

effective date of the combination, at a rate deemed equitable by the Director.

(9) *Costs and expenses.* The costs and expenses of any proceeding under this section may be apportioned and assessed by the Director as he or she may deem equitable against all or some of the parties. In making this determination the Director shall consider whether any party has acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section.

(10) *Voting and distribution.* Any stockholder who has demanded appraisal rights as provided in paragraph (c)(2) of this section shall thereafter neither be entitled to vote such stock for any purpose nor be entitled to the payment of dividends or other distributions on the stock (except dividends or other distribution payable to, or a vote to be taken by stockholders of record at a date which is on or prior to, the effective date of the combination): *Provided*, That if any stockholder becomes unentitled to appraisal and payment of appraised value with respect to such stock and accepts or is deemed to have accepted the terms offered upon the combination, such stockholder shall thereupon be entitled to vote and receive the distributions described above.

(11) *Status.* Shares of the resulting association into which shares of the stockholders demanding appraisal rights would have been converted or exchanged, had they assented to the combination, shall have the status of authorized and unissued shares of the resulting association.

§ 552.15 Supervisory combinations.

Notwithstanding the foregoing provisions of this part, the Director of the Office may waive or deem inapplicable any provision of § 552.13 or § 552.14 of this part if he or she determines that grounds exist, or may imminently exist, for appointment of a conservator or receiver for an association under subsection 5(d) of the Home Owners' Loan Act.

§ 552.16 Effect of subsequent charter or bylaw change.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal stock association to engage in any transaction shall be

determined only by the association's charter or bylaws then in effect.

PART 556—STATEMENTS OF POLICY

Sec.

556.5 Branching by Federal savings associations.

556.12 Deposit assurance of direct deposit of social security payments.

556.13 Receipt of interest expressed as a percentage of other income.

AUTHORITY: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j-3; 15 U.S.C. 1693-1693r.

SOURCE: 54 FR 49538, Nov. 30, 1989, unless otherwise noted.

§ 556.5 Branching by Federal savings associations.

(a) *General.* A Federal association may branch in any state or states of the United States and its territories, except as provided in paragraph (b) of this section, subject to the requirements of paragraph (c) of this section.

(b) *Limitations.* No branching will be permitted under paragraph (a) of this section that will result in the following:

(1) Establishment or operation of a branch outside the state in which the association has its home office in violation of section 5(r) of the Home Owners' Loan Act;

(2) Formation by any company of a multiple savings and loan holding company controlling savings associations in more than one state in violation of section 10(e)(3) of the Home Owners' Loan Act; or

(3) Acquisition of a savings association and the establishment and operation of new branches by such savings association in violation of section 13(k)(4) of the Federal Deposit Insurance Act.

(c) *Branching applications.* (1) *General.* Prior to opening a branch, an association must obtain approval of a branching application pursuant to § 545.92 of this chapter. The Office may approve or deny an application based on information available from any source and supervisory objection may be interposed at any point during the processing of the application. In granting supervisory clearance to an applicant, the Office will consider whether the policies, condition, and operation of

the applicant are satisfactory and afford no basis for supervisory objection.

(2) *Regulatory capital.* For supervisory clearance, an association's regulatory capital should meet or exceed the minimum requirements established by law and applicable regulations of the Office upon acquisition or establishment of the proposed branch or branches, except as otherwise permitted under section 38(e)(4) of the Federal Deposit Insurance Act.

(3) *Community reinvestment.* Pursuant to the Community Reinvestment Act of 1977 (12 U.S.C. 2901), the Office encourages savings associations to help meet in an affirmative and continuing manner the credit needs of all communities in which they do business, including low- and moderate-income neighborhoods, consistent with safe and sound operation. The Office will evaluate an applicant's record under part 563e of this chapter, may deny an application based on the assessment of the association's CRA record, and may approve a branch application on the condition that the association improve specific aspects of its community investment-related practices and performance to the satisfaction of the Office. However, in most cases, commitments by an applicant to improve its record of compliance with the CRA shall not be regarded as sufficient to overcome a seriously deficient CRA record at the time of application.

(4) *Protest and oral argument.* Protests to applications for branches must be submitted in writing and factually documented. Procedures governing protests and oral arguments are set forth in §543.2 of this chapter, part 563e of this chapter, the OTS Application Processing Handbook, Federal Home Loan Bank Board Memorandum AP-18-1 and other supervisory guidance issued by the OTS.

