need to define the overdraft lending authorized in conjunction with demand and NOW accounts.

Real Estate Loans

Section 322 of the Act revised the statutory authority of Federal associations to make loans on the security of "residential" and "nonresidential" real property. In implementing this provision, the Board is proposing to define these terms and to restructure its real estate lending regulations. "Residential real property" (or "residential real estate") would be defined essentially the same as in section 5(c)(6) of the Home Owners' Loan Act, 12 U.S.C. 1464(c)(6) (Supp. IV 1980), and would include homes, multifamily dwellings, combinations of either of these and business property, farm residences, combinations of farm residences and commercial farm real estate, or property that will be improved by the construction of such structures.

"Nonresidential real property" (or "nonresidential real estate") would include all other real estate.

The definition of residential real estate would include "real estate used for primarily residential purposes other than a home." Combinations of such real estate and business property involving only minor business use would also be included within the definition. The Board is proposing to use this description of real estate in lieu of the definition of "other dwelling unit" (currently 12 CFR 541.16 (1982)). The term proposed would include those types of real estate specified in 12 CFR 541.16, such as multifamily dwellings, structures (or parts thereof) designed or used as fraternity or sorority houses which include sleeping accommodations for students of a college or university, structures used principally for living accommodations for students, employees, or staff of a college university, or hospital or for a nursing home or convalescent home. The Board believes that the definition is unnecessary if the type of real estate is adequately described in the definition of residential real estate.

The Board is also proposing to revise further the definitions in Part 541 by removing certain definitions that are unnecessary in light of the amendments made to the real estate lending regulations and by amending certain others. Section 541.3, "Combination of dwelling units, including homes, and business property, involving only minor or incidental business use," would be amended by deleting the reference to "other dwelling units," the definition of which at § 541.16 is being deleted, as mentioned above. Section 541.12, "Improved real estate," would be amended by deleting the reference to § 541.16, adding the language currently at 12 CFR 541.17(b), and amending the title to "Improved residential real estate." A new section 541.33, "Improved nonresidential real estate," would be added and would consist of the present § 541.17 (a) and (c). Section 541.17, "Other improved real estate," would be deleted, its provisions being incorporated into the proposed §§ 541.12 and 541.33. Section 541.29, "Unimproved real estate," would be amended to include a reference to the new § 541.33. The Board requests public comment on the effect, if any, of these changes and whether any of the remaining definitions in Part 541 of the Federal Regulations may be clarified, amended, or eliminated as a means of further simplifying the Board's real estate lending regulations.

In revising the real estate lending regulations, the Board is proposing to consolidate into one section, 12 CFR 545.6, the authority for Federal associations to make loans on the security of real estate and most of the limitations on that authority. As amended, § 545.6 would provide broad authority for Federal associations to invest in real estate loans, subject to the limitations in that Part. A real estate loan is defined as one made on the security of residential or nonresidential real estate where the real estate is the primary security for the loan. The proposed language would eliminate the current requirement that loans on nonresidential real estate be secured by a first lien. In addition, the authorization would include specifically the brokerage, warehousing and servicing of real estate loans as part of an association's authorized investments. The proposal would also provide that a loan would be considered to be secured by a lien on real estate if it is secured by an interest in fee or in a leasehold or subleasehold extending or renewable automatically at the option of the holder or the Federal association for five years beyond the loan maturity. Loans secured by an assignment of such a loan would also be included. The existing provision in 12 CFR 541.14 pertaining to this matter would be deleted as being no longer necessary.

The Board has considered including within the investment authorization of its real estate lending regulations a provision pertaining to loans secured by time-sharing units. In some states the interest conveyed in the unit may be a fee interest in the shared real estate, on which an association may foreclose to the same extent as with a fee interest in any other real estate. In these circumstances, a loan made on the security of the property could be categorized as a real estate loan rather than a consumer loan, as it is currently viewed. The Board acknowledges that the value of the security property will be less than the value of the aggregate number of time-share units in the security property. The Board recognizes, however, that an individual time-share unit will also include other rights and privileges that incidentally enhance its value. A foreclosing association could rely on this incidental value to ensure that a subsequent resale of the unit would cover its outstanding loan. In states where the owner of a time-share unit has only a right to use the property, a loan on the security of the would not be deemed to be a real estate loan. The Board is requesting comment on whether it would be appropriate to

include within its real estate lending regulations a provision allowing loans on the security of fee interests in time-share units.

Because the value of a time-share unit is attributable in part to the fee interest in the real estate and in part to the incidental rights and privileges, the Board believes that such a provision if adopted should limit the amount of any real estate loan on a unit to the owner's *pro rata* interest in the appraised value of the real estate alone. Any excess amount of the loan (i.e., that attributable to the incidental rights) would be made under the consumer lending authority.

Those parts of the present § 545.6 pertaining to the determination of loan-to-value ratios would be retained, except for the amendments noted below, although the Act eliminated the statutory loan-to-value requirements. This is not indictive, however, of a decision by the Board that these are necessary in their present form. To the contrary, the Board believes that it may be appropriate to eliminate or reduce these requirements, and specifically requests comments on what loan-to-value ratios, if any, are a necessary component of a regulatory program to ensure safe and sound operation.

Paragraph (b) of the proposed § 545.6 would apply to loans made on the security of residential real estate. The provisions pertaining to home loans would be substantially the same as the present regulations. The proposal would provide, however, that interest on a home loan need not be paid semi-annually, as would be otherwise required, in the case of a reverse annuity mortgage. The loan contract would also be permitted to provide that an association receive a portion of the interest on the loan in the manner permitted by proposed new section 555.19, pertaining to interest expressed as a percentage of income from security property. In addition, the proposal would add a sentence to § 545.6(b)(1)(a) specifically allowing Federal associations to make a loan on which the percentage or dollar amount of the payments may vary pursuant to a formula or schedule set forth in the loan contract. The Board is proposing this change to make clear that the loan contract may provide that the initial interest rate on a home loan may be increased at intervals agreed to in the loan contract independent of any interest-rate index. The existing loan-to-value limitations for home loans would be retained.

The provision pertaining to multi-family dwelling loans would be changed to reflect the proposed deletion of the term "other dwelling units" from the

definitions in Part 541. The Board believes that the use of descriptive language is adequate to indicate the type of dwelling that would constitute a multi-family dwelling. The provision allowing minor or incidental business use would be retained. The Board is also proposing to allow an association to include in the contract for a multi-family dwelling loan a provision allowing negative amortization of interest, essentially to the same extent as is currently allowed on nonresidential real estate loans.

Proposed paragraph (c) of § 545.6 would allow a Federal association to make loans on the security of nonresidential real estate up to 40 percent of its assets. There would be no requirement that such loans be secured by a first lien. No such loan, however, could exceed the existing limit of 90 percent of the value of the security property.

The Board is proposing to consolidate into paragraph (d) of § 545.6 the authority and limitations for making acquisition loans, development loans, loans on the security of building lots and sites, construction loans, and rehabilitation loans. At present, these provisions (with the exception of construction loans) pertain solely to loans made on the security of residential real estate. The Board is proposing to allow associations to make loans pursuant to paragraph (d) on the security of both residential and nonresidential real estate because it believes that there is no reason to distinguish between the two types of loans in light of the increased investment authority for nonresidential real estate loans.

The loan-to-value limitations for development loans and loans on the security of lots and sites would remain at 75 percent of the value of the security property. The Board believes that acquisition loans for unimproved land involve essentially similar risks as the latter two types of loans and, for that reason, is proposing to increase the loan-to-value ratio to 75 percent, from the existing 66 2/3 percent of the security property. The Board is also proposing to allow associations to make construction or rehabilitation loans to 90 percent of the property's value. At present, construction loans on residential real estate may not exceed 75 percent of the property's value, while those on commercial real estate may be made to 90 percent. The Board believes that the construction of structures or the improvement of existing structures on real estate is sufficient reason to allow loans to 90 percent, regardless of

whether the structure is to be used for residential or nonresidential purposes.

The Board is also proposing to amend those provisions pertaining to the maximum loan terms for construction and rehabilitation loans, loans (other than for an individual residence) on the security of building lots and sites, loans to finance the development of real estate, and combination loans. Currently, the regulations provide specified maximum terms for each of the types of loans and allow extensions for various periods. Because an association may readily extend the loan term as a matter of practice, the Board believes that it should eliminate the provisions regarding extensions and instead allow loans to be made within new maximum terms equal to the present term plus the length of the permissible extension for each type of loan.

With respect to combination loans authorized by the proposed § 545.6(e), the Board is proposing to simplify the method of amortizing the principal loan balance over the remaining term. At present, the regulations require amortization at a rate of 1 1/2 percent of that portion of the loan balance applicable to any home after 3 years, and not applicable to the construction of any home after 4 years. The proposal would require that the amortization be calculated on a straight-line basis, rather than at the rate of 1 1/2 percent.

In all other respects, the existing regulatory provisions for these types of loans would be in substance unchanged. In conformity with the amendments regarding real estate lending generally, however, §§ 545.6-2, 545.6-6, and 545.6-4 would be removed.

In order to simplify the existing regulations pertaining to the permissible investments that an association may make in loans insured or guaranteed by a government agency, the Board is proposing to consolidate present 12 CFR 545.6-1, 545.6-11, 545.6-13, 545.6-14, and 545.7-2 into a single section to be designated as § 545.6-1, "Insured and guaranteed loans." The substance of the prior sections would not be changed by this amendment.

In conjunction with its revision of the real estate lending regulations, the Board is proposing to adopt a ruling to clarify the extent to which a Federal association may participate with the borrower in the income generated by the security property. It has become commonplace for lenders to take an interest in the security property or a share of the income generated by the property as a means of protection against changing interest rates. Because Federal associations, in general, lack the

authority to acquire ownership interest in real estate, they may not acquire an equity interest with the borrower in the security property. This prohibition against acquiring an ownership interest has been construed to preclude an association from sharing with the borrower in the net income generated by the security property. At present, a share in the gross income from the property is not considered to constitute an equity interest in the property. To clarify any confusion that may arise from the existing interpretation, the Board is proposing to adopt a ruling setting forth the instances in which an association may participate with the borrower in the income from the property.

In principle, the Board believes that a share of the income from the security property does not necessarily constitute a prohibited equity interest because it is calculated as a percentage of the income from the property. If the share of the income received in substance constitutes a part of the compensation for the use of an association's funds, it should be considered interest for purposes of this regulation, regardless of the manner in which it is calculated. Accordingly, the proposed ruling states that if an association receives "a substantial payment of interest calculated periodically as a percentage of the outstanding principal loan balance, it may receive additional interest in the form of a share of the income" generated by the security property.

Although the proposed ruling would pertain only to real estate loans, the Board solicits comment as to the applicability of this ruling to commercial loans made by a Federal association.

Manufactured Home Financing

The Board is taking this opportunity to propose two changes to its regulation on manufactured home financing that do not relate to new powers conferred by the Act, but would enhance the ability of Federal associations to invest in manufactured home chattel paper. Section 545.7-6(e)(2) of the Board's regulations currently requires that a manufactured home be occupied by the owner or a relative in order for a Federal association to lend on security of the home. The Board believes that owner occupancy does not necessarily provide significant enhancement of the security afforded by manufactured home collateral. Consequently, the Board proposes to delete the owner-occupancy requirement.

Section 545.7-6(e)(4) of the Board's regulations also restricts the purchase of retail manufactured home chattel paper

by providing that such paper secured by property located outside the association's normal lending territory may be purchased only if the seller retains a 25-percent interest in each document evidencing a loan secured by the paper. This requirement has prevented Federal associations from participating as investors in secondary market offerings of pass-through securities based on manufactured home loans. Although restated in the proposal at § 545.7(e)(4), the Board is considering either deleting this 25-percent retention requirement or imposing substitute or alternative requirements calling for: (1) Primary credit insurance; (2) pool insurance (for pass-through and similar securities); (3) an investment-grade rating of the chattel paper by a nationally recognized rating service; or (4) any combination of the prior three factors. The Board requests specific comments on the desirability of each of these options.

In addition to these two changes, the Board proposes to make a technical change in the language of proposed § 545.7(e)(2)(iii)(a) to clarify that that provision applies only to new manufactured homes.

Commercial Loans

Proposed § 545.8 would implement the commercial lending authority set forth in section 325 of the Act. In implementing this authority it is the intent of the Board to give associations the broadest authority permitted by section 325 in order to maximize potential benefits while limiting the risks inherent in this previously unauthorized activity.

The definition of "commercial loan" in paragraph (a) of the proposed regulation is purposefully broad. Any loan made to a business or government entity would be presumed to satisfy the "commercial, corporate, business, or agricultural purposes" test of the regulation. An association would be able to rely on a natural person's statement of purpose for requesting a loan.

Paragraph (b)(1) would authorize investment and dealing in commercial loans, subject to statutory percentage-of-assets limits. The percentage-of-assets limitations would generally apply to a loan only if an association has not elected to make it under another applicable section; however, the 5%, 7½%, or 10% commercial loan "basket" would always include overdraft loans on business demand deposits and standby letters of credit. The Board believes, however, that Congress did not intend that the limitations apply to other authorized loans and investments that may have a business purpose, such as nonresidential real estate loans, but are

subject to separate statutory percentage-of-assets limitations. For purposes of applying the percentage-of-assets limitations, the proposed regulation would clarify that a loan commitment is not a "loan" until funds have been advanced under it, and loans sold are not included in the basket unless sold with recourse.

Section 325 of the Act subjects commercial loans of Federal associations to the same limitations on loans to one borrower that apply to national banks. The proposed rules implementing this requirement are discussed under the heading "Limitations on Loans to One Borrower" below.

In connection with the issuance of these proposed rules on commercial lending, the Board requests comments on whether any special requirements regarding recordkeeping and lending practices (other than those in proposed § 545.6-7) would be appropriate.

Letters of Credit

Proposed § 545.8-2 would provide general authority for Federal associations to issue commercial and standby letters of credit, and would set forth basic requirements relating to this activity. (As discussed under the heading "Limitations on Loans to One Borrower," standby letters of credit would be subject to special loans-to-one-borrower limitations under § 563.9-3.)

A Federal association's authority to issue letters of credit flows from two sources. First, as instruments of commercial credit, letters of credit are authorized by the commercial lending provisions of the Act discussed above. Second, to the extent letters of credit are used to secure performance of an obligation, they may be authorized by Board regulation pursuant to section 5 (b)(2) of the Home Owners' Loan Act of 1933 (12 U.S.C. 146(b)(2)).

The basic requirements set forth in the proposed regulation are based on comparable provisions in the regulations of the Comptroller of the Currency (12 CFR 7.7016, 7.1160), and are dictated by principles of sound banking practice. The Board expects to issue in the near future more detailed guidelines for letters of credit through its Office of Examinations and Supervision.

Consumer Loans

Section 329 of the Act expands the consumer lending authority of Federal associations to include loans reasonably incident to personal, family, or household purposes. The legislative history indicates that this authorization

is intended to include inventory and floor planning financing in conjunction with extensions of consumer credit, and the proposal implements this expanded authority. The Board is also considering whether this authority should permit loans secured by accounts receivable derived from credit sales of consumer goods, and specifically requests comments on this question and suggestions of other types of financing that might be included in this broadened consumer authority. The proposal also would increase to 30 percent the proportion of an association's assets that may be invested in consumer loans, and would substitute the commercial loans-to-one-borrower limitations for the more restrictive limits contained in the current section.

Educational Loans

Current regulations provide that Federal associations can invest in loans for payment of expenses of college, university or vocational education. The Act expands this authority to include loans for any educational purpose. The proposed amendment would make a corresponding change in the language of the regulation.

Finance Leasing

The Board proposes to expand Federal associations' authority to engage in leasing activities that are the functional equivalent of lending. In the Board's view, Federal associations have the power to engage in such leasing activities under the lending authority provided by the Home Owners' Loan Act of 1933, as amended. Currently, 12 CFR 545.7-10a of the regulations authorizes Federal associations to become legal or beneficial owners of personal property to be leased to consumers for personal, family or household purposes. Such leases must be net, full-payout leases, which are defined to be leases under which a Federal association has no responsibility for maintenance of the leased property and under which the association expects to receive a full return of its investment plus the estimated cost of financing the property over the lease term from rentals, estimated tax benefits, and the residual value of the property. The regulation specifies that the estimated residual value of the leased property may not exceed 25 percent of its acquisition cost, unless the excess over 25 percent is guaranteed. The regulation is substantially similar to the ruling of the Office of the Comptroller of the Currency ("OCC") governing consumer leasing by national banks, 12 CFR 7.3400 (1982). Both the OCC's ruling and the

Board's regulation reflect the guidelines established by the courts for bank leasing activities that are the functional equivalent of lending. See *M & M Leasing Co. v. Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), cert. denied, 438 U.S. 956 (1978).

The Board proposes to expand Federal associations' existing consumer leasing authority consistent with the new commercial lending authority. The Board also proposes to permit real property leasing that is the functional equivalent of real estate lending. As proposed, leases of personal and real property would have to be structured as net, full-payout leases, and the estimated residual value of the property at the end of the initial lease term could not exceed 25 percent, in the case of personal property, or 20 percent, in the case of real property, of the acquisition cost of the property. In addition, associations would be required to liquidate their interest in the property as soon as practicable upon expiration of the lease. The Board specifically requests comment on whether these percentages are appropriate for finance leases.

A "net" lease would be defined so as to preclude an association from directly or indirectly becoming obligated to provide for the repair or maintenance of the property, the purchasing of parts or accessories, the loan of replacement or substitute property, the purchasing of insurance for the lessee, or the renewal of any license, registration or filing required for the property. A "full-payout" lease would be defined to be one from which an association reasonably could expect to recover its investment in the property, plus the cost of financing it over the lease term, from rental payments, estimated tax benefits (e.g., investment tax credit, net economic gain from tax deferral due to accelerated depreciation), and the estimated residual value of the property upon expiration of the initial lease term. The proposed regulation would also permit an association to include in a lease such provisions and to enter such additional agreements as would be necessary to protect the value of the property or its interest as the lessor or lessor's assignee.

Since the proposed financial leasing authority would be the functional equivalent of lending on the security of the leased property, the proposed regulation would provide that leases entered into pursuant to the finance leasing authority would be subject to all of the limitations on investment in comparable loans, including limitations on total investment in a particular type

of loan as well as limitations on individual loan transactions (e.g., loans to one borrower). Thus, a lease of personal property to a consumer for personal, family or household purposes would be subject to the limitations applicable to investment in consumer loans. A lease of personal property for corporate, commercial, agricultural or business purposes would be subject to the limitations applicable to commercial loans. Finally, a lease of real property would be subject to the limitations applicable to real estate loans. It is noted that, with respect to the limitations on total investments in loans or leases of a particular type, an association entering into a finance lease would be able to issue the lease either under the finance lease regulation, which would tie the association to the limitations applicable to loans, or under the leasing regulation (discussed below), which provides independent authority to invest up to ten percent of assets in leasing activities.

General Leasing Authority

The Board also proposes to implement the authority provided Federal associations by section 330 of the Act to invest up to ten percent of assets in all types of tangible personal property for the purpose of leasing such property. The proposed § 545.12-6 would permit investments in both financing and operating leases. Thus, associations would not be limited to entering into net, full-payout leases, but would be permitted to assume responsibility for, among other things, servicing and maintaining the property. In addition, an association would not have to expect to be reimbursed for its investment in the leased property within the lease term.

The only limitation in the proposed regulation would prohibit entering into a lease under which the estimated residual value of the leased property would exceed 70 percent of the acquisition cost of the property. The effect of this limitation would be to prevent an association from entering into extremely short-term leases, such as daily rentals of cars, where the value of the property could not be expected to drop 30 percent during the term of the lease. The Board specifically requests comment on whether a limitation of 70 percent is appropriate for limiting the leasing authority in this way.

