

records on deposit activities in any format that is consistent with standard business practices.

PART 158 [RESERVED]

PART 159—SUBORDINATE ORGANIZATIONS

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AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

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§ 159.1 What does this part cover?

(a) The OCC is issuing this part 159 pursuant to its general rulemaking and supervisory authority under the Home Owners' Loan Act, 12 U.S.C. 1462 *et seq.*, and its specific authority under section 18(m) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(m). This part 159 applies to subordinate organizations of Federal savings associations. The OCC may, at any time, limit a Federal savings association's investment in any of these entities, or may limit or refuse to permit any activities of any of these entities for supervisory, legal, or safety and soundness reasons.

(b) Notices under this part are applications for purposes of statutory and regulatory references to "applications." Any conditions that the OCC imposes in approving any application are enforceable as a condition imposed

in writing by the OCC in connection with the granting of a request by a Federal savings association within the meaning of 12 U.S.C. 1818(b) or 1818(i).

§ 159.2 Definitions.

For purposes of this part:

Control has the same meaning as in part 174 of this chapter.

GAAP-consolidated subsidiary means an entity in which a Federal savings association has a direct or indirect ownership interest and whose assets are consolidated with those of the savings association for purposes of reporting under Generally Accepted Accounting Principles (GAAP). Generally, these are entities in which the savings association has a majority ownership interest.

Lower-tier entity includes any company in which an operating subsidiary or a service corporation has a direct or indirect ownership interest.

Operating subsidiary means any entity that satisfies all of the requirements for an operating subsidiary set forth in §159.3 of this part and that is designated by the parent Federal savings association as an operating subsidiary pursuant to §159.3 of this part. More than 50% of the voting shares of an operating subsidiary must be owned, directly or indirectly, by a Federal savings association and no other person or entity may exercise effective operating control. An operating subsidiary may only engage in activities permissible for a Federal savings association.

Ownership interest means any equity interest in a business organization, including stock, limited or general partnership interests, or shares in a limited liability company.

Service corporation means any entity that satisfies all of the requirements for service corporations in 12 U.S.C. 1464(c)(4)(B) and §159.3 of this part and that is designated by the investing Federal savings association as a service corporation pursuant to §159.3 of this part. A service corporation must be organized under the laws of the state where the Federal savings association's home office is located, may only be owned by savings associations with home offices in that state, and may engage in the activities identified in §§ 159.3(e)(2) and 159.4 of this part.

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Subordinate organization means any corporation, partnership, business trust, association, joint venture, pool, syndicate, or other similar business organization in which a Federal savings association has a direct or indirect ownership interest, unless that ownership interest qualifies as a pass-through investment pursuant to §160.32 of this chapter and is so designated by the investing savings association.

Subsidiary means any subordinate organization directly or indirectly controlled by a Federal savings association.

§ 159.3 What are the characteristics of, and what requirements apply to, subordinate organizations of Federal savings associations?

A Federal savings association (“you”) that meets the requirements of this section, as detailed in the following chart, may establish, or obtain an interest in an operating subsidiary or a service corporation. For ease of reference, this section cross-references other regulations in this chapter affecting operating subsidiaries and service corporations. You should refer to those regulations for the details of how they apply. The chart also discusses the regulations that may apply to lower-tier entities in which you have an indirect ownership interest through your operating subsidiary or service corporation. The chart follows:

	Operating subsidiary	Service corporation
(a) How may a Federal savings association (“you”) establish an operating subsidiary or a service corporation?	(1) You must file a notice, with the appropriate OCC licensing office, satisfying § 159.11. Any finance subsidiary that existed on January 1, 1997 is deemed an operating subsidiary without further action on your part.	(2) You must file a notice, with the appropriate OCC licensing office, satisfying § 159.11. Depending upon your condition and the activities in which the service corporation will engage, § 159.3(e)(2) may require you to file an application.
(b) Who may be an owner?	(1) Anyone may have an ownership interest in an operating subsidiary.	(2) Only Federal or state chartered savings associations with home offices in the state where you have your home office may have an ownership interest in any service corporation in which you invest.
(c) What ownership requirements apply?	(1) You must own, directly or indirectly, more than 50% of the voting shares of the operating subsidiary. No one else may exercise effective operating control.	(2) You are not required to have any particular percentage ownership interest and need not have control of the service corporation.
(d) What geographic restrictions apply?	(1) An operating subsidiary may be organized in any geographic location.	(2) A service corporation must be organized in the state where your home office is located.
(e) What activities are permissible?	(1) After you have notified the OCC in accordance with § 159.11, an operating subsidiary may engage in any activity that you may conduct directly. You may hold another insured depository institution as an operating subsidiary.	(2)(i) If you are eligible for expedited treatment under § 116.5 of this chapter, and notify the OCC as required by § 159.11, your service corporation may engage in the preapproved activities listed in § 159.4. You may request OCC approval for your service corporation to engage in any other activity reasonably related to the activities of financial institutions by filing an application in accordance with standard treatment processing procedures at part 116, subparts A and E of this chapter.