(5) *Expiration of approvals.* If an association does not open a branch within the time specified in the approval, and the Director or his or her designee finds that the association is not making a good-faith effort to open the branch promptly, the approval will be deemed to have expired and the association will be required to reapply if it wants to branch in that location.

(d) *Federal preemption.* This exercise of the OTS's authority is preemptive of any state law purporting to address the subject of branching by a Federal savings association.

[57 FR 12207, Apr. 9, 1992, as amended at 60 FR 66718, Dec. 26, 1995]

§556.12 Deposit assurance of direct deposit of social security payments.

(a) Under the Social Security Administration's "direct deposit program", a social security beneficiary may designate a financial institution, including a Federal savings association, to receive the beneficiary's benefit payments. Thereafter, benefit payments are made directly to the financial institution in the form of checks or magnetic tape notices.

(b) The Office has concluded that giving "deposit assurance" in connection with the program is within a Federal savings association's implied powers under section 5 of the Home Owners' Loan Act. Deposit assurance consists of the Federal savings association's undertaking to credit the beneficiary's account with a "deposit" in the amount of the benefit payment on the date it is due to be received, whether or not the Federal savings association actually receives the check or magnetic tape notice from the Treasury by that date. The Office has concluded, based on the unique nature of the social security direct-deposit program and the improbability of failure to receive payments on time, that the Federal savings association "constructively" receives payment on that date.

(c) The Office believes, however, that such deposit assurance may involve some risk for Federal savings associations participating in the program and that they must therefore institute adequate safeguards and controls in conjunction therewith.

(d) *Electronic fund transfers.* Any electronic fund transfer, as that term is defined by section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and §205.2 of Regulation E of the Federal Reserve Board (12 CFR 205.2), made under this section, is subject to the provisions of the Electronic Fund Transfer Act and Regulation E.

§ 556.13 Receipt of interest expressed as a percentage of other income.

(a) With limited exceptions, Federal savings associations lack the statutory authority to acquire an equity interest either in real estate or in a corporation. Accordingly, Federal savings associations cannot, as part of a loan transaction, acquire an ownership interest in the security property or in a corporate borrower. The issue has arisen as to whether the receipt of a share of the income generated by the security property or of a corporate borrower, or any similar participation with the borrower in the loan project, necessarily constitutes an unauthorized acquisition of an equity interest.

(b) The Office has determined that the receipt of such income or the right to receive income should not be considered an equity interest if it in substance constitutes no more than a part of the compensation received for the use of the Federal savings association's funds. Accordingly, if the borrower has an unconditional obligation to repay the loan principal, and if a Federal savings association receives a substantial payment of interest calculated periodically as a percentage of the outstanding principal loan balance, it may receive additional interest calculated on the basis of the income from or the appreciation of the security property, the income of a corporate borrower, or some other measure of a venture's success. The means by which a Federal savings association calculates its share of the income is not a material consideration in determining whether the share constitutes an equity interest in the property.

PART 558—POSSESSION BY CONSERVATORS AND RECEIVERS FOR FEDERAL AND STATE SAVINGS ASSOCIATIONS

Sec.

558.1 Procedure upon taking possession.

558.2 Notice of appointment.

AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 558.1 Procedure upon taking possession.

(a) The conservator or receiver for a Federal or state savings association shall take possession of the savings association by taking possession of the principal office of the Federal or state savings association in accordance with the terms of the Director's appointment.

(b) Upon taking possession, the conservator or receiver shall immediately:

(1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.

(2) Serve a copy of the order of appointment upon the savings association or upon its conservator or receiver by:

(i) Leaving a certified copy of the order of appointment at the principal office of the savings association; or

(ii) Handing a certified copy of the order of appointment to the previous conservator, receiver or other legal custodian of the savings association, or to the officer or employee of the savings association or of the previous conservator, receiver or other legal custodian in the principal office of the savings association who appears to be in charge.

(3) Take possession of the savings association's books, records and assets.

(4) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the conservator or receiver knows to be holding or in possession of assets of the savings association, that the conservator or receiver has succeeded to all rights, titles, powers and privileges of the savings associations.

(5) File with the Corporate Secretary a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof.

(6) Post a notice on the door of the principal and other offices of the savings association in the form prescribed by the Director of the OTS.

(7) By operation of law and without any conveyance or other instrument,