In connection with the authorization for Federal association to engage in leasing activities, the Board proposes to permit similar authority for service corporations of Federal associations. In addition, the Board requests comment on whether service corporations should

be permitted to engage in leasing activities without limitation as to the estimated residual value of the leased property. In this regard, the Board notes that section 330 of the Act contains no such limitation.

Also in connection with Federal associations' proposed leasing authority, the Board notes that, under the definition of scheduled items as the definition is proposed to be amended (see discussion below), both leases on which the required payments are overdue and real and personal property repossessed by an association because of the lessee's failure to make the required lease payments would be defined to be a scheduled item.

Finally, the Board requests comment on what recordkeeping requirements would be appropriate for institutions engaged in leasing activities, including state-chartered institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation. The Board's existing recordkeeping requirements do not directly address such activities.

Government Securities

Section 324 of the Act authorizes Federal associations to invest in obligations of or obligations issued by any state or political subdivision thereof, including, any instrumentality of a state or political subdivision. Accordingly, the Board proposes to implement this authority by authorizing Federal associations, which currently are limited to investing in *general* obligations of a state, territory or possession of the United States, or political subdivision thereof, to invest in any obligation of a governmental unit, including an agency, corporation of instrumentality of a governmental unit, provided that (1) as section 324 requires, investment in the obligations (other than general obligations) of any one issuer does not exceed 10 percent of the sum of an institution's regulatory net worth (as defined in 12 CFR 561.13), excluding the amount of regulatory net worth attributable to appraised equity capital, plus reserves for loan losses, and (2) such obligations whether or not they are general obligations continue to hold one of the four highest national investment grades, or are issued by a public housing agency and are backed by the full faith and credit of the United States.

Implementation of this authority would be accomplished by amending 12 CFR 523.10(g)(6) defining liquid assets, which section is referenced by the regulation authorizing Federal associations' investment in securities. In addition, the Board would retain Federal associations' authority to invest up to

one percent of assets in such obligations without regard to their investment ratings. Finally, the Board notes that the authority currently provided associations by 12 CFR 545.7-11 to invest in state and local housing obligations is subsumed into the broader authority granted by section 324. Therefore, the Board proposes to delete § 545.7-11.

In connection with this implementation of authority, the Board proposes to permit members of the Federal Home Loan Bank System to count such obligations, subject to the investment limitations described above, in satisfaction of their liquidity requirements. Such obligations would count as liquid assets only if their remaining terms to maturity were two years or less, and as short-term liquid assets only if their remaining terms to maturity were six months or less. The Board also proposes to make minor technical changes to paragraph (h)(3) of § 523.10 to conform the wording to amendments adopted by the Board on October 27, 1982, 47 FR 50201 (1982).

Service Corporations

Although the Act does not directly address the activities of service corporations, several of its sections have an impact on the service corporation authority. First, the legislative history, while suggesting that service corporation activities generally should not be expanded, stated that new regulations to permit service corporations to engage in the same activities authorized to parent associations would not be objectionable. Secondly, the commercial lending authorization specifically requires loans by an association's service corporation to be included in calculating the amount of an association's assets devoted to this type of lending. For these reasons, the proposal includes amendments to the service corporation authority to include commercial lending and investments in tangible personal property as preapproved activities. The proposal would also rearrange this section and make various technical amendments.

Corporate Debt Securities and Commercial Paper

Current regulations permit investment in commercial paper and corporate debt securities, defined at 12 CFR 541.27 and 541.28, provided that such investments together with consumer loans do not exceed 20 percent of an association's assets. The proposal would remove this limit, which has been deleted from the Home Owners' Loan Act. Purchases of commercial paper would be limited to

instruments of investment quality rated in the top two grades by a national rating service. Corporate debt securities would be required to be rated in the top four grades and marketable. A new provision would permit limited investment in commercial paper and corporate debt securities not subject to specific requirements as to quality. The current limitations on purchases of commercial paper and corporate debt securities from a single issuer would be deleted and replaced by the new limitations applicable to commercial loans to one borrower. Conforming changes to § 523.10(g)(9) are also proposed.

Funds Transfer Services

Existing § 545.1-6 (12 CFR 545.1-6), sets forth the authority of federal associations to provide funds transfer services to their customers. Because the existing regulation expressly recognizes only certain types of funds transfer mechanisms, the Board has received numerous inquiries regarding the authority of associations to use other mechanisms and devices. In order to clarify the Board's position, § 545.1-6 would be amended to authorize funds transfer by any means conforming with applicable laws and established commercial practices. In addition to transfers of customers' funds, the proposed regulation would confirm an association's authority to use any of these payment mechanisms to transfer its own funds for purposes relating to its everyday operations.

Election Regarding Classification of Loans

Proposed § 545.5 would expressly permit a Federal association to choose the lending or investment authority provision under which a loan or investment would be made if the transaction met the requirements of more than one provision. This section would replace comparable provisions found in various lending authority regulations (e.g., § 545.7-10(b)) and codify an established interpretation of the Board's lending and investment regulations.

Limitations on Loans to One Borrower

The Board proposes to amend § 563.9-3 to impose stricter limitations on the extension of commercial credit to one borrower by insured institutions. The limitations imposed would be comparable to those applicable to national banks under 12 U.S.C. 84, which are also applicable to commercial lending by Federal associations pursuant to section 325 of the Act. The

Board believes the application of these restrictions to insured state-chartered institutions is recommended by safety and soundness considerations, even though it is not required by statute, because of the increased insurance risk posed by excessive commercial lending to one borrower.

The loans-to-one-borrower limitations applicable to national banks are expressed in terms of percentages of "unimpaired capital and unimpaired surplus." Mutual institutions do not have equity accounts designated "capital" and "surplus"; therefore, it is necessary for the Board to define "unimpaired capital and unimpaired surplus" for purposes of these limitations. The Board believes the legislative purpose behind tying these limitations to "capital" and "surplus" was to ensure that a lending institution would be able to absorb potential losses on commercial loans.

The Board proposes to define "unimpaired capital and unimpaired surplus" to mean regulatory net worth (as defined in 12 CFR 561.13) plus specific reserves for loan losses, less appraised equity capital. The Board proposes to exclude the "appraised equity capital" account from the definition of "unimpaired capital and unimpaired surplus" because national banks have no comparable account and this account is only authorized temporarily for insured institutions. Finally, the Board proposes to include all specific reserves for loan losses, even though they are not part of regulatory net worth, because they constitute reserves for absorption of losses. The Board notes that at present the Comptroller of the Currency's regulations include only 50 percent of loan loss reserves in "unimpaired capital and unimpaired surplus"; however, the Comptroller has proposed to amend the regulatory definition to include all such reserves. See 46 FR 40520, Aug. 10, 1981.

The proposed amendments would apply the limitations in 12 U.S.C. 84 (i.e., 10% of unimpaired capital and unimpaired surplus until April 14, 1983; thereafter, 15% for unsecured loans and an additional 10% for fully secured loans) to the aggregate of: (1) Loans to one borrower for commercial, corporate, business, or agricultural purposes, except those fully secured by real estate or deposit accounts; (2) all investments in commercial paper and corporate debt securities of one issuer; (3) financial leases to one lessee for commercial, corporate, business, or agricultural purposes; and (4) standby letters of credit. Commercial loans secured by real estate or deposit accounts would be

excluded because (1) insured institutions have expertise in assessing the risks involved in real estate loans, (2) account loans involve very little risk, and (3) the Board believes Congress generally did not intend the limitations in 12 U.S.C. 84 to be applied to loans of the type authorized for Federal associations prior to the Act. The proposed rule for commercial paper and corporate debt securities is in recognition of the similarity between the risks posed by these investments and commercial loans. The proposed inclusion of commercial financial leases is warranted because these are the substantive equivalent of direct commercial loans. Finally, the limitations would apply to a standby letter of credit for which the issuer-institution has not been "put in funds" by the account party, since the risks posed by the obligation on the letter of credit are comparable to those involved in a commercial loan.

The Board also proposes to make a technical correcting amendment to § 563.9-3 to incorporate a change that was formally adopted by Board action on January 3, 1980 (Res. No. 80-18) but, through inadvertence, was never reproduced in the Code of Federal Regulations. As explained in the Board's 1980 action, the amendment was intended to exclude from the loans-to-one-borrower limitations loans made under HUD's former Section 23 program only, not loans made under the Section 8 program. A detailed discussion of the amendment may be found at 47 FR 1849 (Jan. 9, 1980).

Definition of Scheduled Items

The Board uses the term "scheduled items" to describe assets whose carrying value on an institution's books may not be fully realized. The amount of scheduled items is factored into the calculation of net-worth requirements pursuant to § 563.13(b) of the Board's regulations, and is utilized as one of several indicators of an institution's financial soundness. Section 561.15 of the Board's regulations defines "scheduled items" to include slow loans and real estate acquired as a result of or in lieu of foreclosure. Currently, however, due to broadened lending authority provided to both state and Federally chartered savings and loan associations, a significantly larger portion of the lending activities engaged in by institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions") involves loans secured by assets other than real estate, such as securities, manufactured homes, and other types of personal property.

There does not appear to be a basis for distinguishing between real estate acquired by an insured institution by or in lieu of foreclosure and other types of assets acquired through enforcement of a security interest. Therefore, the Board proposes to amend its definition of scheduled items to incorporate all types of assets acquired through enforcement of a security interest.

The proposal would incorporate the changes by amending paragraphs (g), (h), (i) and (j) of § 561.15. Paragraphs (i) and (j) would be amended to parallel the treatment given real estate under paragraphs (c) and (d) by including within the definition of scheduled items personal property acquired through enforcement of a security interest as well as loans secured by personal property thus acquired.

Paragraph (g) would be amended to provide that any asset, whether real or personal property, acquired in exchange for any scheduled item is itself a scheduled item. Thus, assets acquired in exchange for slow consumer loans of any type (as defined in § 561.16a), and assets acquired in exchange for assets that previously had been acquired through enforcement of a security interest, would be included within the definition of scheduled items. However, as currently is the case, securities with market values equal to or exceeding their book values at the time of acquisition, securities qualifying as liquid assets under § 523.10(g), and assets owned pending transfer to an insuring or guaranteeing agency of the United States Government (e.g., Veterans' Administration, Federal Housing Administration) would be excluded from the definition.

The proposal would also amend paragraph (h) to include within the definition of scheduled items any assets transferred by an insured institution to a service corporation or to any corporation in which an insured institution has an investment, to the same extent the assets would have been so included if not transferred.

Finally, as is discussed above with respect to leasing activities, the definition of scheduled items would be amended to include both leases on which the required payments are overdue and personal or real property that is repossessed by an insured institution because of a lessee's failure to make payments on a financing lease. The Board believes this change is necessary to accommodate an expected increase in the leasing activities of insured institutions. The change would apply only to financing leases and would be accomplished by adding a new

paragraph (k) to § 561.15 providing that a financing lease would be treated as a loan secured by the leased property for purposes of the definition. The Board specifically requests comment on whether other types of leases also should be included within the definition of scheduled items.

Other Amendments

Passive Trusts. The Board proposes to permit a Federal association to serve as the trustee for passive trusts such as funeral trusts without requiring it to apply for trust powers under 12 CFR 550.2. This authority will be available to Federal associations only if it is granted by state law to other financial institutions. Since the only duties of the trustee of such trusts are to invest funds in savings accounts or certificates of deposit and to disburse the funds upon the termination of the trust, the Board believes it is unnecessary to apply the requirements of Part 550 to associations that wish to engage in this limited activity.

Escrow Accounts. The proposal would amend the Board's regulations (currently at 12 CFR 545.8-3 (b), (c)) governing the establishment of, and payment of interest on, escrow accounts. These regulations currently restate the requirements of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601-2617) ("RESPA"). The amendments would reference rather than incorporate the requirements of RESPA, thus simplifying the regulation. The regulations also currently require the payment of interest on escrows in connection with owner-occupied single-family dwellings if state law requires state-chartered lenders to pay interest. The amendments would liberalize these requirements by permitting Federal associations full discretion to contract to pay interest on escrow accounts. In addition to these amendments, the Board solicits comments on how the terms governing escrow accounts should be disclosed to borrowers.

Late Charges. The proposal would amend the regulations governing the imposition of late charges (12 CFR 545.8-3 (d), (e)) that currently limit the assessment of late charges on owner-occupied single-family dwellings. In part, the regulations require a 15-day grace period after the due date of a periodic installment payment before a late charge may be imposed and limit late charges to a dollar amount not exceeding 5 percent of the aggregate amount of principal and interest included in the delinquent payment. The amendments would delete these restrictions and permit associations to

specify the duration of the grace period, if any, and the amount of the late charge in the loan contract. In addition to comments on these specific amendments, the Board solicits comments on how late charge provisions should be disclosed to borrowers.

Due-on-Sale Clause. The proposal would amend the regulations (currently at 12 CFR 545.8-3 (f), (g)) governing the use of due-on-sale clauses by Federal associations to conform them to the Federal preemption provided by section 341 of the Act.

Prepayment Penalties. The proposal would amend the regulations (currently at 12 CFR 545.8-5) governing the imposition of a penalty on the prepayment of loans to provide that a Federal association may impose a penalty on prepayment of a loan as provided in the loan contract, provided that the association complies with certain disclosure requirements. On any adjustable-rate mortgage, however, the borrower would be entitled to prepay without penalty within 90 days of the notice of adjustment. An association wishing to include a prepayment penalty in the loan contract must disclose to the applicant, in plain language and prior to accepting the application, the existence of the penalty provision and the manner in which the penalty will be calculated. Specifically, the disclosure must include the maximum amount of the penalty that could be imposed under the contract. For penalties based on a fixed percentage of the outstanding loan balance, the percentage to be used must be specified. If the penalty is to be determined according to an interest-rate index, the disclosure must include a table or similar guide that shows the extent to which the penalty may vary as the index changes, and the minimum penalty, if specified in the contract.

Liquidity Base Amendments. The proposal would amend the definition of net withdrawable accounts contained in § 523.10(d) to exclude specifically accounts to the extent that security has been given upon them. The Board believes that since such deposits are collateralized, an additional liquidity requirement is not necessary.

Agencies. Section 545.16 of the regulations currently permits a Federal association to establish agencies to service and originate loans and contracts and to manage or sell real estate owned by the association. Establishment of agencies within the same state as the association's home office requires only approval of the board of directors of the association and not Board approval. Since in certain circumstances Federal associations may

now operate branches outside the state where the home office is located, the proposal would amend § 545.16 to permit associations to establish agencies without Board approval in the same state as the home office of the association or in which any branch office approved by the Board was located.

General Solicitation of Comments

The Board has solicited comments from the public concerning various specific questions arising from this proposal. In addition, the Board affirmatively requests comments on any other aspects of these proposed amendments or existing Part 545 that would be of aid in producing a unified, clear, concise, logical body of regulations that incorporates as much of the spirit of deregulation as is commensurate with the Board's responsibility to ensure safe and sound operation of Federal institutions.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-35, 94 Stat. 1164 (September 19, 1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objective, and legal basis underlying the proposed rules.* These elements have been incorporated elsewhere into the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules will apply.* The proposed rule would apply only to Federal savings and loan associations and institutions the accounts of which are insured by the FSLIC.

3. *Impact of the proposed rules on small institutions.* The proposal would permit institutions to expand their services and investment activities regardless of size. There would be no disproportionate effect on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known Federal rules that may duplicate, overlap, or conflict with the proposal.

5. *Alternatives to the proposed rules.* To the extent that there are alternatives to any elements of the proposed rule, discussion of them has been incorporated into the supplementary information.

Regulatory Analysis

The elements of regulatory analysis for major proposed regulations required by Board Resolution No. 80-584 (September 11, 1980) have been incorporated into the supplementary information regarding the proposal.

List of Subjects

12 CFR Part 523

Federal Home Loan banks, Savings and loan associations, Applications.

12 CFR Part 526

Federal Home Loan banks.

12 CFR Parts 541, 545, 555, 561 and 563

Savings and loan associations.

CROSS-REFERENCE TABLE

Proposal (section)	Title	Present (section)
523.10	Definitions for purposes of this section, § 523.11 and § 523.12.	523.10.
526.1	Definitions used in this part.	526.1.
541.3	Combination of residential real estate and business property involving only minor or incidental business use.	541.3.
541.12	Improved residential real estate.	541.12.
541.14	Loans secured by liens on real estate.	541.17(b).
541.16	Other dwelling unit.	541.14.
541.17	Other improved real estate.	541.16.
541.29	Unimproved real estate.	541.17.
541.31	Residential real estate.	541.29.
541.32	Nonresidential real estate.	[None.]
541.33	Improved nonresidential real estate.	[None.]
545.0	Federal preemption.	541.17(a).
545.1	Insured accounts.	541.17(c).
		545.6a.
		545.1.
		545.1-1.
		545.1-2.
		545.1-3.
545.1-1	Account records.	545.2.
545.1-2	Distribution of earnings.	545.3.
545.1-3	Withdrawals.	545.4.
545.1-3(e)	Payments to third parties.	545.4-1.
545.1-4	Give-aways.	545.5.
545.1-5	Public deposits, suretyship, depositaries, and fiscal agents.	545.24-2.
545.1-6	Funds transfer services.	545.24-3.
545.2	Issuance of stock.	545.4-1.
545.2-1	Issuance of mutual capital certificates.	[None.]
545.3	Issuance of net worth certificates.	545.5-1.
545.4	Borrowing.	[None.]
545.4-1	Borrowing from a state-chartered central reserve institution.	545.24.
545.5	Election regarding classification of loans or investments.	545.7-10.
545.6	Real estate loans.	545.6.
		545.6-2.
		545.6-5.
		545.6-6.
		545.6-4.
545.6-1	Insured and guaranteed loans.	545.6-1.
		545.6-11.
		545.6-13.
		545.6-14.
		545.7-2.
545.6-2	Home improvement loans.	545.6-3.
545.6-3	Loans on low-rent housing.	545.6-9.
545.6-4	Community development loans and investments.	545.6-10.
545.6-5	State housing corporation investment-insured.	545.7-3a.
545.6-6	Insured loans for title purchase.	545.7-5.
545.6-7	General provisions respecting loans.	545.6-2.
		545.6-3.
		545.6-5.
		545.6-8.
545.6-8	Mortgage transactions with the Federal Home Loan Mortgage Corporation.	545.6-10.
545.7	Manufactured home financing.	545.7-6.
545.8	Commercial loans.	545.6-6.
545.8-1	Overdraft loans.	545.4-1.
545.8-2	Letters of credit.	[None.]
545.8-3	Loans on securities.	545.7-1.
545.8-4	Loans to and investments in business development credit corporations.	545.7-3.
545.9	Consumer loans.	545.7-10.
545.9-1	Credit cards.	545.7-7.
545.9-2	Educational loans.	545.7-4.
545.9-3	Loans on savings accounts.	545.7.
545.10	Financing leases.	545.7-10a.
545.10-1	Collateral loans.	545.7-9.
545.11	Equalization of interest rates.	545.8-9.
545.12	Securities and other investments.	545.9.
545.12-1	Service corporations.	545.9-1.
545.12-2	Investment in savings and demand accounts.	545.9-2.
545.12-3	Investments in corporations and partnerships authorized by title IX of the Housing and Urban Development Act of 1968.	545.9-3.
545.12-4	Commercial paper and corporate debt securities.	545.9-4.
545.12-5	Real estate for office and related facilities.	545.10.
545.12-6	Leasing.	[None.]
545.12-7	Gold transactions.	545.8-11.
545.13	Home office.	545.13.

