

(g) *Grandfathering.* (1) Notwithstanding the core capital and tangible capital limitations set forth in paragraphs (e) and (f) of this section, any otherwise disallowed purchased mortgage servicing rights that were acquired on or before February 9, 1990, and any otherwise disallowed purchased mortgage servicing rights for which a contract to purchase the servicing rights had been executed on or before February 9, 1990, may be grandfathered and recognized for regulatory capital purposes under this part to the extent permitted by the OTS. Grandfathered purchased mortgage servicing rights must be treated in accordance with generally accepted accounting principles and the requirements of paragraphs (c) and (d) of this section. Grandfathered purchased mortgage servicing rights will count toward the core capital and tangible capital limitations described in paragraphs (e) and (f) of this section.

(2)(i) On a case-by-case basis, the OTS may extend grandfathered treatment prospectively to all or part of the purchased mortgage servicing rights acquired by an association to replace its grandfathered purchased mortgage servicing rights if OTS determines that:

(A) The association is reducing, at an acceptable rate, its level of purchased mortgage servicing rights to the levels permitted by this section; and

(B) The granting of such grandfathered treatment is consistent with the safe and sound operation of the association.

(ii) The OTS may terminate or limit such grandfathered treatment at any time if it determines that either of the conditions in paragraph (g)(2)(i) of this section is not being satisfied.

(3) Core deposit intangibles resulting from transactions consummated or under firm contract on the effective date of this rule may be grandfathered and recognized for capital purposes under this part, to the extent permitted by OTS, provided that such core deposit intangibles are valued in accordance with generally accepted accounting principles, supported by credible assumptions, and have their amortization adjusted at least annually to

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

(h) *Exemption for certain subsidiaries.—*

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

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

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

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

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

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

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

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

§§ 567.14–567.19 [Reserved]

**PART 568—SECURITY PROCEDURES**

- Sec.
- 568.1 Authority, purpose, and scope.
- 568.2 Designation of security officer.
- 568.3 Security program.

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568.4 Report.

568.5 Protection of customer information.

AUTHORITY: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p-1, 1881-1884; 15 U.S.C. 1681s and 1681w; 15 U.S.C. 6801 and 6805(b)(1).

SOURCE: 56 FR 29566, June 28, 1991, unless otherwise noted.

### § 568.1 Authority, purpose, and scope.

(a) This part is issued by the Office of Thrift Supervision (OTS) under section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882), sections 501 and 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805(b)(1)), and sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w). This part is applicable to savings associations. It requires each savings association to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and prosecution of persons who commit such acts. Section 568.5 of this part is applicable to savings associations and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers). Section 568.5 of this part requires covered institutions to establish and implement appropriate administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.

(b) It is the responsibility of an association's board of directors to comply with this regulation and ensure that a written security program for the association's main office and branches is developed and implemented.

[56 FR 29566, June 28, 1991, as amended at 66 FR 8639, Feb. 1, 2001; 69 FR 77620, Dec. 28, 2004]

### § 568.2 Designation of security officer.

Within 30 days after the effective date of insurance of accounts, the board of directors of each savings association shall designate a security officer who shall have the authority, subject to the approval of the board of directors, to develop, within a reasonable time but no later than 180 days, and to administer a written security program for each of the association's offices.

### § 568.3 Security program.

(a) *Contents of security program.* The security program shall:

(1) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(2) Establish procedures that will assist in identifying persons committing crimes against the association and that will preserve evidence that may aid in their identification and prosecution. Such procedures may include, but are not limited to:

(i) Maintaining a camera that records activity in the office;

(ii) Using identification devices, such as prerecorded serial-numbered bills, or chemical and electronic devices; and

(iii) Retaining a record of any robbery, burglary, or larceny committed against the association;

(3) Provide for initial and periodic training of officers and employees in their responsibilities under the security program and in proper employee conduct during and after a burglary, robbery, or larceny; and

(4) Provide for selecting, testing, operating and maintaining appropriate security devices, as specified in paragraph (b) of this section.

(b) *Security devices.* Each savings association shall have, at a minimum, the following security devices:

(1) A means of protecting cash and other liquid assets, such as a vault, safe, or other secure space;

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the office;

(3) Tamper-resistant locks on exterior doors and exterior windows that may be opened;

(4) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(ii) The amount of currency and other valuables exposed to robbery, burglary, or larceny;

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- (iii) The distance of the office from the nearest responsible law enforcement officers;
- (iv) The cost of the security devices;
- (v) Other security measures in effect at the office; and
- (vi) The physical characteristics of the structure of the office and its surroundings.

#### § 568.4 Report.

The security officer for each savings association shall report at least annually to the association's board of directors on the implementation, administration, and effectiveness of the security program.

#### § 568.5 Protection of customer information.

Savings associations and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) must comply with the Interagency Guidelines Establishing Information Security Standards set forth in appendix B to part 570 of this chapter. Supplement A to appendix B to part 570 of this chapter provides interpretive guidance.

[70 FR 32229, June 2, 2005]

### PART 569—PROXIES

Sec.

- 569.1 Definitions.
- 569.2 Form of proxies.
- 569.3 Holders of proxies.
- 569.4 Proxy soliciting material.

AUTHORITY: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463).

SOURCE: 54 FR 49665, Nov. 30, 1989, unless otherwise noted.

#### § 569.1 Definitions.

As used in this part:

(a) *Security holder*. The term *security holder* means any person having the right to vote in the affairs of a savings association by virtue of:

- (1) Ownership of any security of the association or
- (2) Any indebtedness to the association.

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For purposes of this part, the term *security holder* shall include any account holder having the right to vote in the affairs of a mutual savings association.

(b) *Person*. The term *person* includes, in addition to natural persons, corporations, partnerships, pension funds, profit-sharing funds, trusts, and any other group of associated persons of whatever nature.

(c) *Proxy*. The term *proxy* includes every form of authorization by which a person is, or may be deemed to be, designated to act for the security holder in the exercise of his or her voting rights in the affairs of a savings association. Such an authorization may take the form of failure to dissent or object.

(d) *Solicit; solicitation*. The terms *solicit* and *solicitation* refer to:

(1) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(2) Any request to execute, not execute, or revoke a proxy; or

(3) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

The terms do not apply, however, to the furnishing of a form of proxy to a security holder upon the request of such security holder or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

#### § 569.2 Form of proxies.

Every form of proxy shall conform to the following requirements:

(a) The proxy shall be revocable at will by the person giving it. The power to revoke may not be conditioned on any event or occurrence or be otherwise limited; except that, in the case of a proxy relating to capital stock if such proxy is coupled with an interest, states such fact on its face, and is valid under the laws of the State in which it is to be exercised, such proxy may be made irrevocable to the extent permitted by such State law.

(b) The proxy may not be part of any other document or instrument (such as an account card).