CROSS-REFERENCE TABLE—Continued

Proposal (section)	Title	Present (section)
545.14	Branch offices	545.14
545.14-1	Upgrading of approved branch office	545.14-1
545.14-2	Closing a branch office	545.14-2
545.15	Change of office location and redesignation of offices	545.15
545.16	Agency	545.16
545.17	Fiscal agency	545.17
545.17-1	Trustee	545.17-1
545.18	Adjustments to book value of assets	545.18
545.19	Real estate owned	545.19
545.20	Accounting records	545.20
545.21	Monthly reports	545.22
545.22	Statement of condition	545.23
545.23	Indemnification of directors, officers and employees	545.25
545.23-1	Employment contracts	545.25-1
545.24	Advisory boards and committee	545.26
545.25	Referral of insurance business	545.27
545.26	Communication between members of a Federal mutual association	545.28
545.27	Financial futures transactions	545.29
545.28	Financial options transactions	545.29-1
545.29	Data-processing services	545.16-1
545.30	Insurance of GNMA-guaranteed, mortgage-backed securities	545.24-1
545.31	Correspondent services and accounts	545.30
545.32	Remote Service Units (RSUs)	545.4-2
555.3	Real estate	555.3
555.11	Loans for acquisition and development of land	555.11
555.15	Prepayment penalty on mortgage loans	555.15
555.19	Receipt of interest expressed as a percentage of the income from the security property	[None.]
561.15	Scheduled items	561.15
563.3-3	Eurodollar deposits	563
563.8	Borrowing limitations	563.8
563.8-2	Corporation's right of purchase	[None.]
563.9-3	Loans to one borrower	563.9-3

Accordingly, the Board hereby proposes to amend Parts 523 and 526 of Subchapter B, Parts 541, 545 and 555 of Subchapter C, and Parts 561 and 563 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 523—MEMBERS OF BANKS LIQUIDITY

1. Revise paragraphs (d), (g)(6) and (9), and (h)(3) and (5) of § 523.10, as follows:

§ 523.10 Definitions for purposes of this section, § 523.11 and § 523.12.

(d) *Net withdrawable accounts.* All withdrawable accounts less the unpaid balance of all loans secured by such accounts, but not including tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to § 563.8-2 of this Chapter, United States Treasury General Accounts, or United States Treasury Time Deposit-Open Accounts.

(g) *Liquid assets.* * * *

(8) 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 a member's investment in the obligations (other than general obligations) of any one issuer shall not exceed 10 percent of the sum of its regulatory net worth, as defined in § 561.13 of this Chapter, excluding the amount of regulatory net worth attributable to appraised equity capital, plus reserves for loan losses, and that:

(9) Corporate debt obligations and commercial paper issued by a non-governmental entity, but not including investments in the commercial paper or corporate debt obligations of a single issuer in amounts in excess of one percent of such institution's assets, if:

(i) Such corporate debt obligations (a) continue to be rated in one of the four highest grades by the most recently published rating of such obligations by a nationally recognized investment rating service, (b) are marketable as defined by § 545.12-4(b)(2) of this Part, (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 grades by the most recently published rating of such paper by a nationally recognized investment rating service, or, if unrated, is issued by a company or subsidiary of a company having outstanding paper that is so

rated, (b) will mature in 270 days or less; and

(h) *Short-term liquid assets.* * * *

(3) Savings accounts, including loans of unsecured day(s) funds, that qualify as liquid assets under paragraph (g)(4) of this section, and, in the case of negotiable savings accounts, will mature in six months or less;

(5) Obligations specified in paragraph (g)(6)(i)(b) of this section that will mature in 6 months or less;

PART 526—LIMITATIONS ON RATE OF RETURN

2. Amend § 526.1 by removing the word "notice" from the first sentence of paragraph (e) thereof and adding in its place the word "note", and revising paragraph (l) thereof, as follows:

§ 526.1 Definitions used in this Part.

(l) *NOW (negotiable order of withdrawal) account.* A savings account on which interest is paid subject to the rate limitation in § 526.3 of this Part, and from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties. The entire beneficial interest in a NOW account must be held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit, or with respect to public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof. For purposes of the preceding sentence,

(1) An organization shall be deemed "operated primarily for religious, philanthropic, charitable, educational, or other similar purposes" * * * and not for profit" if it is described in sections 501(c)(3) through (13), 501(c)(19), or 528 of the Internal Revenue Code, and

(2) The funds of a sole proprietorship or unincorporated business owned by a husband and wife shall be deemed beneficially owned by "one or more individuals."

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 541—DEFINITIONS

3. Revise § 541.3 as follows:

§ 541.3 Combination of residential real estate and business property involving only minor or incidental business use.

Residential real estate for which no more than 20 percent of the total value of the real estate is attributable to the business use.

4. Revise § 541.12 as follows:

§ 541.12 Improved residential real estate.

Any of the real estate defined in §§ 541.3, 541.4, 541.5, or 541.11 of this Part or any real estate containing offsite or other improvements sufficient to make the property ready for primarily residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.

5. Remove § 541.14 as follows:

§ 541.14 Loans secured by liens on real estate.

(Removed effective _____.)

6. Remove § 541.16 as follows:

§ 541.16 Other dwelling unit.

(Removed effective _____.)

7. Remove § 541.17 as follows:

§ 541.17 Other improved real estate.

(Removed effective _____.)

8. Revise § 541.29 as follows:

§ 541.29 Unimproved real estate.

Real estate that will be improved, as defined in §§ 541.12 or 541.33 of this Part.

9. Add a new § 541.31 as follows:

§ 541.31 Residential real estate.

The terms "residential real estate" or "residential real property" mean homes (including condominiums and cooperatives), combinations of homes and business property, other real estate used for primarily residential purposes other than a home (but which may include homes), combinations of such real estate and business property involving only minor business use, farm residences and combinations of farm residences and commercial farm real estate, property to be improved by the construction of such structures, or leasehold interests in the above real estate.

10. Add a new § 541.32 as follows:

§ 541.32 Nonresidential real estate.

The terms "nonresidential real estate" or "nonresidential real property" mean real estate that is not "residential real estate," as that term is defined in § 541.31 of this Part.

11. Add a new § 541.33 as follows:

§ 541.33 Improved nonresidential real estate.

Nonresidential real estate: (a) Containing a permanent structure(s) constituting at least 25 percent of its value, or (b) containing improvements which make it usable by a business or industrial enterprise; or (c) used, or to be used within a reasonable time, for commercial farming, excluding hobby and vacation property.

12. Revise Part 545 in its entirety as follows:

PART 545—OPERATIONS

Sec.

545.0 Federal Preemption.

Capital Formation

545.1 Insured Accounts.

545.1-1 Account Records.

545.1-2 Distribution of earnings.

545.1-3 Withdrawals.

545.1-4 Give-aways.

545.1-5 Public deposits, suretyship, depositories, and fiscal agents.

545.1-6 Funds transfer services.

545.2 Issuance of stock.

545.2-1 Issuance of mutual capital certificates.

545.3 Issuance of net worth certificates.

545.4 Borrowing.

545.4-1 Borrowing from a state-chartered central reserve institution.

Investments

545.5 Election regarding classification of loans or investments.

545.6 Real estate loans.

545.6-1 Insured and guaranteed loans.

545.6-2 Home improvement loans.

545.6-3 Loans on low-rent housing.

545.6-4 Community development loans and investments

545.6-5 State housing corporation investment—insured

545.6-6 Insured loans for title purchase.

545.6-7 General provisions respecting loans.

545.6-8 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

545.7 Manufactured home financing.

545.8 Commercial loans.

545.8-1 Overdraft loans.

545.8-2 Letters of credit.

545.8-3 Loans on securities.

545.8-4 Loans to and investments in business development credit corporations.

545.9 Consumer loans.

545.9-1 Credit cards.

545.9-2 Educational loans.

545.9-3 Loans on savings accounts.

545.10 Financing leases.

545.10-1 Collateral loans.

545.11 Equalization of interest rates.

545.12 Securities and other investments.

545.12-1 Service corporations.

545.12-1 Investment in savings and demand accounts.

545.12-3 Investments in corporations and partnerships authorized by title IX of the

Housing and Urban Development Act of 1988.

545.12-4 Commercial paper and corporate debt securities

545.12-5 Real estate for office and related facilities

545.12-6 Leasing.

545.12-7 Gold Transactions.

General Operations

545.13 Home office.

545.14 Branch office.

545.14-1 Upgrading of approved branch office.

545.14-2 Closing a branch office.

545.15 Change of office location and redesignation of offices.

545.16 Agency.

545.17 Fiscal agency.

545.17-1 Trustee.

545.18 Adjustments to book value of assets.

545.19 Real estate owned.

545.20 Accounting records.

545.21 Monthly reports.

545.22 Statement of condition.

545.23 Indemnification of directors, officers and employees.

545.23-1 Employment contracts.

545.24 Advisory boards and committees.

545.25 Referral of insurance business.

545.26 Communication between members of a Federal mutual association.

545.27 Financial futures transactions.

545.28 Financial options transaction.

545.29 Data-processing services.

545.30 Issuance of GNMA-guaranteed, mortgage-backed securities.

545.31 Correspondent services and accounts.

545.32 Remote Service Units (RSUs)

Authority: Title III, Pub. L. No. 97-320, 96 Stat. 1469, amending 12 U.S.C. 1461 *et seq.*; Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947; 3 CFR 1943-48 Comp., p. 1071

§ 545.0 Federal preemption.

The regulations in this Part 545 are promulgated pursuant to the plenary and exclusive authority of the Board to regulate all aspects of the operations of Federal associations, as set forth in section 5(a) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464 ("the Act"), as amended. This exercise of the Board's authority is preemptive of any state law purporting to address the subject of the operations of a Federal association as set forth in this Part.

Capital Formation

§ 545.1 Insured accounts.

(a) *General.* A Federal association may issue insured accounts as defined in § 561.3 of this Chapter in the form of demand deposit accounts and savings accounts for indefinite or fixed terms ("certificate accounts") as authorized by its charter in the form of shares of

deposits. Payments on insured accounts may be in cash or property in which the association is authorized to invest. The authority of an association to issue insured accounts pursuant to this Part is subject to any applicable provisions of Parts 526 and 563 of this Chapter and Part 1204 of this title.

(b) *Eligibility*—(1) *NOW accounts*. A Federal association may issue savings accounts subject to withdrawal by negotiable or transferable instruments for the purpose of making transfers to third parties ("NOW accounts") only to persons described in § 526.1 of this Chapter.

(2) *Demand deposit accounts*. A Federal association may issue non-interest-bearing demand accounts only to persons or organizations that have a business, corporate, commercial, or agricultural loan relationship with the association. An association also may issue non-interest-bearing demand accounts to a commercial, corporate, business, or agricultural entity for the sole purpose of effectuating payments thereto by nonbusiness customers.

(i) For purposes of this paragraph (b)(2) of this section, a business, corporate, commercial or agricultural loan is any loan other than a home loan on property occupied or to be occupied by the borrowers; a loan to a natural person for personal, family, or household use; or a participation interest in such loans.

(ii) A loan relationship is established where there is any outstanding loan, the establishment of a line of credit, or a previous loan and a reasonable expectation of the renewal of a lending relationship based on the usual and customary activities and needs of the borrower.

(c) *Rates of return*—(1) *Savings accounts*. An association may issue accounts earning interest at different rates of return. The annual rate of return paid on a savings account either may be fixed at the time the account is issued or may vary on any basis specified at the time the deposit is accepted.

(2) *Demand deposit accounts*. Demand deposit accounts shall not earn interest.

(d) *Premiums*. An association may pay premiums to account holders in the form of merchandise, credit or cash, subject to the limitations of § 545.1-4 of this Part on give-aways.

(e) *Classes of accounts*. An association may establish classes of insured accounts distinguished on any reasonable basis that does not violate otherwise applicable law.

(f) *Fees*. An association may charge fees in connection with the administration of insured accounts.

(g) *Sales commissions*. An association may pay commissions or fees in cash or merchandise for soliciting insured accounts to any employee of the association or to any broker or agent as determined by the association.

(h) *Eurodollar certificates*. An association may issue Eurodollar certificate accounts in conformity with § 563.3-3 of this Chapter.

§ 545.1-1 Account records.

(a) *Evidence of ownership*. When a Federal association issues an insured account, it shall obtain and preserve in its records evidence of ownership sufficient to identify the accountholder.

(b) *Evidence of account*. At the time of issuing an account, an association shall present to the accountholder evidence of the accountholder's interest in the account and written evidence of the terms of the account contract. Accounts in statement, book-entry, or other form may be evidence by a written agreement with transactions confirmed by issuance of a receipt or advice.

(c) *Filing*. Prior to issuing any form of savings account, an association shall comply with the applicable filing requirements of § 563.1 of this Chapter.

(d) *Ownership of record*—(1) *General rule*. An association may treat the holder of record of an insured account as the owner, regardless of any notice to the contrary, until the account is transferred on the association's books. Insured accounts shall be transferable only on the association's books on proper application by the transferee and acceptance of the transferee as a member on terms approved by the board of directors.

(2) *Exception*. Paragraph (d)(1) of this section notwithstanding, an association may issue negotiable certificate accounts in bearer form without recording ownership on the books of the association: *Provided*, that any provisions of the association's charter regarding membership and voting shall not apply to such certificates.

(e) *Duplicate evidence of accounts*. Except for accounts issued in negotiable instrument form, an association may issue a new evidence of account in the name of the holder of record, if the holder of record, or the legal representative of the holder, files an affidavit with the association that the accountholder's evidence of account was lost or destroyed, and that no part of the account has been pledged or assigned except as disclosed to the association. The association's board of directors may require bond sufficient to indemnify the association against any loss that might result from issuance of the new evidence of account.

(f) *Use of collecting agent*. An association may authorize any bank that is a member of the Federal Deposit Insurance Corporation or any institution that is a member of the Federal Savings and Loan Insurance Corporation to prepare, sign and deliver evidence of accounts and to collect and transmit funds obtained from those accounts. The association may provide for issuance of duplicate certificates, bond, security and other protection in connection with such issuance.

§ 545.1-2 Distribution of earnings.

(a) *Time of distribution*. A Federal association may distribute earnings on savings accounts, or designated classes thereof, as provided in its charter and bylaws and the terms of the account. No distribution of earnings on share accounts may be made under this paragraph until provision has been made for payment of expenses and for the *pro rata* portion of credits to reserves required by the association's charter and by Part 563 of this Chapter.

(b) *Small accounts*. An association may establish minimum balance requirements for savings accounts to be eligible for distribution of earnings.

(c) *Amounts withdrawn between distribution dates*. An association may provide for distribution of earnings on amounts withdrawn from savings accounts between regular distribution dates.

(d) *Determination date*. With regard to insured accounts for indefinite terms, an association may prescribe a determination date, not later than the 20th of the month, and while the resolution is in force, pay earnings on savings accounts received on or before that date as if the account was received on the first of the month, and payments received after that date will receive earnings from the first of the next month.

(e) *Compounding of earnings*. An association may compute earnings for distribution on its savings accounts on a compounded basis.

§ 545.1-3 Withdrawals.

(a) *Withdrawal of certificate accounts prior to expiration of term*. (1) A Federal association may assess a penalty upon withdrawal of any part of the principal or accrued interest on a savings account with a fixed term before expiration of the term except as provided by § 526.7(c). If earnings were distributed on the account before the withdrawal, deduction shall be made from the amount withdrawn to adjust for the applicable penalty.

(2) An association may provide that an account owner cannot withdraw any part of a savings account with a fixed term before its term expires except in the event of death, or adjudication of incompetence, of an account owner or under such other emergency circumstances as may be set forth in the certificate evidencing the account.

(b) *Travelers' convenience withdrawals.* Subject to the requirements of otherwise applicable law, a Federal association may permit an accountholder to make a withdrawal from an insured account through a disbursing institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation. The withdrawal may be made only after the association receives a specific withdrawal request (oral or electronic) from the accountholder, and the amount paid shall be immediately withdrawn from the account. The association permitting the withdrawal may charge a fee to the accountholder, limit the amount of such withdrawal, or pay a fee to the disbursing institution. A Federal association may act as the disbursing institution in such a withdrawal from a savings account in an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, and may collect a fee for that service.

(c) *Payment of withdrawal requests.* Unless otherwise specified in its charter, when a Federal association cannot pay withdrawal requests within 14 days of the date of receipt of written request therefor, it shall number and file all requests in the order received and proceed in the following manner while any request remains unpaid for more than 14 days:

(1) Requests shall be paid in numerical order, and as each number is reached the accountholder shall be paid the lesser of \$1,000 or the amount of the withdrawal request. If the amount of the request is not paid in full the request shall be renumbered, placed at the end of the list of requests, and acted upon in the same way when its new number is reached, until the request is paid in full. However, when a request is reached for payment, the association shall so notify the accountholder by registered mail to his last address as recorded on the association's books and, unless the holder, within 14 days from the mailing of the notice, applies in person or in writing for payment, the request shall be cancelled and not paid. Regardless of any other provision in this section, the board of directors may pay on an equitable basis an amount not

exceeding \$200 to any accountholder in any calendar month; and

(2) The association shall allot to the payment of withdrawal requests the remainder of the association's receipts from all sources after deducting therefrom amounts for expenses, required payments on indebtedness, earnings distributable in cash to holders of savings accounts, and a fund for general corporate purposes of not more than 20 percent of the association's receipts from its accountholders and its borrowers.

(d) *Grace period with respect to withdrawals.* As association may compute earnings on amounts withdrawn from its insured accounts having an indefinite term during the last 3 business days of any period for which earnings are distributable as if the withdrawal had been made immediately after the close of that period.

(e) *Payments to third parties.* An association may permit withdrawals and transfers from an account by means of orders and authorizations, pursuant to § 545.1-6 of this Part.

§ 545.1-4 Give-aways.

(a) *Definitions used in this section.* (1) "Give-away" means any thing of value, or service performed in any part outside an association's premises, given without adequate payment, but not including (i) providing safety deposit facilities at reduced rental to members of the association, or (ii) repaying to members of any part of amounts paid by them for safe deposit facilities located outside the association's facilities.

(2) "Doing business" has the meaning it has in the statute described in paragraph (c), and "domestic association" means any savings and loan, building and loan, homestead association, or cooperative bank which is a domestic association under that statutory provision.

(b) *Prohibition.* No Federal association doing business in a state which has in effect a statutory provision as described in paragraph (c) of this section and regulatory restrictions adopted under that statute, shall (1) condition the distribution of a give-away on the recipient's possessing, opening, or adding to a savings account, or maintaining a minimum balance therein; (2) except under paragraph (d) of this section, refer in any of its advertising to any give-away, other than printed material of an educational or informational nature or a coin bank, with a cost not exceeding \$2.50; or (3) enter any agreement with, or accept funds for investment in a savings account from, any person engaging in such activities.

(c) *Reciprocal statutory provision.* The statutory provision referred to in paragraph (b) of this section must authorize a specified state official to impose by regulation restrictions on domestic associations of the state equivalent to those imposed on Federal associations by paragraphs (b) (1) and (2) of this section if, while the restriction is in force, Federal associations doing business in the state are likewise restricted.

(d) *Exception.* Notwithstanding paragraph (b) of this section, a Federal association may advertise give-aways during a single period of 30 days ending not more than one year after it opens its first office.

§ 545.1-5 Public deposits, suretyship, depositaries, and fiscal agents.

(a) *Definitions.* As used in this section—

(1) "Moneys" includes "monies" and has the meaning it has in applicable state law;

(2) "State law" includes actions by a governmental body which has a charter adopted under the constitution of the state with provisions respecting deposits of public money of that body;

(3) "Surety" means surety under real and/or personal suretyship, and includes guarantor; and

(4) Terms in paragraph (b) of this section have the meanings they have under applicable state law.

(b) *Authority to act as surety.* (1) A Federal association that is a deposit association may give bond or security for deposit in it of public moneys or investment in it by a governmental unit if required to do so by state law, either as an alternative condition or otherwise, regardless of the amount required. Any bond or security may be given and any substitution or increase thereof may be made under this section at any time.

(2) If state law requires as a condition of such deposit or investment that the association or its bond or security, or any combination thereof, be surety for or with respect to other deposits or instruments, whether of that depositor or investor or of any other(s), and whether in the association of in any other institution(s) having, when the investments or deposits were made, insurance by the Federal Savings and Loan Insurance Corporation, the same shall become, or if the state law is self-executing shall be, such surety.

(3) An association may also be surety to the extent that (i) it could have been surety if section 5(b) of the Act had not been amended by section 101(e) of Public Law 93-495, and (ii) the Board

otherwise authorizes in writing or by regulation.

(c) *Depositories and fiscal agents.* Subject to regulation of the U.S. Treasury Department, a Federal association may serve as a depository for Federal taxes, as a Treasury tax and loan depository, as a depository of public money and fiscal agent of the Government, or any other instrumentality thereof when designated for that purpose by such instrumentality and approved by the Board, and satisfy any requirement in connection therewith, including: (1) Maintaining accounts described in § 526.1(n), (o), (p) and (q) of this Chapter, (2) pledging collateral, and (3) performing the services outlined in 31 CFR 202.3(b) (1981), or any section that supersedes or amends § 202.3(b).

§ 545.1-6 Funds transfer services.

A Federal association may transfer its customer's funds from any account (including a line of credit) of the customer at the association or at another financial intermediary to third parties or to other accounts of the customer on the customer's order or authorization by any mechanism or device conforming with applicable laws and established commercial practices. An association may assess fees for providing any service authorized by this section. An association also may use cashier's checks or any other mechanism or device to effectuate transfers of its own funds in connection with any activities authorized under its charter or Board regulations.

§ 545.2 Issuance of stock.

A Federal association with a stock charter may raise capital by issuance of stock as provided by its charter and applicable provisions of this Chapter.

§ 545.2-1 Issuance of mutual capital certificates.

A Federal mutual association may issue mutual capital certificates as its charter permits, subject to the requirements of § 563.7-4 of this Chapter or as the Board may otherwise authorize in writing.

§ 545.3 Issuance of net worth certificates.

A Federal association may issue net worth certificates as its charter permits, in accordance with Part 572 of this Chapter or as the Board may otherwise authorize in writing.

§ 545.4 Borrowing.

A Federal association may borrow, issue notes, bonds, debentures, obligations or securities and give security as authorized by its charter or approved in writing by the Board,

subject to the requirements of §§ 563.8 and 563.8-2 of this Chapter.

§ 545.4-1 Borrowing from a State-chartered central reserve institution.

A Federal association which has amended its charter under § 544.2(d) of this Subchapter may borrow from a state-chartered central reserve institution, including a state mortgage finance agency, if:

(a) The association's general reserves, surplus, and undivided profits aggregate over 5 percent of its withdrawable accounts;

(b) The reserve institution is located in the state where the association's home office is located;

(c) The amount borrowed does not exceed the amount a state-chartered savings and loan in that state could borrow from that institution;

(d) The association does not use the loan proceeds to make loans at an interest rate exceeding by one and three-quarters percent per year the interest rate paid for the borrowed funds; and

(e) The association maintains any documentation required by the state regarding use of the loan proceeds or other matters.

Investments

§ 545.5 Election regarding classification of loans or investments.

If a loan or other investment is authorized under more than one section in this Part, an association may designate under which section the loan or investment has been made.

§ 545.6 Real estate loans.

(a) *General.*—(1) *Authorization.* A Federal association may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) real estate loans or interests therein, subject to the restrictions of this Part. A real estate loan is any loan made on the security of residential or nonresidential real estate where the association relies substantially upon that real estate as the primary security for the loan. A loan secured by a lien on real estate is (i) a loan secured by an interest in real estate in fee or in a leasehold or subleasehold extending or renewable automatically at the option of the holder or the Federal association for 5 years after maturity of the loan, (ii) a loan secured by assignment of such loans, or (iii) any real-estate-related loan purchased from the Federal Savings and Loan Insurance Corporation and guaranteed by the Corporation under a guaranty contract made by the Corporation with the purchasing association.

(2) *Determination of loan-to-value ratios.* (i) In determining compliance with maximum loan-to-value limitations in this Part, at the time of making a loan an association shall add together the unpaid amount of all recorded loans secured by prior mortgages, liens or other encumbrances on the security property that would have priority over the association's loan, and shall not make such a loan unless the total amount of such loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed applicable maximum loan-to-value limitations prescribed in this Part.

(ii) In valuing the real estate security, an association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed. "Value" for a real estate loan means market value.

(b) *Residential real estate loans.* A Federal association may make loans on the security of residential real estate, subject to the following restrictions:

(1) *Home loans.* A home loan is a loan made on the security of homes (including condominiums and cooperatives), combinations of homes and business property, farm residences, and combinations of farm residences and commercial farm real estate, including non-amortized, partially-amortized and line-of-credit loans. The interest rate, the payment, the loan balance or the term to maturity may vary as provided in paragraph (b)(1) (i) of this paragraph (b)(1). Home loans shall have a term not to exceed 40 years, with interest payable at least semi-annually, except as expressly authorized in this paragraph (b)(1).

(i) *Adjustments to rate, payment, balance or term; refinancing.* Subject to such limitations on adjustment as are set forth in the loan contract:

(a) Adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or of an index that measures the rate of inflation or the rate of change in consumer disposable income, which index is readily available to and verifiable by the borrower and is beyond the control of the association; *Provided*, that an association may decrease the interest-rate at any time, and: *Provided further*, That an association may increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase and the time at which it may be made, and which is set forth in the loan contract;

(b) Adjustments to the payment and the loan balance that do not reflect an interest-rate adjustment may be made if (i) the adjustments reflect a change in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the control of the association, or (ii) in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula, or to a schedule specifying the percentage or dollar change in the payment and set forth in the contract;

(c) Any combination of indices or a moving average of index values may be used as an index, and an association may use more than one index during the term of a loan;

(d) A loan contract may provide for the deferral and capitalization of a portion of interest, or of all interest on loans to natural persons secured by borrower-occupied property and on which periodic advances are being made, and may provide that a portion of the consideration to be received by the association in return for making the loan shall be interest in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value or as provided in § 555.19 of this Subchapter;

(e) At least 30 but not more than 120 days prior to an adjustment and at least 90 but not more than 120 days prior to the expected maturity of a non- or partially-amortized loan (including a loan with a "call" provision pursuant to subparagraph (b)(1)(i)(f) of this section, an association shall provide the borrower with notice of the adjustment or of maturity. However, where the loan contract provides that changes in the interest rate shall occur more frequently than changes in the payment, the association need not notify the borrower of changes in the rate, nor of changes in the loan balance or term resulting from a rate change, until notice of a payment adjustment is given. (For purposes of notification, a payment adjustment is considered to occur as of the date of the interest-rate change immediately preceding the due date of the adjusted payment.) In addition, where the loan contract sets out a schedule of payment adjustments, notice need not be given of payment changes made pursuant to that schedule;

(f) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance. A loan contract may provide an association with the right to call the

loan due and payable either after a specified number of years has elapsed following closing or upon the occurrence of a specified event external to the loan; and

(g) If, at maturity of a loan that provides for adjustments pursuant to this paragraph (b)(1)(i), the ratio of the loan balance to the current market value of the security property exceeds 95 percent, the association may offer to refinance the loan, subject to the requirements of paragraphs (b)(ii)(a) and (ii)(c) of this paragraph (b)(1) and other applicable provisions of this Part.

(ii) *Loan-to-value ratio.* A home loan shall not at the time of origination exceed 90 percent of the value of the security property, except as provided in paragraph (b)(1)(i)(g) of this section and this paragraph (b)(1)(ii). During the term of the loan, the loan-to-value ratio may increase above 90 percent if the increase results from a change authorized by paragraph (b)(1)(i) of this section.

The Board will assume continued compliance with the loan-to-value ratio limitations where the original ratio met the requirements of this paragraph (b)(1)(ii), but in no event may the loan balance exceed 125 percent of the original appraised value of the property during the term loan unless pursuant to paragraph (b)(1)(i)(b)(f) of this section or unless the loan contract provides that the payment shall be adjusted at least once each five years, beginning no later than the tenth year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance over the remaining term of the loan. The 125-percent limitation shall not apply to that portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property pursuant to paragraph (b)(1)(i)(d) of this section. Notwithstanding the foregoing, the loan-to-value ratio at the time of origination may be up to 95 percent if:

(a) The loan contract requires that, in addition to full or partial amortization of the loan, the *pro rata* portion, based on the number of installments due annually, of estimated annual taxes and assessments on the security property be paid in advance to the association with each installment payment;

(b) The borrower, including a purchaser who assumes the loan, has executed a certificate stating that the borrower occupies, or in good faith intends to occupy, the property (or one dwelling on the property) as the borrower's principal residence; and

(c) During the time that the unpaid balance of the loan exceeds 90 percent of the value of the security property, determined at the time of origination,

the part of such balance exceeding 80 percent of value is guaranteed or insured by a mortgage insurance company which the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer": *Provided*, That any unpaid loan balance secured by a pledged savings account shall not be required to be guaranteed or insured under this provision.

(iii) *Loans on cooperatives.* A loan made on the security of a cooperative under this paragraph (b)(1) of this section shall comply with the following requirements:

(a) *Loans on the security of cooperative housing developments ("blanket" loans).* The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the Federal Housing Administration.

(b) *Loans on individual cooperative units.* Such loans may be made on the security of (i) a security interest in stock, membership certificate, or other evidence of ownership issued to a stockholder or member by a cooperative housing organization; and (ii) an assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(iv) *Loans to facilitate trade-in or exchange.* Loans made to facilitate the trade-in or exchange of security property shall not exceed 90 percent of value shall be repayable within 18 months.

(v) *Pledged-account loans.* Loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios specified in this paragraph (b)(1) with such excess secured by savings accounts: *Provided*, that loans that exceed 90 percent of the value of the combined security are subject to the following restrictions:

(a) The loan shall not exceed the appraised value of the real estate;

(b) The savings account shall consist of only of funds belonging to the borrower, members of his family, or his employer; and

(c) The association shall fully disclose to the prospective borrower the differences (including interest, private-mortgage-insurance costs, and equity interest) between a loan secured by real estate and savings accounts and a loan secured by real estate alone.

(vi) *Disclosure.* Prior to accepting an application for a home loan, an association must disclose to each loan applicant, in one or more documents other than the loan documents and in plain language, the terms of the type(s)

of loan(s) offered to the applicant. The purpose of this disclosure requirement is to ensure full understanding of the operation of the loan for which the individual is applying; the disclosures do not constitute a commitment on the part of an association to make a loan to a loan applicant. The disclosure material provided to an applicant shall include at least such of the following information as is relevant to the type of loan being offered:

(a) A general explanation of the fact that (1) the association and the applicant become bound by the terms of the loan contract upon signing it, (2) even though subsequently either party may request modification of the contract, neither party is bound to agree to such a request, and (3) since normally the loan contract and mortgage (or deed of trust) establish the rights of the borrower, the borrower should become familiar with and understand the provisions of those documents;

(b) The term to maturity;

(c) The initial interest rate, if known, or the manner in which the initial interest rate will be established;

(d) The amount of the initial payment, if known, and an explanation of how the association establishes an amortization schedule for the loan, including how the association determines both the amount of each payment and what proportion of each payment is credited to interest;

(e) A full explanation of how the interest rate, the payment, the loan balance, or the term to maturity may be adjusted (including identification of the index(es) to be used and how index values may be obtained by the borrower), and how the adjustment of one item may affect the others;

(f) What information will be contained in each notice of an adjustment and, in the case of a non- or partially-amortized loan (including a loan giving the association the right to call the loan due and payable after a number of years or upon the occurrence of an event external to the loan), on the notice of maturity, and how far in advance of an adjustment or maturity each notice will be provided;

(g) A description of all contractual contingencies under which the loan may become due or which may result in a forced sale of the home;

(h) In the case of a non- or partially-amortized loan, unless the association unconditionally obligates itself to refinance the loan, a statement that a large payment will be due at maturity of the loan and that the association is under no obligation to refinance the loan; if the loan gives the association the right to call the loan due and payable after a number of years or upon the

occurrence of an event external to the loan, a statement that a large payment may be due at such time and that the association is not obligated to refinance the loan;

(i) A description of any prepayment penalty provided for by the loan contract;

(j) Whether the loan contract will produce for escrow payments, the purpose of requiring escrow payments, how the amount of an escrow payment is established and whether interest will be paid on escrow accounts; and

(k) An example of the interaction of all variable features of the loan over any period of time.

(2) *Multi-family dwelling loans.* A multi-family dwelling loan is a loan made on the security of real estate that is not a home (but which may include homes) and that is used primarily for residential purposes, or combinations of such real estate and business property that involves only minor or incidental business use. A multi-family dwelling loan shall not exceed 90 percent of the value of the security property and shall be repayable within 30 years: *Provided*, That nonamortized loans shall be repayable within 5 year. Interest shall be payable at least semi-annually except to the extent that the loan contract provides for the deferral and capitalization of interest: *Provided*, That the ratio of the loan balance to the current appraised value of the security property may not at any time during the loan term exceed 90 percent as a result of the deferral and capitalization of interest. The loan contract may provide that a portion of the consideration for making the loan shall be in the form permitted by § 555.19 of this Subchapter.

(c) *Nonresidential real estate loans.*

(1) A Federal association may make loans on the security of nonresidential real estate: *Provided*, That any such loan shall not exceed 90 percent of the value of the security property, and shall be repayable within 30 years, except that construction loans and non-amortized loans shall be repayable within 5 years. Interest shall be payable at least semi-annually except to the extent that the loan contract provides for deferral and capitalization of interest: *Provided*, That the ratio of the loan balance to the current appraised value of the security property may not at any time during the loan term exceed 90 percent as a result of deferral and capitalization of interest. The loan contract may provide that a portion of the consideration for making the loan shall be in the form permitted by § 555.19 of this Subchapter.

(2) An association's aggregate investment under this paragraph shall not exceed 40 percent of assets.

(d) *Loans to acquire or to improve real estate.* (1) Subject to the limitations in paragraphs (b) and (c) of this section, a Federal association may make real estate loans for the purpose or acquiring unimproved real estate, for financing the development of real estate, on the security of building lots and sited, for construction of structures on real estate, or for the rehabilitation of real estate. The interest on any such loan shall be payable at least semi-annually.

(2) Loans authorized by this paragraph (d) shall not exceed the following loan-to-value ratios:

(i) Seventy-five percent of the value of the security property for land acquisition loans, loans to finance the development of real estate, or loans of the security of building lots and sites;

(ii) Ninety percent of the value of the security property for construction loans and rehabilitation loans.

(3) Loans authorized by this paragraph (d) shall be repayable within the following terms:

(i) Two years: loans for the construction or rehabilitation of an individual single-family dwelling;

(ii) Three years: loans for the acquisition of land;

(iii) Five years: loans for the construction or rehabilitation of nonresidential real estate;

(iv) Six years: loans for the construction or rehabilitation of multi-family dwellings, or of more than one single-family dwelling, and loans on the security of building lots and sites (other than for a borrower's principal residence);

(v) Eight years: loans to finance the development of real estate;

(vi) Fifteen years: loans on the security of building lots and sites for single-family dwellings to be used as the borrower's principal place of residence (as evidenced by a borrower's certification of intention that the property will be so used);

(4) For loans made to finance the development of real estate, loans on the security of building lots and sites, and construction loans; upon release of any portion of the security property from the lien securing the loan, the principal balance of the loan shall be reduced by an amount at least equal to that portion of the outstanding loan balance attributable to the value of the property to be released. "Value" for the purposes of the preceding sentence is the value fixed at the time the loan was made.

(5) Loan documentation for development loans shall contain a

preliminary development plan that is satisfactory to the association. In addition, the limitation on loans to one borrower as defined in § 563.9-3 of this Chapter shall be 2 percent of an association's assets with regard to loans on any one development project made under this paragraph (d). A development project includes all primarily residential, recreational, or other facilities in an integrated development plan. With respect to construction loans, associations shall reserve the right to impose limits on the number of structures under construction at a given time.

(e) *Combination loans.* (1) Any loans authorized by this section may be combined, with the term of each loan beginning at the end of the term of the preceding loan and interest and principal payment requirements as specified in the applicable paragraphs of this section.

(2) With respect to a combination of loans to finance development and loans on building lots and sites and/or construction loans, whether or not development has been completed, (i) beginning not more than 3 years after the initial disbursement of loan proceeds for construction purposes, the borrower shall make monthly payments sufficient to amortize, on a straight-line basis, that portion of the principal loan balance applicable to any improvement, including the building site, over the remaining term of the loan, and (ii) beginning not more than 4 years after such disbursement, the borrower shall make monthly payments sufficient to amortize, on a straight-line basis, that portion of the loan balance not applicable to the construction of any improvement and its building site, over the remaining term of the loan.

(3) If the development or construction to be financed by a loan made pursuant to paragraph (e) of this section has not commenced by the end of the third year from the initial disbursement the loan proceeds, the loan balance outstanding shall be due and payable.

(4) Notwithstanding any other provisions of this section, a combination loan for construction inclusive of acquisition and/or development shall be repayable within 11 years.

(f) *Leeway authority for loans relating to residential real estate and farms.* (1) In addition to loans in which it may invest under other provisions of this Part, an association may invest an amount not exceeding the greater of its surplus, undivided profits, and reserves or 5 percent of its assets in loans the principal purpose of which is to provide financing with respect to what is or is expected to become primarily

residential real estate, where the association relies substantially for repayment on: (i) the borrower's general credit standing and forecast of income, with or without other security, or (ii) other assurances of repayment, including but not limited to a third-party guaranty or similar obligation.

(2) In addition to loans in which it may invest under other provisions of this Part, an association may invest an amount not exceeding 5 percent of its assets in loans, advances of credit, and interests therein, secured by real estate for primarily residential use or real estate used or to be used for commercial farming that are not otherwise authorized under this Part: *Provided*, that home loans made under this authority must conform to the notice and disclosure requirements of § 545.6(b)(1) (i) and (vi) of this Part.

§ 545.6-1 Insured and guaranteed loans.

Without regard to any of the limitations in § 545.6 of this Part pertaining to loan amounts or terms and conditions of repayment, a Federal association may make or invest in any of the following loans guaranteed or insured by a government agency:

(a) Loans on the security of residential real estate that are insured or guaranteed by a public mortgage insurer, provided the amounts, terms, and conditions of repayment are acceptable to the insuring or guaranteeing agency. A loan is insured or guaranteed by a public mortgage insurer if: (1) It comes within the definitions of §§ 541.10 or 541.13 of this Subchapter, or within the provisions of Title X of the National Housing Act, or (2) it is insured or guaranteed by an agency or instrumentality of a state (i) whose full faith and credit is pledged to support the insurance or guarantee, or (ii) whose insurance or guarantee program is approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b)(1) Loans on residential real estate guaranteed under the Farmers Home Administration (FmHA) Rural Housing Program: *Provided*, (i) FmHA guarantees at least 80% of the principal amount and accrued interest of each loan made under the program; (ii) the loan terms must be acceptable to FmHA; and (iii) the association invests not more than the greater of 2.5 percent of its assets or one-half of its net worth in the aggregate outstanding balance of the non-guaranteed portions of all loans made under the program and held by the association.

(2) An association shall maintain records to verify compliance with the requirements for each investment made

under this paragraph including the loan note guarantee, lender's agreement, and documentation that the investment limitation has not been exceeded.

(c)(1) Housing project loans with any guaranty under section 221 of the Foreign Assistance Act of 1961, as in effect before December 30, 1969; loans with any guaranty under section 224 of that Act, as in effect before December 30, 1969; or loans with any guaranty under section 221 or 222 of that Act, as in effect after December 29, 1969.

(2) No association may invest in any loans, or interests therein, under this paragraph, unless (i) the loan agreement specifies what constitutes an event of default, and provides that upon default in payment of principal or interest under such agreement, the entire amount of the outstanding indebtedness thereunder shall become immediately due and payable, at the lender's option; and (ii) the contract of guaranty covers 100 percent 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 provides 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.

(3) No association shall invest in any loan, or interest therein, under this paragraph if, as a result, the aggregate outstanding principal amount of such investments of the association and investments made under § 545.12(b) of this Part would exceed 1 percent of its assets.

(d) Loans on the security of non-residential real estate that are guaranteed by one of the following agencies under the authority specified herein, provided the loan terms are acceptable to the guaranteeing agency: (1) Economic Development Administration (under the Public Works and Economic Development Act of 1965, as amended, or the successor to that Act, or the Trade Act of 1974, as amended); (2) Farmers Home Administration (under the Consolidated Farm and Rural Development Act of 1974, as amended); (3) Small Business Administration (under the Small Business Investment Act of 1958, as amended; or the Small Business Act of 1953, as amended).

(e) Loans or obligations, or interests therein, guaranteed in whole or in part or as to which a commitment or agreement for any such guaranty has been made under the New Communities Act of 1968 or under Part B of the Urban Growth and New Community Development Act of 1970, as amended.

§ 545.6-2 Home improvement loans.

A Federal association may invest in loans, with or without security, for residential real property alteration, repair or improvement, or for equipping or furnishing residential real property, with installments payable at least quarterly, the first installment due no later than 120 days from the date the loan is made and the final installment due no later than 20 years and 32 days from such date. Installments shall be substantially equal except to the extent that the loan complies with mortgage provisions authorized under § 545.6(b)(1) of this Part.

§ 545.6-3 Loans on low-rent housing.

(a) *General.* Limitations in this Part relating to maximum loan terms and loan-to-value ratios shall not apply to any loan secured by a lien on real estate which is, or is being constructed, remodeled, rehabilitated, or renovated to be, the subject of (1) an annual contributions contract for low-rent housing under former Sections 23 or 5 of the United States Housing Act of 1937, as amended, or (2) a Housing Assistance Payment (HAP) contract for low-income housing under Section 8 of the United States Housing Act of 1937, as amended, which the borrower has agreed in writing to enter into for the maximum term available for the particular project type and financing: *Provided*, That no loan by a Federal association pursuant to the authority of this section shall exceed 90 percent of the appraised value of the security property or, in lieu of such appraisal, 90 percent of the purchase price if the security property is to be purchased by a local public housing authority, and in no event, shall loan proceeds in excess of 80 percent of such appraised value be disbursed to the borrower until the Department of Housing and Urban Development has issued its final approval of the project under the subsidy program. Loans insured under the National Housing Act may be made on terms and conditions permitted by the insuring agency as provided in § 545.6-1 of this Part.

(b) *Appraisals.* The appraisals of any real estate required by § 545.6-7(e) shall be rendered in accordance with the general appraisal guidelines issued by the Office of Examinations and Supervision.

§ 545.6-4 Community development loans and investments.

(a) *General.* A Federal association may invest in real property, or in interests in real property, located within any of the following areas, and in loans on the security of liens, and in other obligations secured by liens, on real

property so located; (1) Any neighborhood strategy area (as defined in 24 CFR 570.301(c)) receiving concentrated development assistance under Title I of the Housing and Community Development Act of 1974, as amended; (2) Any general location (as specified in 24 CFR 570.306(b)(3)(ii)) which is specified in a community's Housing Assistance Plan (as defined in 24 CFR 570.306) as an area for housing assistance goals and which is receiving such concentrated assistance; (3) Any urban renewal area (as defined in section 110(a) of the Housing Act of 1949, as amended) receiving such concentrated assistance in order to finish uncompleted urban renewal projects; and (4) Any locales specified by a community as receiving Urban Development Action Grants or otherwise receiving significant amounts of such concentrated assistance.

(b) *Investment in loans and other obligations secured by liens on real estate.* Such investments shall conform to all limitations in this Part 545 applicable to the type of real estate securing the investments.

(c) *Investments in real estate.* An association may invest up to 2 percent of assets in real property or interests therein described in paragraph (a) of this section. Investments may not exceed the appraised value of the property plus usual settlement costs. In determining the 2-percent investment limit, the following rules shall apply:

(i) A reasonable allowance for depreciation computed under the straight-line method may be deducted from the cost of improved real property or investments in improved real property owned by the association:

(ii) If a leasehold interest in land is acquired, the amount of the investment as to rental obligations under the lease shall be determined on the basis of the "present value of an annuity due" and for the purpose of such determination, the worth of money shall be deemed to be 10 percent; and

(iii) The investment in improvements to land in which the association has a leasehold interest shall be the cost to the association of the improvement, less reasonable allowance for amortization computed under the straight-line method.

(d) *Amount of Investment.* Total investment under this section shall not exceed 5 percent of assets.

§ 545.6-5 State housing corporation investment-insured.

(a) A Federal association may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation (as

defined in § 571.8 of this Chapter), provided that such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the National Housing Act, as amended, and that in the event of default, the holder of such obligations or loans has the right directly, or indirectly through a fiduciary, to subject to the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds.

(b) The aggregate outstanding direct investment and investment in loans and loan commitments under paragraph (a) of this section shall not exceed 30 percent of the association's assets at the time of investment, and shall not exceed 10 percent of such assets for investments in state housing corporations located outside the association's home state.

§ 545.6-6 Insured loans for title purchase.

Without regard to any other provision of this Part, a Federal association may invest in loans, or interests therein, made for financing the purchase by homeowners of fee simple title to property on which their homes are located and as to which the association has benefit of insurance under section 240 of the National Housing Act, as amended, or of a commitment or agreement for such insurance.

§ 545.6-7 General provisions respecting loans.

(a) *Initial loan fees and charges.* A Federal association may charge fees in connection with a commitment to make a real estate loan (whether or not the making of a loan follows the commitment), or in connection with the acquisition, making, refinancing or modification of a loan. Subject to § 563.35(d) of this Chapter, an association may require a borrower to pay necessary initial charges connected with making a loan, including the actual costs of title examination, appraisal, credit report, survey, drawing of papers, loan closing, and other necessary incidental services and costs. The association may collect initial charges from the borrower and pay the persons rendering services.

(b) *Contract provisions.*—(1) *Required and authorized provisions.* Each loan shall be evidenced by note, bond, or other debt instrument and be secured by a security instrument which is consistent with sound lending practices. Loan instruments shall comply with applicable provisions of law, governmental rules and regulations, and the association's charter and bylaws,

and provide for full protection to the Federal association. They shall be recorded and, among other protections, shall be provided specifically for full protection with respect to insurance, taxes, assessments, other governmental levies, maintenance, and repairs. They may provide for an assignment or rents. The association may pay taxes, assessments, insurance premiums, and other similar charges for protection of its interest in the security property. If such payments are consistent with this Part, they may be added to the unpaid balance of the loan. The association may require life insurance to be assigned to it by the borrower as additional collateral for a loan on the security of real estate. It may advance premiums on such life insurance and, if consistent with this Part, add the premiums so advanced to the unpaid balance of the loan. A Federal association shall keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real estate on which it has loans or which it owns.

(2) *Escrow accounts.—General.* (i) Subject to the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601-2617), an association may require that all or any Part of the estimated annual taxes, assessments, insurance premiums, and other charges on any loan be paid in advance to the association to enable the association to pay such charges as they become due. If the association determines there will be a deficiency on the due date of such charges, it may require that additional deposits, sufficient to make up the deficiency, be submitted in equal amounts with each payment up to the date upon which such charges become due and payable. After giving the borrower notice of such deficiency and of the additional deposits required to make up the deficiency, the association may deduct the necessary amounts from the borrower's regularly scheduled installment payments if the borrower fails to make the additional deposits.

(ii) *Payment of interest on escrow accounts.* Unless obligated by contract, an association shall have no obligation to pay interest on escrow accounts.

(3) *Late Charges.—General.* (i) An association's loan instruments may, as a matter of contract between it and the borrower, provide for assessment, imposition, and collection of a late charge respecting payment of any delinquent periodic installment payment. The charge may be in any form necessary and appropriate to full protect the association. No form of such

late charge shall be considered as interest to the association. The association shall not deduct late charges from regular periodic installment payments on the loan, but shall collect them as such from the borrower. Except as provided in this paragraph (b)(3), assessment, imposition, and collection of such late charges shall be exclusively governed by the terms of the loan contract. Collection of a late charge shall not impair, alter, or abrogate any other right of the association granted by contract or law respecting delinquent installment payments.

(ii) *Limitations on late charges.* With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by an association, unless any monthly billing, coupon, or notice the association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed; or more than one time for late payment of the same installment. Any installment payment made by the borrower shall be applied to the longest outstanding installment due. An association, in an appropriate case, may elect to waive all or any portion of an authorized late charge.

(4) *Due-on-sale clauses.* An association may include a provision in its loan instrument whereby the association may, at its option, declare immediately due and payable sums secured by the association's security instrument if all or any part of the real property securing the loan is sold or transferred by the borrower without the association's prior written consent. Subject to the provisions of 12 U.S.C. 1701j-3, exercise by the association of such option shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the association and borrower shall be fixed and governed by that contract.

(c) *Initial payments on real estate loans.* Payments on real estate loans shall begin not later than 60 days after the loan is disbursed: *Provided*, That if such loans are for construction, substantial alteration, repair or improvement loans, payments may begin not later than 36 months (18 months for loans secured by real estate consisting solely of one or more homes or combination of home and business property) after the date of the first disbursement, and interest shall be payable at least semi-annually until regular periodic payments become due.

(d) *Loan payments and prepayments.* Except for loans to natural persons

secured by borrower-occupied property and on which periodic advances are being made, payments on the principal indebtedness of all loans on real estate shall be applied directly to reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time wholly or partly to offset payments which subsequently accrue under the loan contract. An association may impose a penalty of prepayment of a loan as provided in the loan contract: *Provided*, That prior to accepting an application for a real estate loan an association must disclose to each applicant, in one or more documents other than the loan documents and in plain language, the existence of the penalty provision in the loan contract and the manner in which the penalty would be calculated. The documents must disclose the amount of the maximum possible penalty that could be incurred by the applicant pursuant to the penalty provision. If the penalty is to be calculated as a fixed percentage of the outstanding loan balance, the disclosure must include a statement identifying that percentage. If the penalty is to be calculated by reference to an index that measures the change in interest rates, the disclosure must include a table or similar guide that indicates the extent to which the amount of the penalty may vary as interest rates (as measured by the index) change, as well as the amount of the penalty to be imposed if the index decreases or remains unchanged. Notwithstanding the above, for any mortgage instrument on which the yield may be adjusted an association may not impose a penalty on any prepayment made within 90 days of the notice of an adjustment.

(e) *Appraisals.* A Federal association may make a real estate loan only after a qualified person designated by its board has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the association by the insuring or guaranteeing agency. The association shall pay the cost of any appraisal of the security property obtained by the association after loan closing but prior to maturity of a loan unless the borrower specifically requested the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan.

§ 545.6-8 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

Without regard to any other provisions of this Part, a Federal association may enter into and perform

any mortgage transaction with the Federal Home Loan Mortgage Corporation specified in section 305(a) of the Federal Home Loan Mortgage Corporation Act. For purposes of this section, the term "mortgage" shall have the meaning prescribed in section 302(d) of such Act.

§ 545.7 Manufactured home financing.

(a) Definitions used in this Part.

(1) "Manufactured home" shall have the same definition as that contained in the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6).

(2) "Manufactured home chattel paper"—a document evidencing an installment sales contract or a loan or interest in a loan secured by a lien on one or more manufactured homes and equipment installed or to be installed therein.

(3) "Manufacturer's invoice price"—a manufacturer's itemized charges, shown on its invoice, for a specifically identified manufactured home, furnishings, equipment, and accessories installed by the manufacturer, and freight.

(b) General investment authority. An association may invest in manufactured home chattel paper and interests therein without limitation as to percentage of assets.

(c) Sound investment practices. Appraisals or other generally accepted systems of valuation of used manufactured homes shall substantiate the term to maturity of loans made. Chattel paper shall have provisions to protect the association, specifically regarding insurance, taxes, other governmental levies, and maintenance and repairs, and may include any other protection provision which is lawful and appropriate. The association may pay taxes or other governmental levies, and insurance premiums or other similar charges to protect its security interest, and may, when lawful, add such payments to the debt evidenced by the chattel paper. The association shall seasonably perfect its security interest. The association is responsible for current knowledge of regulations and requirements pertaining to Federal insurance and guarantee programs for manufactured home loans in which it invests, including portfolio limitations on coverage, and is expected to make underwriting decisions as carefully for such loans as for conventional loans.

(d) Inventory financing. An association may invest in manufactured home chattel paper which finances a manufactured home dealer's acquisition of inventory, if:

(1) The inventory is held for sale by the dealer in its ordinary course of business;

(2) The loan evidenced by the chattel paper is the dealer's obligation; and

(3) The loan amount does not exceed the following:

(i) For new manufactured homes, 100 percent of manufacturer's invoice price for each manufactured home and equipment to be installed by the dealer;

(ii) For used manufactured homes, 75 percent of appraised market value or other generally accepted valuation of each manufactured home, including installed equipment.

(e) Retail financing. (1) Insured and guaranteed loans. An association may invest in retail manufactured home chattel paper that is insured or guaranteed, as defined in § 541.10 or § 541.13 of this Subchapter, or that has a commitment for such insurance or guarantee.

(2) Conventional loans. An association may invest in conventional retail manufactured home chattel paper if:

(i) The manufactured home is located at a manufactured home park or other permanent or semi-permanent site;

(ii) The manufactured home chattel paper is payable within 20 years, in monthly payments which are substantially equal except to the extent that the financing complies with mortgage provisions authorized under § 545.6(b)(1)(i) of this Part; and

(iii) The financed amount (excluding time-price differential or interest, however computed) does not exceed;

(a) In the case of a new manufactured home, 90 percent of buyer's total costs, including freight, itemized set-up charges, sales or other taxes, filing and recording fees imposed by law and premiums for related insurance, or

(b) In the case of a used manufactured home, 90 percent of the appraised market value or other generally accepted valuation of the manufactured home plus sales and other taxes, filing and recording fees imposed by law, premiums for related insurance, and freight and itemized set-up charges, if any.

(3) Combination loans. An association may invest in manufactured home chattel paper secured by combinations of manufactured homes and lots on the following terms:

(i) Affixed manufactured homes. If the wheels and axles have been removed and the manufactured home is permanently affixed to a foundation, a loan secured by a combination of manufactured home and lot on which it sits may be treated as a residential real estate loan under § 545.6(b) of this Part.

(ii) Unaffixed manufactured homes. If the manufactured home is not affixed in the manner described in (e)(3)(i) of this section, an association may make a loan secured by a combination of manufactured home and lot on which it is or is to be located if the financing complies with the requirements of paragraphs (e)(2)(i), (ii) and (iii) of this section and the loan-to-value ratio does not exceed 75 percent of the appraised value of the lot and lot improvements and 90 percent of the buyer's total costs of the manufactured home (or valuation of used manufactured home) as defined in paragraph (e)(2)(iii) of this section.

(iii) Insured and guaranteed loans. Notwithstanding the other provisions of this paragraph (e)(3), an association may invest in a combination manufactured home and lot chattel paper that is insured or guaranteed as defined in §§ 541.10 or 541.13 of this Subchapter, or that has a commitment for such insurance or guarantee.

(4) Purchase of retail paper. With regard to purchase of an interest in retail mobile home chattel paper where the security property is or will be located outside the association's normal lending territory (as defined in § 561.22), the seller of the interest (unless the seller is the association's service corporation) shall retain at least a 25 percent interest in each document evidencing a loan secured by the chattel paper.

(f) Sale of paper. (1) All manufactured home chattel paper sold by an association shall be sold without recourse, as defined in § 561.8 of this Chapter.

(2) No association may sell manufactured home chattel paper if, at the close of its most recent semi-annual period, it has manufactured home chattel paper scheduled items (other than assets acquired in a supervisory merger) in excess of 5 percent of its total portfolio in such paper: *Provided*, That application may be made to the Board for a waiver of this restriction.

§ 545.8 Commercial loans.

(a) Definition. As used in this section, the term "commercial loan" means a secured or unsecured loan to any person or organization for commercial, corporate, business, or agricultural purposes. In determining whether a loan to a natural person is a commercial loan, a Federal association may rely on the borrower's statement of purpose if accepted in good faith.

(b) Investment authority. (1) An association may invest in, sell, purchase, participate in, or otherwise deal in commercial loans: *Provided*, That at any

one time the total investment made under this section shall not exceed 5 percent of the association's assets (or 7½ percent in the case of a savings bank) prior to January 1, 1984, and 10 percent thereafter.

(2) Notwithstanding the provisions of § 545.5 of this Chapter, the percentage-of-assets limitations in paragraph (b)(1) of this section shall apply to:

- (i) Overdraft loans on demand accounts;
- (ii) Standby letters of credit; and
- (iii) Commercial loans not secured by real estate that are made by a service corporation of the association: *Provided*, That, in the case of a service corporation with multiple stockholders, the amount of such loans attributed to one stockholder association will be calculated *pro rata* on the basis of the percentage of the service corporation's stock owned by the association.

(3) Loans sold to a third party will be included in the percentage-of-assets calculation required by paragraph (b)(1) of this section only if they are sold with recourse.

(4) Loan commitments will not be subject to the percentage-of-assets limitation in paragraph (b)(1) of this section. A "loan in process" is not a loan commitment for purposes of this exception.

§ 545.8-1 Overdraft loans.

Associations may extend secured or unsecured credit to cover payment of drafts or other funds transfer orders in excess of the available balance of an account on which they are drawn. Overdraft credit relating to demand accounts is subject to specific limitations set forth in § 545.8 of this Chapter.

§ 545.8-2 Letters of credit.

An association may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code or the Uniform Customs and Practice for Documentary Credits, subject to the following requirements:

- (a) Each letter of credit must conspicuously state that it is a letter of credit;
- (b) The issuer's undertaking must contain a specified expiration date or be for a definite term, and must be limited in amount;
- (c) The issuer's obligation to pay must be solely dependent upon the presentation of confirming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and

(d) The account party must have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

§ 545.8-3 Loans on securities.

A Federal association may invest in loans secured by obligations of, or by obligations fully guaranteed as to principal and interest by, the United States or any agency or instrumentality of the United States named in § 523.10(g)(3) of this Chapter, if:

- (a) The borrower is a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or is a broker or dealer registered with the Securities and Exchange Commission; and
- (b) The market value of the securities for each loan at least equals the amount of the loan at the time it is made.

§ 545.8-4 Loans to and investments in business development credit corporations.

Notwithstanding any other provisions of this Part, a Federal association whose general reserves, surplus, and undivided profits aggregate more than 5 percent of its withdrawable accounts may invest in, lend to, or commit itself to lend to any business development credit corporation incorporated in the state in which the association's home office is located, in the same manner and to the same extent as the statutes of that state authorize a savings and loan association organized under the laws of that state to so invest, lend, or commit itself to lend: *Provided*, That the aggregate amount of investments, loans, and commitments to such a corporation outstanding at any time shall not exceed the lesser of one-half of one percent of the total outstanding loans of the association or \$250,000.

§ 545.9 Consumer loans.

(a) *General*. A Federal association may originate, purchase, sell, service and participate in direct or indirect consumer loans and loans to dealers in consumer goods to finance inventory and floor-planning. Consumer loans are loans for personal, family or household purposes and loans reasonably incident thereto, including overdrafts on NOW accounts.

(b) *Limitations*. (1) At any one time, the total investment made under this section shall not exceed 30 percent of an association's assets.

(2) The total balances of all outstanding loans, as defined in § 563.9-3(a), of this Chapter, that may be made under this section in unsecured loans to one borrower, as defined in § 563.9-3(a), may not exceed the limitations

contained in § 545.8 of this Part concerning commercial loans. For purposes of the loans-to-one-borrower calculation, inventory and floor planning loans shall be treated as commercial loans.

§ 545.9-1 Credit cards.

An association may issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations. Such operations may be subject to § 545.16-1 of this Part. If a personal security identifier, as defined in § 545.16-1(a)(2), is used in conjunction with a credit card, the identifier may not be disclosed to a third party.

§ 545.9-2 Educational loans.

A Federal association may invest in loans, obligations, and advances of credit (all referred to herein as "loans") made for the payment of educational expenses, if the principal amount of the investment and of all other investments in loans under this section, exclusive of any investment which is, or which at the time of its making was, otherwise authorized, would not exceed 5 percent of the association's assets. The borrower shall certify to the association that the loan proceeds are to be used solely by a student for payment of such expenses. The loan may be secured, partly secured, or unsecured, and the association may require a co-maker(s), insurance, guaranty under a governmental student loan guarantee plan, or other protection.

§ 545.9-3 Loans on savings accounts.

A Federal association may make loans on the security of its savings accounts, whether or not the borrower is the owner of the account, if the association obtains a lien on, or a pledge of, such accounts as security therefor. Such a loan shall not exceed the withdrawal amount of the savings account and shall not be made when the association has any unpaid application for withdrawal on file more than 30 days.

§ 545.10 Financing leases.

(a) *General*. (1) A Federal association may become the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, may obtain an assignment of a lessor's interest in a lease of such property, and may incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if (i) the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early

termination of the lease and (ii) at the expiration of the lease, the association's interest in the property shall be liquidated or released on a net basis as soon as practicable.

(2) A lease of tangible personal property made to a natural person for personal, family or household purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal association's investment in consumer loans. A lease made for commercial, corporate, business or agricultural purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal association's investment in commercial loans. A lease of residential or nonresidential real property made pursuant to this section shall be subject to all limitations applicable to the amount of a Federal association's investment in real estate loans.

(b) *Definitions.* For the purposes of this section:

(1) A "net lease" is a lease under which the association will not, directly or indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) The purchasing of parts and accessories for the leased property; *Provided*, That improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this section;

(iii) The loan of replacement or substitute property while the leased property is being serviced;

(iv) The purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) The renewal of any license, registration or filing for the property unless such action by the association is necessary to protect its interest as an owner or financier of the property.

(2) A "full-payout" lease is one from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals, estimated tax benefits, and the estimated residual value of the property at the expiration of the initial term of the lease. The estimated residual value of the property shall not exceed 25 percent, in the case of personal property, or 20 percent, in the case of real property, of the acquisition cost of the property to the lessor *unless* the estimated residual value is guaranteed by a manufacturer,

the lessee, or a third party not an affiliate of the association and the association makes the determination that the guarantor has the resources to meet the guarantee. In all cases, however, both the estimated residual value of the property and that portion of the estimated residual value 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 of any guarantor of the residual value, and on the residual market value of the leased property. The maximum term of a full-payout lease shall be 40 years.

(c) *Salvage powers.* If, in good faith, an association believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, the provisions of paragraphs (a) and (b) of this section shall not prevent the association:

(1) As the owner and lessor under a net, full-payout lease, from taking 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, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) From including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (c) (1) and (2) of this section.

§ 545.10-1 Collateral loans.

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

§ 545.11 Equalization of interest rates.

Any loan contract entered into by a Federal association may provide for charging any time/price differential or any interest (whether on an add-on, discount, gross charge, or other similar basis) permitted to be charged on the same type of loan by a building and loan, savings and loan, homestead association, cooperative bank, or mutual savings bank organized under the laws of the State, District, Commonwealth,

territory, or possession in which the home office of the lending Federal association is located.

§ 545.12 Securities and other investments.

A Federal association may invest in:

(a) Assets that qualify as liquid assets, as defined in § 523.10(g) of this Chapter, and assets, other than time deposits and bankers' acceptances, that would so qualify except for their maturities: *Provided*, That any investment in corporate debt obligations and commercial paper shall be subject to the limitations of § 545.12-4 of this Part;

(b) Obligations fully guaranteed as to principal and interest by the United States;

(c) Securities guaranteed by the Government National Mortgage Association under section 306(g) of the National Housing Act, as amended;

(d) Obligations of, or participations or other instruments fully guaranteed as to principal and interest by, the Federal Home Loan Mortgage Corporation;

(e) 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), without regard to investment-grade rating, if the association's home office or a branch office is located in such state, territory, possession or political subdivision, and the association's aggregate investment in such obligations does not exceed 1 percent of its assets;

(f) The stock of a Federal Home Loan Bank and the Federal National Mortgage Association;

(g) Obligations or other instruments or securities of the Student Loan Marketing Association;

(h) The share capital and capital reserve of the Inter-American Savings and Loan Bank, subject to the following conditions:

(1) The association's net worth meets the requirements of § 563.13 of this Chapter, its scheduled items do not exceed 2.5 percent of its specified assets, and all appraised losses have been offset by specific loss reserves to the extent required by § 563.17-2 of this Chapter;

(2) The association's aggregate investment pursuant to this paragraph, including the amount of any obligations undertaken to provide said Bank with reserve capital in the future (callable capital), will not, as a result of such investment, exceed one-quarter of one percent of its assets or \$100,000, whichever is less; and

(3) The association's aggregate investment under this paragraph and its aggregate outstanding principal amount of investment under § 545.6-1(c) of this Part, will not, as a result of such investment, exceed one percent of its assets; and

(i) Shares or certificates in any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the portfolio of which is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to investments that an association is authorized, without limitation as to percentage of assets, to invest in, sell, redeem, hold, or otherwise deal with. The authority to invest in such companies includes the authority to redeem or hold the shares or certificates of such companies.

§ 545.12-1 Service corporations.

(a) *Definitions.* As used in this section—

(1) "Aggregate outstanding investment" means the sum of amounts paid to acquire capital stock or securities and amounts invested in obligations of service corporations less amounts received from the sale of capital stock or securities of service corporations and amounts paid to the association to retire obligations of service corporations.

(2) "Conforming loan" means a loan or portion thereof which a Federal association may make under any provision of this Part other than this section, except a loan made under § 545.6(f). A guarantee or take-out commitment of a loan which could have been made by a Federal association as a conforming loan may be deemed a conforming loan for purposes of this section if the Federal association complies with all requirements of this Chapter, including appraisal and recordkeeping requirements, as though it were itself making the loan subject to its guarantee or take-out commitment.

(3) "Insured institution" has the meaning prescribed in § 561.1 of this Chapter.

(4) "Joint venture" means any joint undertaking by a service corporation or a wholly-owned subsidiary thereof with one or more persons or legal entities in any form, including a joint tenancy, tenancy in common, or partnership and including investment in a corporation other than a wholly-owned subsidiary.

(5) "Scheduled items" and "specified assets" have the meanings prescribed in §§ 561.15 and 561.17 of this Chapter.

(6) "Subsidiary" includes a wholly-owned subsidiary and any joint venture in which a service corporation or wholly-owned subsidiary thereof (i) owns, controls, or holds with power to vote more than 25 percent of the capital stock, (ii) is a general partner, or (iii) is a limited partner and has contributed more than 25 percent of the limited partnership's capital.

(7) "Unsecured debt" and "unsecured loan" exclude accounts payable incurred in the ordinary course of business and paid within 60 days.

(b) *Qualified service corporations.* A Federal association may invest in the capital stock, obligations, or other securities of the following types of service corporations organized under the laws of the State (including District, Commonwealth, territory or possession) in which the association's home office is located:

(1) A statewide service corporation in which:

(i) All of the capital stock is available for purchase by, any only by, any and all savings and loan associations with a home office in such state;

(ii) No savings and loan association owns, or may own, more than 10 percent of the service corporation's outstanding capital stock, except that in any state in which the home offices of fewer than 15 savings and loan associations are located, no association owns, or may own, more than one-third of such stock;

(iii) Every eligible savings and loan association may own an equal amount of capital stock or may, on such uniform basis as the service corporation may determine, own an amount of such stock equal to a stated percentage of its assets or savings capital at the time the stock is purchased, but capital stock outstanding on December 31, 1984, may be disregarded in determining compliance with this requirement; and

(iv) Substantially all of the service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist of one or more of the activities set forth in paragraph (c) of this section;

(2) A multi-owned service corporation in which:

(i) All of the capital stock is held by at least five savings and loan associations with a home office in such state, and no one association holds more than 40 percent of such stock; and

(ii) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities set forth in paragraph (c) of this section; or

(3) A solely owned or multi-owned service corporation in which:

(i) All of the capital stock is held by fewer than five savings and loan associations, or more than 40 percent of such stock is held by one savings and loan association, with a home office in such State;

(ii) The consolidated debt outstanding at any one time (to holders of its capital stock and to others) of the service corporation and its subsidiaries does not exceed:

(a) Ten times the total of the service corporation's consolidated net worth and its unsecured debt to holders of at least 25 percent of its capital stock; or

(b) Twenty times such total if the service corporation is engaged solely in the activities set forth in paragraph (c) (1)(i) of this section. The consolidated debt of the service corporation and its subsidiaries shall include the entire amount of any obligation of the service corporation or subsidiary resulting from the sale of loans with recourse;

(iii) Approval of the Board is obtained before any activity of the service corporation is performed through one or more joint ventures if a director, officer, or controlling person of any stockholder of the service corporation has a direct or indirect beneficial interest in the joint venture;

(iv) Approval of the Board is obtained for any investment by:

(a) A Federal association in a service corporation or in a corporation which will become a service corporation as a result of that investment, or

(b) A service corporation directly or indirectly through one or more of its wholly-owned subsidiaries or joint ventures, if the purpose of the investment is to acquire a going business for an amount exceeding the fair market value of the tangible net assets of that business from a director or officer of a Federal association which owns any of the capital stock of the service corporation or from an entity in which a director or officer of the Federal association has a direct or indirect beneficial interest or is a director, officer, controlling person, partner, or trustee;

(v) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities set forth in paragraph (c) of this section.

(c) *Permitted activities.* A service corporation in which a Federal association may invest is permitted to engage in activities reasonably related to the activities of Federal associations as the Board may approve. In addition, a service corporation may engage in the

following activities without prior Board approval:

(1) *Loans.* Originating, investing in, selling, purchasing, servicing, or otherwise dealing in (including brokerage or warehousing), any of the following:

(i) Loans, and participations in loans, on a prudent basis and secured by real estate or liens on manufactured homes;

(ii) Loans, and participations in loans with or without security, for altering, repairing, improving, equipping, or furnishing real estate;

(iii) Loans and participations in loans for business purposes secured in part by real estate and insured or guaranteed by an agency of the United States;

(iv) Educational loans and participations therein;

(v) Consumer loans and participations therein;

(vi) Commercial loans and participations therein: *Provided*, That: such loans together with commercial loans made by the parent association pursuant to § 545.8 of this Part do not exceed five percent of the assets of the parent, or 7.5 percent if the parent is a Federally chartered savings bank, prior to January 1, 1984, or ten percent thereafter. Where a service corporation is owned by more than one association, each parent for purposes of this calculation shall include a portion of the subsidiary's commercial loans in the proportion of that parent's investment in the service corporation.

(2) *Services primarily for financial institutions.* Performing any of the following services, primarily for financial institutions:

(i) Credit analysis, appraising, construction loan inspection, and abstracting;

(ii) Developing and administering personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(iii) Research, studies, and surveys;

(iv) Developing and operating storage facilities for microfilm or other or other duplicate records;

(v) Advertising, brokerage and other services to procure and retain both savings accounts and loans, but not pooling savings accounts or soliciting or promoting pooled savings accounts;

(vi) Serving as escrow agent or as trustee under deeds of trust, including executing and delivering conveyances, reconveyances, and transfers of title;

(vii) Providing liquidity management, investment, advisory and consulting services;

(viii) Providing clerical, accounting, data processing and internal auditing services;

(ix) Establishing, owning, leasing, operating or maintaining remote service units;

(3) *Real estate services.* (i) Maintaining and managing real estate, including real estate used for agricultural purposes;

(ii) Managing owners' associations for condominium, cooperative, Planned Unit Development or other rental real estate projects;

(iii) Providing homeownership and financial counseling;

(iv) Providing relocation services;

(v) Providing real estate brokerage services for property owned by an association that owns capital stock of the service corporation, the service corporation, or a joint venture in which the service corporation participates, but not for property owned by third parties;

(vi) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites: *Provided*, That any development, subdivision, and construction of improvements is to be completed within three years after commencement of development of the real estate and within five years after acquisition of the real estate, unless such period is extended by the Principal Supervisory Agent (as defined in § 541.18 of this Subchapter) upon written application by the service corporation, which application shall be supported by information evidencing that the service corporation will proceed or has proceeded in accordance with a prudent development plan and has not caused undue delay in the completion of construction; and *Provided further*, That acquisition of an option to purchase is not an acquisition for the purpose of determining the periods provided for in this subparagraph;

(vii) Acquiring improved real estate or manufactured homes to be held for rental or resale, or for remodeling, renovating, or demolishing and rebuilding for sale or rental;

(viii) Acquiring, maintaining and managing real estate (improved or unimproved) to be used for offices and related facilities of a stockholder of the service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is performed under a prudent program of property acquisition to meet either the stockholder's present needs or reasonable future needs for office and related facilities: *Provided*, That without prior approval of the Board, no service corporation shall acquire such real estate if, as a result of the acquisition, the outstanding

aggregate book value of all such real estate owned by the stockholder and its service corporations would exceed their consolidated net worth.

(4) *Other investments.*

(i) Making investments in securities and in corporations or partnerships authorized by title IX of the Housing and Urban Development Act of 1968 specified in § 545.12-3 of this Part;

(ii) Investing in savings accounts in an insured institution that is a stockholder of the service corporation: *Provided*, That the service corporation receives no consideration, other than interest at the current market rate, for opening or maintaining any such account;

(iii) Investing in the capital stock or in the accounts of an interim Federal association or an interim state institution that has been chartered solely for the purpose of becoming a constituent in a merger that will result in the acquisition of a stock association by a savings and loan holding company or by a company which will, after the acquisition, be a savings and loan holding company;

(iv) Investing in tax-exempt bonds of state governments or political subdivisions thereof used to finance residential real property for family units and issued pursuant to section 103 of the Internal Revenue Code, and tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies and issued pursuant to section 11(b) of the United States Housing Act of 1937, as amended; and

(v) Investing in the capital of a small business investment company or minority enterprise small business investment company licensed pursuant to section 301(d) of the Small Business Investment Act of 1958 by the U.S. Small Business Administration to invest in small businesses engaged exclusively in the activities listed in paragraphs (c) (1)-(5) of this section.

(5) *Other services.* (i) Preparing state and Federal tax returns for individuals or organizations that are not corporations operated for profit;

(ii) Insurance brokerage or agency for liability, casualty, automobile, life, health, accident, or title insurance, but not private mortgage insurance;

(iii) Providing fiduciary services upon application to the Board pursuant to § 550.2, and subject to the conditions provided in §§ 550.1-550.16, of this Subchapter;

(iv) Issuing notes, bonds, debentures, or other obligations or securities;

(v) Issuing credit cards, extending credit in connection therewith, and

otherwise engaging in or participating in credit card operations;

(vi) Acquiring real or personal property for the purpose of leasing such property or obtaining an assignment of a lessor's interest in a lease of such property: *Provided*, That the estimated residual value of the property at the expiration of the initial term of the lease shall not exceed 70 percent of the acquisition cost to the lessor. A service corporation may sell real or personal property in connection with its leasing activities;

(6) Activities reasonably incident to those listed in subparagraphs (c) (1)-(5) of this section.

(d) *Amount of investment.* (1) An association may invest under this section in the capital stock, obligations, or other securities of service corporations: *Provided*, That its aggregate outstanding investment does not exceed 3 percent of assets, and any investment in excess of 2 percent of assets serves primarily community, inner-city or community development purposes. The investment limitations of this paragraph shall include all loans, secured and unsecured, and all guarantees or take-out commitments of such loans, to service corporations or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries, whether or not the association is a stockholder therein. An association with an aggregate outstanding investment in excess of 2 percent of assets shall designate investments that serve primarily community, inner-city or community development purposes which shall include the following:

(i) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that are local in character;

(ii) Investments for the preservation or revitalization of either urban or rural communities;

(iii) Investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or

(iv) Other community, inner city or community development-related investments approved by the Principal Supervisory Agent (as defined in § 541.18 of this Subchapter).

(2) In addition to amounts which it may invest under paragraph (d)(1) of this section, an association that has a net worth at least equal to the minimum net-worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in paragraph (b) of § 563.13 of this Chapter,

and that has a ratio of scheduled items (other than assets acquired in a merger instituted for supervisory reasons) to specified assets of not more than 2.5 percent (except as provided in paragraph (d)(4) of this section), may loan additional amounts as follows:

(i) An aggregate outstanding amount not to exceed 20 percent of the association's net worth may be invested in conforming loans made to service corporations, or subsidiaries thereof, and to joint ventures of such service corporations and subsidiaries; and

(ii) An aggregate outstanding amount, including loans included in paragraph (d)(2)(i) of this section, not to exceed 50 percent of such Federal association's net worth may be invested in conforming loans made to a service corporation of which the association owns or holds with power to vote not more than 10 percent of the capital stock or to a joint venture in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations, (a) own or hold with power to vote not more than a total of 10 percent of the capital stock, or (b) are limited partners and have contributed not more than 10 percent of such joint venture's capital.

(3) The limitation in paragraph (d)(1) of this section does not apply to conforming loans to any service corporation in which the lending association does not have any investment made under authority of this section.

(4) An association that has a net worth at least equal to the minimum net-worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in paragraph (b) of § 563.13 of this Chapter, may apply to the Board for an exception from the scheduled-items limitation in paragraph (d)(2) of this section. The application shall be supported by information evidencing the association's sound investment, lending, appraisal, and underwriting policies and favorable operating results. The application shall be filed with the Principal Supervisory Agent with a copy to the Director, Office of Examinations and Supervision. The application is approved if, within 30 calendar days after the date the Principal Supervisory Agent receives it, he has not notified the applicant that approval is withheld. If approval is withheld, the Principal Supervisory Agent shall promptly cause the application to be submitted to the Board for its decision. The Principal Supervisory Agent may request additional information from the applicant, but need not consider such additional information received less

than 5 calendar days before the end of the 30-day period.

(e) *Examination.* A Federal association may invest in the capital stock, obligations, or other securities of a service corporation only if the service corporation has executed and filed with the Supervisory Agent a written agreement, in a form prescribed by the Board, that:

(1) If the service corporation is described in paragraph (b) of this section, it will permit and pay the cost of examination of it by the Board to determine the propriety of any investment by a Federal association under this section; and

(2) If the service corporation is described in paragraph (c) of this section, it will permit and pay the cost of such examination and/or audit by the Board as the Board deems necessary.

(f) *Disposal of investment.* Whenever a service corporation, including any subsidiary thereof, engages in an activity which is not permissible for, or exceeds limitations on, a service corporation in which a Federal association may invest, or whenever the capital stock ownership requirements of this section are not met, a Federal association having an interest in the corporation, including any subsidiary thereof, shall dispose of its investment promptly unless, within 90 days after the Board mails written notice to the association, the impermissible activity is discontinued, the limitation is complied with, or the capital stock ownership requirements are met.

(g) *Corporate name.* No Federal association may invest in, or retain any investment, the capital stock, obligations, or other securities of any service corporation whose corporate name or the designation of whose subsidiary or office (1) includes the words "National", "Federal", or "United States", or the initials "U.S." or (2) could identify it with any insured institution which has not invested in it.

(h) *Applications.* Any application made to the Board under this section shall be in the form it prescribes and filed with the Supervisory Agent. One or more Federal associations which propose investment in a service corporation which is not yet organized may make any application required by this section.

(i) *Revision of specified activities and limitations.* Activities and limitations specified in this section may be revised from time to time.

(j) *Limitation on activities.* Service corporations in which Federal associations may invest shall not be used to acquire scheduled items from an

insured institution, except that such a service corporation may, for the purpose of providing housing, acquire real estate owned by an insured institution.

§ 545.12-2 Investment in savings and demand accounts.

A Federal association may invest in the savings and demand accounts of any institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation. In addition, a Federal association may maintain a non-interest-bearing account at an institution whose accounts are insured pursuant to a state deposit insurance program if the account is necessary or incidental to a correspondent relationship.

§ 545.12-3 Investments in corporations and partnerships authorized by title IX of the Housing and Urban Development Act of 1968.

Without regard to any other provision of this Part, a Federal association may invest an aggregate amount not exceeding 1 percent of its assets in:

(a) Shares of stock issued by the National Corporation for Housing Partnerships or by any other corporation created under title IX of the Housing and Urban Development Act of 1968;

(b) Limited partnership interests in the National Housing Partnership or in any other limited partnership formed under section 907(a) of that Act; and

(c) Any partnership, limited partnership, or joint venture formed under section 907(c) of that Act.

§ 545.12-4 Commercial paper and corporate debt securities.

(a) *General.* A Federal association may invest in, sell, or hold commercial paper and corporate debt securities, including corporate debt securities convertible into stock, subject to the limitations set forth in paragraph (b) of this section. An investment under this section includes the investing in, redeeming, or holding shares of any open-end management investment company which has registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and whose portfolio is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to the investments that an association is authorized to invest in pursuant to this section and paragraph (i) of § 545.12 of this Part.

(b) *Limitations.* (1) Commercial paper must be of investment quality. Investment quality paper is paper that (i) as of the date of purchase, as shown by the most recently published rating

made of such investments by at least one nationally recognized investment rating service, is rated in either one of the two highest grades or (ii) if unrated, is issued by a company or a subsidiary of a company having outstanding paper that is rated as provided in paragraph (b)(1)(i) of this paragraph.

(2) Corporate debt securities must be marketable. To be considered marketable for purposes of this regulation, a security must be one that may be sold with reasonable promptness at a price which corresponds reasonably to its fair value. A corporate debt security must be rated in one of the four highest grades by at least one nationally recognized investment rating service at its most recent published rating before the date of purchase of the security.

(3) An association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any person or entity affiliated with such issuer, together with other commercial loans, shall not exceed the limitations on loans to one borrower contained in § 563.9-3: *Provided*, That this provision shall not apply to investments in the shares of an open-end management investment company. In such cases, an association's total investment in the shares of any one such company shall not exceed five percent of the association's assets.

(4) Investments in corporate debt securities convertible into stock are subject to the following additional limitations: (i) The purchase of securities convertible into stock at the option of the issuer is prohibited; (ii) at the time of purchase, the cost of such securities must be written down to an amount which represents the investment value of the securities considered independently of the conversion feature; (iii) such securities must be traded on a national securities exchange; and (iv) associations are prohibited from exercising the conversion feature.

(5) At any one time, the average maturity of an association's portfolio of corporate debt securities may not exceed six years.

(6) An association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.

(c) Notwithstanding other limitations contained in this section, an association may invest up to one percent of its assets in commercial paper and corporate debt securities if in the exercise of its prudent business judgment it determines that there is adequate evidence that the obligor will be able to perform all that it undertakes

to perform in connection with such securities, including all debt service requirements.

§ 545.12-5 Real estate for office and related facilities.

(a) *General.* A Federal association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the association's present needs or its reasonable future needs for office and related facilities. The association shall obtain Board approval before making an investment which would cause the outstanding aggregate book value of all such investments (including investments under § 545.12-1(c)(3)(viii) of this Part) to exceed its net worth. The association shall also obtain Board approval before investing in real estate which the Board has not approved for the establishment or maintenance of an office facility, if the investment, together with the association's other investments in real estate lacking such approval, would exceed 25 percent of its net worth.

(b) *Requests for Board approval of exceptions.* An association shall send requests for Board approval of exceptions to limitations in this section to the Supervisory Agent, with a copy to the Director, Office of Examinations and Supervision.

§ 545.12-6 Leasing.

(a) *General.* A Federal association may become the legal or beneficial owner of tangible personal property for the purpose of leasing such property, may obtain an assignment of a lessor's interest in a lease of such property, and may take such actions and incur such obligations as are incidental to its position as the lessor, legal or beneficial owner, or assignee: *Provided*, That the estimated residual value of the property at the expiration of the initial term of the lease shall not exceed 70 percent of the acquisition cost to the lessor. An association also may sell tangible personal property if such sales are incidental to its leasing activities.

(b) *Limitation on investment.* An association's total investment under this section shall not exceed ten percent of its assets.

§ 545.12-7 Gold transactions.

No Federal association shall engage in any transaction or activity involving gold (including gold coins) or gold-related instruments or securities.

General Operations

§ 545.13 Home office.

All operations of a Federal association shall be subject to direction from the home office.

§ 545.14 Branch offices.

(a) *General.* A branch office of a Federal association is any office other than its home office, agency office, data processing or administrative office, or a remote service unit. Except as limited by this section, any business of a federal association may be transacted at a branch office. Except as provided in paragraph (j) of this section, a Federal association shall not establish a branch office without prior written approval of the Board or its Principal Supervisory Agent.

(b) *Eligibility.* A Federal association may apply for a branch regardless of the number of branch applications it has pending before the Board, unless otherwise currently restricted under an agreement between the Board and a state agency that regulates state-chartered savings and loan associations.

(c) *Application form; filing; completion; supervisory objection.* Applicants shall obtain Board-approved application and notice forms and related instructions from the Supervisory Agent. An application is filed when four copies are delivered to the Supervisory Agent; the application is complete when the Supervisory Agent determines that all required information has been submitted. The Board shall not accept an application if in its opinion the association is not eligible or its policies, condition, or operations afford a basis for supervisory objection. The Supervisory Agent shall determine that the application is complete, the applicant is eligible, and that as a preliminary matter there is no basis for supervisory objection to the application, before giving direction for publication of notice.

(d) *Processing of application.* Processing of an application under this Part shall follow the procedures set forth in § 543.2(d), (e), and (f) of this Subchapter except that the applicant shall publish the required newspaper notice of application in the applicant's home office community and in the community to be served by the proposed branch office.

(e) *Approval by the Board or the Principal Supervisory Agent.* (1) The Board shall approve an application only if, in its opinion: (i) The branch can be established without undue injury to properly conducted existing local thrift and home-financing institutions; (ii) the policies, condition, and operation of the

applicant afford no basis for supervisory objection; and (iii) the proposed branch will open with 12 months of approval unless otherwise allowed by the Board or the Supervisory Agent. In addition, in considering whether to approve an application, the Board will assess and take into account an institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, pursuant to Part 563e of this Chapter; assessment of an institution's record of performance may be the basis for denying an application. An application may also be denied on the basis of restrictions imposed by the Board pursuant to an existing agreement between the Board and a state agency that regulates state-chartered savings and loan associations.

(2) The Principal Supervisory Agent may approve, on behalf of the Board, an application for permission to establish a branch office if no substantial protest based on undue injury or Part 563e of this Chapter has been filed. Such application shall be deemed to be approved by the Board 30 days after notification that the application is complete, unless the applicant is notified by the Principal Supervisory Agent that objection has been taken on grounds set forth in paragraph (e)(1) of this section.

(f) *Approval of temporary or permanent location.* The Supervisory Agent may approve a temporary and/or permanent location of an approved branch office if the new location is in the immediate vicinity of the approved location and would not be more strongly competitive to any other properly conducted existing thrift and home-financing institution than at the approved location.

(g) *Offices not requiring prior written approval.* A Federal association may establish without prior approval a drive-in and/or pedestrian office opened in conjunction with an approved branch or home office of the association, located within 500 feet of a public entrance of that office and closer to that entrance than to a public entrance of any other FSLIC-insured institution, and the functions of which are limited to the ordinary functions performed at a teller-window.

(h) *Application for and maintenance of branch office after conversion, consolidation, purchase of bulk assets, or merger.* (1) An existing institution which converts to a Federal association may not maintain an existing office, and a Federal association which acquires offices through consolidation, purchase of bulk assets, or merger, may not

maintain any acquired office, without written Board approval.

(2) A Federal association may not file a branch application after having filed an application to merge or otherwise surrender its Federal charter, unless the merger or conversion application has been pending for at least six months.

(3) The Board may deny a branch application if it determines that the applicant will not in fact operate such branch as an office of a Federal association.

(i) *Exclusive agreements prohibited.* A Federal association may not enter into any kind of agreement(s) that would result in the exclusive right to operate a branch office in a regional shopping center, as defined in § 571.11(b) of this Chapter, or in a majority of all locations of a chain store, or enter into an agreement under which other financial institutions would be excluded from operating offices in a regional shopping center or any location of a chain store where the Federal association does not have an office.

(j) *Effective date; effect on existing applications.* (1) This regulation applies to any branch application published for its first required notice on or after January 1, 1981; all other pending applications will be evaluated under the regulations in effect immediately prior to such date.

(2) An applicant may withdraw a pending application at any time without prejudice.

§ 545.14-1 Upgrading of approved branch office.

(a) *General.* A branch office is upgraded if the association is relieved of any of the restrictions imposed on operation of the office when it opened.

(b) *Notice.* A Federal association operating a limited, mobile, or satellite facility approved before January 1, 1981, or a branch office with conditions imposed on its operation shall notify the Supervisory Agent at least 30 days before upgrading the facility.

(c) *Approval.* If, within 30 days of receipt of the notice, the Supervisory Agent does not notify the association of supervisory objection which would require the association to submit an application or additional information before upgrading, the association may upgrade the facility.

(d) *Upgrading with change of location.* Any upgrading which involves a permanent change of location must be approved under § 545.15 of this Part.

§ 545.14-2 Closing a branch office.

A Federal association shall notify the Supervisory Agent not less than 60 days

or, in the case of an emergency, as early as circumstances permit, before closing a branch office.

§ 545.15 Change of office location and redesignation of offices.

(a) *General.* A Federal association shall not change the permanent location of its home office or any approved branch office, or redesignate a home or branch office, without prior approval of the Board or the Supervisory Agent.

(b) *Processing of application.* Processing of an application for a change of office location or redesignation of a home or branch office shall follow the procedures set forth in § 545.14 (c), (d), (e), (f), (g), (h), and (i) of this Part, except that (1) the applicant shall publish the required newspaper notice of application in (i) the applicant's home office community, (ii) the community to be served by the new office, and (iii) the community where the office is to be closed or the home office is to be redesignated as a branch; and (2) the applicant shall post notice of the application for 17 days from the date of first publication in a prominent location in the office to be closed or redesignated.

(c) *Approval by the Board.* An application shall be approved only if the applicant complies with the standards of § 545.14(h) of this Part.

(d) *Short-distance relocations.* (1) Notwithstanding paragraph (a) of this section, an association may change the permanent location of a home or branch office, without applying for Board approval, to a site within the market area and short-distance relocation area of the office site that has been approved in accordance with § 545.14 of this Part or paragraph (a) of this section. The short-distance relocation area of an office site is:

(i) The area within a 1,000-foot radius of the site if it is located within a central city of a Standard Metropolitan Statistical Area ("SMSA") designated by the U.S. Department of Commerce;

(ii) The area within a one-mile radius of the site if it is located within a SMSA designated by the U.S. Department of Commerce but not within a central city; or

(iii) The area within a two-mile radius of the site if it is not located within an SMSA.

(2) An association shall notify the Supervisory Agent in writing at least 30 days before such an office relocation and may proceed with the relocation unless, within 30 days of receipt of the notice, the Supervisory Agents notifies the association that the relocation does not satisfy the criteria in the first sentence of this paragraph (d), in which

case the association must file an application and obtain Board approval in accordance with paragraphs (b) and (c) of this section. The Supervisory Agent shall provide a timely written acknowledgment to the association stating when notice was received. The Supervisory Agent's determination of whether the proposed relocation is within the market area and the short-distance relocation area of the former site shall be final.

(3) This paragraph (d) does not permit an office relocation that would violate a restriction imposed by the Board pursuant to an agreement between the Board and a state agency that regulates state-chartered savings and loan associations.

§ 545.16 Agency.

(a) *General.* A Federal association may, without approval of the Board, to the extent authorized by its board of directors, establish or maintain, within the same state as the home office of the association or the same state as any branch office approved by the Board, agencies which only service and originate (but do not approve) loans and contracts and/or manage or sell real estate owned by the association.

(b) *Additional services.* Except for payment of savings accounts and loan approval services, offering of any services not listed in paragraph (a) of this section may be approved by the Principal Supervisory Agent.

(c) *Records.* An agency shall maintain records of all business it transacts and transmit copies to a branch or home office of the association.

(d) *Notice.* A Federal association shall notify the Supervisory Agent when it opens or closes an agency.

§ 545.17 Fiscal agency.

A Federal association designated fiscal agent by the Secretary of the Treasury or, with Board approval by another instrumentality of the United States, shall, as such, perform such reasonable duties and exercise only such powers and privileges as the Secretary of the Treasury or such instrumentality may prescribe.

§ 545.17-1 Trustee.

A Federal association may act (a) as a trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954, and (b) as trustee or custodian of an individual retirement account within the meaning of section 408(a) of the Code, if the funds of the trust or account are invested only in the

association's savings accounts or deposits or its obligations or securities. If state law authorizes a financial institution to hold funds in a trust capacity involving no active fiduciary duties a Federal association may so act. The association may receive reasonable compensation for acting in any such capacity.

§ 545.18 Adjustments to book value of assets.

If the Supervisory Agents determines that an asset's stated book value exceeds its value or that documentation in the association's loan file is inadequate to demonstrate that an investment made under § 545.8(f) is sound, the Supervisory Agent may require the association to charge off the asset immediately or establish and maintain a special reserve(s) equalling the overvaluation.

§ 545.19 Real estate owned.

A Federal association may not carry real estate on its books for a sum in excess of the total amount invested by the association on account of such real estate, including advances, costs, and improvements, but excluding accrued but uncollected interest.

§ 545.20 Accounting records.

(a) *Accounting practices.* Each Federal association shall use such forms and follow such accounting practices as the Board may require, and shall close its books at least annually as of the end of such month(s) as the association's board of directors may designate. The date of the association's annual closing shall be not less than 15 days or more than 3 months and 15 days before its annual meeting.

(b) *Maintenance of records.* An association shall maintain a complete record of its business transactions and maintain at its home office, or at a branch or service office located within 100 miles of the home office, all general accounting records, including control records, of its business transactions. The association may not transfer the general accounting or control records or the maintenance thereof from any of its offices to another, unless its board of directors has (1) by resolution authorized the transfer or maintenance and (2) sent a certified copy of the resolution to the District Director—Examinations of its district. An association which determines to maintain any of its records by means of data processing services shall so notify the District Director—Examinations, in writing, at least 90 days before such maintenance will begin. Notification

shall include identification of the records and the location at which they will be maintained. Any contract, agreement, or arrangement under which data processing services are to be performed shall expressly provide that the records maintained by such services shall at all times be available for examination and audit.

§ 545.21 Monthly reports.

A Federal association's officers shall make a monthly report to the association's board of directors on forms prescribed by the Board and available from any Federal Home Loan Bank. The association shall send a copy of the report to the Bank of which it is a member and two copies to the Board.

§ 545.22 Statement of condition.

Within the month after the annual closing of a Federal association's books, the association shall mail to all of its members, or if it is a Charter S association to all of its depositors and borrowers, at their last address appearing on the association's books, or publish in an English-language newspaper of general circulation in the county in which the association's home office is located, a statement of the association's condition as of such closing, on forms prescribed by the Board and available from any Federal Home Loan Bank or from the Board. Within 5 days after mailing or publishing the statement, the association shall send a certification to that effect signed by one of its executive officers, and a copy of the statement, to the Bank of which it is a member. This section shall not apply in a year in which the association sends to its voting members an annual report as required by § 563.45(a) of this Chapter.

§ 545.23 Indemnification of directors, officers and employees.

A Federal association shall indemnify its directors, officers, and employees in accordance with the requirements in § 522.72 of this Chapter regarding indemnification of persons by Federal Home Loan Banks. In applying that section "Federal association" shall be read for "Bank" and "Supervisory Agent" shall be read for "Secretary". Before making advance payment of expenses under § 522.72(e), the association shall obtain an agreement that the association will be repaid if the person on whose behalf payment is made is later determined not to be entitled to such indemnification. The requirements of § 522.72(f) notwithstanding, an association which has a bylaw in effect relating to indemnification of its personnel shall be

governed solely by that bylaw, except that its authority to obtain insurance shall be governed by § 522.72(d) of this chapter.

§ 545.23-1 Employment contracts.

(a) *General.* A Federal savings and loan association with bylaws amended under § 544.6(k), a Federal mutual savings bank or a Charter S or Charter T association, upon specific approval of its board of directors, may enter into employment contracts with its officers and other employees in accordance with § 563.39 of this Chapter.

(b) *Contracts with other entities or persons.* An officer of an association shall have no other written or oral agreement concerning employment as an officer of the association with any entity or person other than the association.

§ 545.24 Advisory boards and committees.

A Federal association's board of directors may establish one or more advisory boards of directors or advisory committees to advise the association as the board of directors may authorize. Each member of such a board or committee shall be appointed by the board of directors on a year-to-year basis. Such members may be permitted to attend meetings of the board of directors, but they shall have no vote on matters acted upon by the board of directors.

§ 545.25 Referral of insurance business.

(a) For purposes of this section the terms "owned" and "referral" have the meanings prescribed in § 555.17(a)(1) and (3) of this Subchapter.

(b) No Federal association shall refer any insurance business to an agency owned by officers or directors of the association, or by persons having power to direct its management, unless:

(1) A specific state statute or regulation precludes Federal associations' service corporations (or wholly-owned subsidiaries thereof) from engaging in the insurance business;

(2) The association, after filing any necessary applications and making a bona fide attempt to obtain any necessary approval (with or without instituting legal proceedings against state officials to compel approval) has been denied permission by the appropriate state licensing or regulatory authorities for its service corporation, or a wholly-owned subsidiary thereof, to engage in the insurance business;

(3) Such state authorities follow an established and well-known policy of refusing to accept or approve such applications (the association need not demonstrate existence of such a policy

by instituting legal proceedings against such authorities to compel approval);

(4) The referral takes place within a reasonable period of time (not exceeding 18 months) after a change in such state law, regulation, or policy for the association to investigate the feasibility and desirability of acquiring or establishing its own service corporation insurance business; or

(5) An application for permission to establish or acquire a service corporation insurance business is on file with the appropriate state agencies and/or the Board.

§ 545.26 Communication between members of a Federal mutual association.

(a) *Disclosure of membership list prohibited.* (1) As used in this section, "membership lists" means any document of the association containing: (i) A list of members of the association; (ii) their addresses; (iii) their savings account or loan balances or records; or (iv) any data from which that information reasonably could be constructed.

(2) Federal mutual associations may not disclose in any manner, directly or indirectly, their membership lists to any person (other than officers of the association, or others employed by them, in the usual course of conducting the association's business) except with prior written approval of the Board.

(3) The Supervisory Agent may approve or disapprove requests made under paragraph (a)(2) of this section, and may specify terms and conditions of approval.

(b) *Right of inspection of member's own records.* A member of a Federal mutual association has the right to inspect the association's books and records pertaining solely to the member's own savings or borrowing account(s).

(c) *Right of communication with other members.* A member of a Federal mutual association has the right to communicate, as prescribed in paragraph (d) of this section, with other members of the association regarding any matter related to the association's affairs, except for "improper" communications, as defined in paragraph (e) of this section. The association may not defeat that right by redeeming a savings member's savings account in the association.

(d) *Member communication procedures.* If a member of a Federal mutual association desires to communicate with other members, the following procedures shall be followed:

(1) The member shall give the association a written request to communicate;

(2) If the proposed communication is in connection with a meeting of the association's members, the request shall be given at least 30 days before the annual meeting or 10 days before a special meeting;

(3) The request shall contain—

(i) The member's full name and address;

(ii) The nature and extent of the member's interest in the association at the time the information is given;

(iii) A copy of the proposed communication; and

(iv) If the communication is in connection with a meeting of the members, the date of the meeting;

(4) The association shall reply to the request within either—

(i) 14 days;

(ii) 10 days, if the communication is in connection with the annual meeting; or

(iii) 3 days, if the communication is in connection with a special meeting;

(5) The reply shall provide either—

(i) The number of the association's members and the estimated reasonable cost to the association of mailing to them the proposed communication; or

(ii) Notification that the association has determined not to mail the communication because it is "improper", as defined in paragraph (e) of this section;

(6) After receiving the amount of the estimated costs of mailing and sufficient copies of the communication, the association shall mail the communication to all members, by a class of mail specified by the requesting member, either—

(i) Within 14 days;

(ii) Within 7 days, if the communication is in connection with the annual meeting;

(iii) As soon as practicable before the meeting, if the communication is in connection with a special meeting; or

(iv) On a later date specified by the member;

(7) If the association refuses to mail the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the Supervisory Agent two copies each of the requesting member's materials, the association's written statement, and any other relevant material. The materials shall be sent within (i) 14 days, (ii) 10 days if the communication is in connection with the annual meeting, or (iii) 3 days, if the communication is in connection with a special meeting, after

the association receives the request for communication.

(e) *Improper communication.* A communication is an "improper communication" if it contains material which: (1) At the time and in the light of the circumstances under which it is made (i) is false or misleading with respect to any material fact or (ii) omits a material fact necessary to make the statements therein not false or misleading, or necessary to correct a statement in an earlier communication on the same subject which has become false or misleading; (2) relates to a personal claim or a personal grievance, or is solicitous of personal gain or business advantage by or on behalf of any party; (3) relates to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the association or is not within the control of the association; or (4) directly or indirectly and without expressed factual foundation (i) impugns character, integrity, or personal reputation, (ii) makes charges concerning improper, illegal, or immoral conduct, or (iii) makes statements impugning the stability and soundness of the association.

§ 545.27 Financial futures transactions.

A Federal association may engage in financial futures transactions in compliance with § 563.17-4 of this Chapter.

§ 545.28 Financial options transactions.

A Federal association may engage in financial options transactions in compliance with § 563.17-5 of this Chapter.

§ 545.29 Data-processing services.

(a) *Definition.* As used in this section, "data-processing services" means maintenance of bookkeeping, accounting, or other records primarily by mechanical or electronic methods.

(b) *Data-processing office.* (1) An association may establish or maintain a data-processing office with functions limited to providing data-processing services for its own use and/or primarily for other depository institutions without observing the application and approval procedures for branch offices set forth in this Part. Data processing services may be provided to others on a for-profit basis only if they are authorized by § 545.31(a) of this Part.

(2) An association may participate with others in establishing or maintaining a data-processing office: *Provided*, That the association may participate in establishing or

maintaining a data-processing office controlled by an entity not subject to examination by a Federal agency regulating financial institutions only if such entity has agreed in writing with the Board that it will permit and pay for such examination of the office as the Board deems necessary, and that it will make available for such purposes any records in its possession relating to the operation of the office.

§ 545.30 Issuance of GNMA-guaranteed, mortgage-backed securities.

Without regard to any other provision of this part, a Federal association may, in accordance with regulations prescribed by the Government National Mortgage Association (GNMA) in 24 CFR Part 1665, Subpart A:

(a) Issue and sell trust certificates or other securities: (1) Backed by a trust or pool composed of mortgages insured under the National Housing Act or title V of the Housing Act of 1949, or insured or guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code, and (2) guaranteed as to principal and interest by GNMA under section 306(g) of the National Housing Act; and

(b) Do all things necessary and proper for carrying out such issuance and sale.

§ 545.31 Correspondent services and accounts.

(a) *General.* A Federal association may provide correspondent services primarily to other depository institutions to the extent such activity is consistent with the purposes set forth in the Act and does not violate other regulations in this Chapter or any other provisions of law.

(b) *Correspondent accounts.* An association may receive noninterest-bearing deposits from correspondent institutions for use as compensating balances, for settlement purposes, or for other purposes incidental to a correspondent relationship. Such deposits may be payable on demand and subject to withdrawal by negotiable or transferable instrument, order, or authorization. Such deposits shall not give rise to voting rights or other rights of membership in a Federal mutual association.

§ 545.32 Remote Service Units (RSUs)

(a) *Definitions.* As used in this section—

(1) "Generic data" means statistical information which does not identify any individual account holder.

(2) "Personal security identifier" (PSI) means any word, number, or other security identifier essential for an

accountholder to gain access to an account.

(3) "Remote service unit" (RSU) means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device not on the premises of a Federal association that, for activation and account access, requires use of a machine-readable instrument and PSI in the possession and control of an accountholder, is an RSU. The term includes, without limitation, point-of-sale terminals merchant-operated terminals, cash-dispensing machines, and automated teller machines. It excludes automated teller machines on the premises of a Federal association, unless shared with other financial institutions. An RSU is not a branch, satellite, or other type of facility or agency of a Federal association under § 545.14 *et seq.* of this Part.

(4) "RSU account" means a savings or loan account that may be accessed through use of an RSU.

(b) *General.* Subject to the requirements of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and Regulation E of the Federal Reserve Board (12 CFR 205.2), a Federal association may establish or use RSUs and participate with others in RSU operations, on an unrestricted geographic basis. No RSU may be used to open a savings account or establish a loan account.

(c) *RSU access techniques.* A Federal association shall provide a PSI to each accountholder and require its use when accessing an RSU; it may not employ RSU access techniques that require the accountholder to disclose a PSI to another person. The association must inform each accountholder that the PSI is for security purposes and shall not be disclosed to third parties. Any device used to activate an RSU shall bear the words "Not Transferable" or their equivalent. A passbook may not be such a device.

(d) *Service charges.* A Federal association may impose service charges for RSU financial services.

(e) *Privacy of account data.* A Federal association shall allow accountholders to obtain any information concerning their RSU accounts. Except for generic data or data necessary to identify a transaction, no Federal association may disclose account data to third parties, other than the Board or its representatives, unless express written consent of the accountholder is given, or

applicable law requires. Information disclosed to the Board will be kept in a manner to ensure compliance with the Privacy Act, 5 U.S.C. 552(a). A Federal association may operate an RSU according to an agreement with a third party or share computer systems, communications facilities, or services of another financial institution only if such third party or institution agrees to abide by this section as to information concerning RSU accounts in the Federal association.

(f) *Bonding.* A Federal association shall take all steps necessary to protect its interest in financial services processed at each RSU, including obtaining available fidelity, forgery, and other appropriate insurance.

(g) *Security.* A Federal association shall protect electronic data against fraudulent alterations or disclosure. All RSUs shall meet the minimum security devices requirements of Part 563a of this Chapter as though such units were offices, as defined in § 563a.1 of said Part, except to the extent that an association satisfies the Board's Supervisory Agent that those requirements are inappropriate. In such a case, alternative measures satisfactory to the Board's Supervisory Agent must be taken for installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, larcenies, and computer theft and to assist in identification and apprehension of persons who commit such acts.

(h) *Board supervision.* A Federal association may share an RSU controlled by an institution not subject to examination by a Federal regulatory agency only if such institution has agreed in writing that the RSU is subject to such examination by the Board as its deems necessary.

PART 555—BOARD RULINGS

13. Amend § 555.3 by removing paragraph (b) thereof, redesignating paragraph (c) as paragraph (b) and revising the first sentence of paragraph (a) as follows:

§ 555.3 Real estate.

(a) For lending purposes, a motel is generally considered "improved nonresidential real estate." * * *

14. Revise § 555.11 as follows:

§ 555.11 Loans for acquisition and development of land.

A Federal association may make a loan under § 545.6(c) of this Subchapter to finance development of land to which the borrower already has title, but it

may not make a development loan under that section to finance the purchase of land already completely developed into building sites.

15. Amend § 555.15 by removing all references to "§ 545.8-5(b)" and inserting in their place "§ 545.6-7(d)", and by amending the first sentence to read as follows:

§ 555.15 Prepayment penalty on mortgage loans.

Section 545.6-7(d) makes clear that, with the exception of certain instances enumerated therein, the charging of a prepayment penalty is a matter of contract between a Federal association and a borrower, and that the borrower may wholly or partly prepay the loan without penalty unless the loan contract contains an express provision imposing a prepayment penalty. * * *

16. Add a new § 555.19 as follows:

§ 555.19 Receipt of interest expressed as a percentage of the income from the security property.

Pursuant to § 545.6 of this Subchapter a Federal association may make loans on the security of residential or nonresidential real estate. With limited exceptions, Federal associations lack the statutory authority to acquire an equity interest in real estate and, accordingly, cannot, as part of a loan transaction, acquire an ownership interest in the security property. The issue has arisen as to whether the receipt of a share of the income generated by the security property, or any similar participation with the borrower in the project, would constitute the acquisition of an equity interest in the security property.

The Board has determined that the receipt of such income should not be considered an equity interest if the income in substance constitutes no more than a part of the compensation received for the use of the association's funds. Accordingly, if an association receives a substantial payment of interest calculated periodically as a percentage of the outstanding principal loan balance, it may receive additional interest in the form of a share of the income. The means by which an association calculates its share of the income (i.e., a percentage of the gross or net receipts, or of the appreciation of the property) would therefore not be a material consideration in determining whether the share constitutes an equity interest in the property.

SUBCHAPTER D—FEDERAL SAVINGS AND
LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

17. Amend § 561.15 by revising paragraphs (g) through (i) paragraph (k) and the introductory text of paragraph (j) as follows:

§ 561.15 Scheduled items.

(g) Assets acquired in exchange for any of the scheduled items described in this section except (1) securities, if the market value of a security when it is acquired at least equals its unpaid principal balance, or (2) securities that qualify as liquid assets under § 523.10(g) of this Chapter.

(h) Assets transferred by an insured institution to a service corporation referred to in § 545.9-1 of this Chapter, or to any other corporation in which an insured institution has an investment, to the same extent that they, or the amount invested therein, would be counted as scheduled items if not transferred.

(i) The amount invested in personal property acquired through enforcement of a security interest, including manufactured homes and any personal property in the possession of any servicing company or dealer acting on behalf of an insured institution but excluding personal property owned pending transfer to an issuing or guaranteeing agency of the U.S. Government.

(j) The unpaid principal balance of any loan secured by, and any contract for the sale of, personal property described in paragraph (i) of this section, if the unpaid balance exceeds any applicable lending limitation or 100 percent of the wholesale value, including any installed equipment, of the personal property as established at the time of sale in a dealer's market or by appraisal; except that, with respect to loans secured by or contracts for the sale of manufactured homes, only 20 percent of the unpaid principal balance of any such loan or contract will be included in "scheduled items" if all of the following requirements are met:

(k) For purposes of this section, a lease made or otherwise invested in by an insured institution that conforms to the description of a financing lease, as set out in § 545.10 of this Chapter, shall be treated as if it were a loan secured by the type of property leased.

PART 563—OPERATIONS

18. Amend § 563.3-3 by revising paragraph (c) as follows:

§ 563.3-3 Eurodollar deposits.

(c) *Collateralization of certificates.* An institution may give security for Eurodollar deposits subject to the provisions of § 563.8-2 of this Part.

19. Amend § 563.8 by revising paragraph (c) as follows:

§ 563.8 Borrowing limitations.

(c) An institution may give security for borrowings other than from a Federal Home Loan Bank or state-chartered central reserve institution subject to the provisions of § 563.8-2 of this Part.

20. Add a new § 563.8-2 as follows:

§ 563.8-2 Corporation's right of purchase.

(a) *General rule.* For any security given by an insured institution other than for borrowings from a Federal Home Loan Bank or state-chartered central reserve institution, the terms of the security agreement or other documentation shall provide that the Corporation receive prompt written notification of any default on the obligation and, before a sale or other disposition of any portion of the collateral, that the Corporation shall have thirty (30) days after receipt of written notice of the proposed sale or other disposition to exercise a right to repurchase the collateral at the price to be paid at the sale or to acquire the collateral at the value to be assigned to it in any other disposition.

(b) *Exceptions.* The notice and right of purchase required by paragraph (a) of this section shall not apply to collateral consisting of liquid assets as defined in § 523.10 of this Chapter or collateral that would qualify as liquid assets but for its remaining term to maturity.

21. Revise paragraphs (a) and (b) of § 563.9-3 as follows:

§ 563.9-3 Loans to one borrower.

(a) *Definitions used in this section.* (1) The term "one borrower" means (i) any person or entity that is, or that upon the making of a loan will become, obligor on a loan, (ii) nominees of such obligor, (iii) all persons, trusts, partnerships, syndicates, and corporations of which such obligor is a nominee or a beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock, and (iv) if such obligor is a trust, partnership, syndicate, or corporation, all trusts, partnerships, syndicates, and corporations of which any beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock, is also a

beneficiary, partner, member, or record or beneficial stockholder owning 10 percent or more of the capital stock of such obligor.

(2) *Outstanding loans.* The term "outstanding loans" means the original amounts loaned by an insured institution plus any additional advances and interest due and unpaid, less repayments and participating interests sold and exclusive of any loan of the security of such institution's savings accounts or real estate the title to which has been conveyed to a bona fide purchaser of such real estate. The term does not include loan commitments.

(3) *Outstanding commercial loans to one borrower.* (i) The term "outstanding commercial loans to one borrower" means: (a) outstanding loans to one borrower for commercial, corporate, business, or agricultural purposes, unless fully secured by real estate or one or more deposit accounts; (b) investments in commercial paper and corporate debt securities of one issuer; (c) financing leases, to one lessee made for commercial, corporate, business, or agricultural purposes and satisfying the criteria set forth in § 545.10(a)(1) of this Chapter; and (d) standby letters of credit issued for one account party for commercial, corporate, business, or agricultural purposes.

(ii) For purposes of this definition, the terms "one issuer," "one lessee," and "one account party" shall be construed in accordance with the principles used to define "one borrower" in subparagraph (1) of this paragraph.

(iii) The term "commercial loans to one borrower" includes the portion of commercial loans to one borrower by an institution's service corporation affiliate calculated *pro rata* on the basis of the percentage of the service corporation's stock owned by the institution.

(4) *Unimpaired capital and unimpaired surplus.* The term "unimpaired capital and unimpaired surplus" means regulatory net worth plus specific reserves for loan losses, less appraised equity capital, as set forth in an institution's most recent Semiannual Financial Report.

(5) *Standby letter of credit.* The term "standby letter of credit" means any letter of credit, or similar arrangement however named or described, that represents an obligation of the issuer to the beneficiary to repay money borrowed by or advanced to or for the account of the account party, to make payment on account of any indebtedness undertaken by the account party, or to make payment on account of any default by the account party in the performance of an obligation. A letter of

credit is not a "standby letter of credit" if, prior to or at the time of issuance:

(i) The issuer is paid an amount equal to its maximum liability under the letter of credit; or

(ii) The issuer has set aside sufficient funds in a segregated deposit account, clearly designated for that purpose, to cover the issuer's maximum liability under the letter of credit.

(b) *Limitations.*—(1) *Aggregate loans.* No insured institution shall have outstanding any loan to one borrower, as defined in paragraph (a) of this section, if the sum of (1) the amount of such loan and (2) the total balances of all outstanding loans owed to such institution and its service corporation affiliates by such borrower exceeds an amount equal to 10 percent of such institution's withdrawable accounts or an amount equal to such institution's net worth, whichever amount is less:

Provided, That, notwithstanding any other limitation of this sentence, any such loan may be made if the sum of paragraphs (b) (1) and (2) of this section does not exceed \$200,000 and, beginning on January 1, 1982, and annually thereafter, such amount adjusted by the dollar amount that reflects the percentage increase, if any, in the Consumer Price Index during the previous 12 months as shown in the November-to-November index, or if such loan is secured by a first lien on real estate subject to an annual contributions contract under former section 23 of the United States Housing Act of 1937, as amended.

(2) *Commercial loans.* No insured institution may have outstanding at one time commercial loans to one borrower in excess of the amount a national bank having an identical unimpaired capital and unimpaired surplus could lend such borrower. The general rule stated in section 5200 of the Revised Statutes (12 U.S.C. 84) is that total loans and extensions of credit by a national bank to one borrower are limited to 10 percent of the bank's unimpaired capital and unimpaired surplus prior to April 14, 1982, and 15 percent, plus an additional 10 percent for fully secured loans, thereafter. Several exceptions to these limits are set forth in section 5200; and additional limitations on loans to one borrower are found in sections 11(m) and 13 of the Federal Reserve Act (12 U.S.C. 248(m), 372). All investments in commercial paper of one issuer shall be included for purposes of calculating the loans-to-one-borrower limitations of section 5200 of the Revised Statutes, notwithstanding the exception stated therein.

(Title III, Pub. L. No. 97-320, 96 Stat. 1469, amending 12 U.S.C. 1461 *et seq.*; Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947; 3 CFR 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 83-1021 Filed 1-19-83; 8:45 am]

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12 CFR Parts 545, 556, 590, and 591

[No. 83-17]

Preemption of State Due-on-Sale Laws

January 13, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") proposes to revise its regulations pertaining to preemption of state laws restricting the use of due-on-sale clauses with regard to both federally and non-federally chartered lenders, to implement section 341 of the Garn-St Germain Depository Institutions Act of 1982 ("Act"). The Act provides for federal preemption of all state laws restricting the right of any lender to exercise its contractual option to declare immediately due and payable sums secured by the lender's security instrument if all or any part of the real property securing the loan is sold or transferred by the borrower without the lender's prior written consent. The revisions would: (1) Describe real property lenders subject to the statute and regulations; (2) restate the right of federally-chartered associations and savings banks to exercise such option, with the option governed exclusively by the terms of the loan contract; (3) provide for preemption of state law with regard to all other lenders of real property loans; (4) provide, as to lenders other than federally-chartered savings and loan associations and savings banks, a "window period" where preemption would not apply, for loans made or assumed during the period beginning on the date a state law or judicial decision prohibited exercise of due-on-sale clauses and ending October 15, 1982; (5) provide, as to all lenders, a list of circumstances, involving transfers otherwise subject to the general preemption, in which lenders shall not exercise the due-on-sale clause; and (6) provide notice that the Board will issue interpretations of the statute upon written request and explain the procedure for filing such requests.

DATES: Comments must be received by March 18, 1983.

ADDRESS: Send comments to Director, Information Services Section, Office of Communications, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Gwenn Hibbs, Deputy Director, Legislative Counsel (202-377-6448), Office of General Counsel, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION:

As authorized under section 341(e)(1) of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469, 1507, the Board is proposing revisions to its regulations governing the preemption of state laws restricting the exercise of due-on-sale clauses by federal associations, and is proposing to adopt new regulations regarding preemption of such laws with regard to all other lenders.

The Board's current due-on-sale clause regulations are codified in 12 CFR 545.8-3(f), (g) and 556.9. Section 545.8-3(f), promulgated in 1976 (initially codified at 12 CFR 545.8-11(f)), expressly affirmed the continued right of federal associations to exercise due-on-sale clauses notwithstanding restrictive state laws, and § 545.8-3(g) set out four circumstances in which a federal association could not exercise the due-on-sale option with regard to future loans on homes occupied or to be occupied by the borrower. 41 FR 18288; *see also*, 4 FR 39124 (1981).

The express language of section 545.8-3(f) was deemed a desirable clarification of pre-existing Board policy on the due-on-sale issue, due to increasing controversy as to the rights of federal associations regarding due-on-sale clauses. *See* 41 FR 6283, 6285 (1976). Prior to 1976, the Board had no regulation which specifically mentioned due-on-sale clauses. However, the Board had affirmed the right of federal associations to use such clauses, notwithstanding restrictive state law, pursuant to a regulation in effect since 1948 which specifically required that each "loan contract" of a federal savings and loan association "shall provide for full protection to the Federal association." 12 CFR 545.8-11 (1975); Advisory Opinion of Federal Home Loan Bank Board, Resolution No. 75-647, *In the Matter of Scott v. Mission Federal Savings and Loan Association*.

The preemptive effect and validity of the 1976 Board regulation as to federal