	Operating subsidiary	Service corporation
(f) May the operating subsidiary or service corporation invest in lower-tier entities?	<p>(1)(i) An operating subsidiary may itself hold an operating subsidiary. Part 159 applies equally to a lower-tier operating subsidiary. In applying the regulations in this part, the investing operating subsidiary should substitute “investing operating subsidiary” wherever the part uses “you” or “savings association.”</p> <p>(ii) An operating subsidiary may also invest in other types of lower-tier entities. These entities must comply with all of the requirements of this part 159 that apply to service corporations except for paragraphs (b)(2) and (d)(2) of this section.</p>	<p>(ii) If you are subject to standard treatment under § 116.5 of this chapter, and notify the OCC as required by § 159.11, your service corporation may engage in any activity that you may conduct directly except taking deposits. You may request OCC approval for your service corporation to engage in any other activity reasonably related to the activities of financial institutions, including the activities set forth in § 159.4(b)–(j), by filing an application in accordance with standard treatment processing procedures at part 116, subparts A and E of this chapter.</p> <p>(2) A service corporation may invest in all types of lower-tier entities as long as the lower-tier entity is engaged solely in activities that are permissible for a service corporation. All of the requirements of this part apply to such entities except for paragraphs (b)(2) and (d)(2) of this section.</p>
(g) How much may a Federal savings association invest?	<p>(1) There are no limits on the amount you may invest in your operating subsidiaries, either separately or in the aggregate.</p>	<p>(2) Section 159.5 limits your aggregate investments in service corporations and indicates when your investments (both debt and equity) in lower-tier entities must be aggregated with your investments in service corporations.</p>
(h) Do Federal statutes and regulations that apply to the savings association apply?	<p>(1) Unless otherwise specifically provided by statute, regulation, or OCC policy, all Federal statutes and regulations apply to operating subsidiaries in the same manner as they apply to you. You and your operating subsidiary are generally consolidated and treated as a unit for statutory and regulatory purposes.</p>	<p>(2)(i) If the Federal statute or regulation specifically refers to “service corporation,” it applies to all service corporations, even if you do not control the service corporation or it is not a GAAP-consolidated subsidiary.</p> <p>(ii) If the Federal statute or regulation refers to “subsidiary,” it applies only to service corporations that you directly or indirectly control.</p>
(i) Do the investment limits that apply to Federal savings associations (HOLA section 5(c) and part 160 of this chapter) apply?	<p>(1) Your assets and those of your operating subsidiary are aggregated when calculating investment limitations.</p>	<p>(2) Your service corporation’s assets are not subject to the same investment limitations that apply to you. The investment activities of your service corporation are governed by paragraph (e)(2) of this section and § 159.4.</p>
(j) How does the capital regulation (part 167 of this chapter) apply?	<p>(1) Your assets and those of your operating subsidiary are consolidated for all capital purposes.</p>	<p>(2) The capital treatment of a service corporation depends upon whether it is an includable subsidiary. That determination is based upon factors set forth in part 167 of this chapter, including your percentage ownership of the service corporation and the activities in which the service corporation engages. Both debt and equity investments in service corporations that are GAAP-consolidated subsidiaries are considered investments in subsidiaries for purposes of the capital regulation, regardless of the authority under which they are made.</p>

	Operating subsidiary	Service corporation
(k) How does the loans-to-one-borrower (LTOB) regulation (12 CFR part 32) apply?	(1) The LTOB regulation does not apply to loans from you to your operating subsidiary or loans from your operating subsidiary to you. Other loans made by your operating subsidiary are aggregated with your loans for LTOB purposes.	(2) The LTOB regulation does not apply to loans from you to your GAAP-consolidated service corporation or from your GAAP-consolidated service corporation to you. However, part 32 imposes restrictions on the amount of loans you may make to non-consolidated service corporations. Loans made by a GAAP-consolidated service corporation are aggregated with your loans for LTOB purposes.
(l) How do the transactions with affiliates (TWA) regulations of the Board of Governors of the Federal Reserve System (Board) apply?	(1) Board rules explain how TWA applies. Generally, an operating subsidiary is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. A non-affiliate operating subsidiary is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association.	(2) Board rules explain how TWA applies. Generally, a service corporation is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. If a savings association directly or indirectly controls a service corporation and the service corporation is not otherwise an affiliate under Board rules, the service corporation is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association.
(m) How does the Qualified Thrift Lender (QTL) (12 U.S.C. 1467a(m)) test apply?	(1) Under 12 U.S.C. 1467a(m)(5), you may determine whether to consolidate the assets of a particular operating subsidiary for purposes of calculating your qualified thrift investments. If the operating subsidiary's assets are not consolidated with yours for that purpose, your investment in the operating subsidiary will be considered in calculating your qualified thrift investments.	(2) Under 12 U.S.C. 1467a(m)(5), you may determine whether to consolidate the assets of a particular service corporation for purposes of calculating your qualified thrift investments. If a service corporation's assets are not consolidated with yours for that purpose, your investment in the service corporation will be considered in calculating your qualified thrift investments.
(n) Does state law apply?	(1) State law applies to operating subsidiaries regardless of whether it applies to you.	(2) State law applies to service corporations regardless of whether it applies to you.
(o) May the OCC conduct examinations?	(1) An operating subsidiary is subject to examination by the OCC.	(2) A service corporation is subject to examination by the OCC.
(p) What must be done to redesignate an operating subsidiary as a service corporation or a service corporation as an operating subsidiary?	(1) Before redesignating an operating subsidiary as a service corporation, you should consult with the OCC licensing office in the district in which your home office is located. You must maintain adequate internal records, available for examination by the OCC, demonstrating that the redesignated service corporation meets all of the applicable requirements of this part and that your board of directors has approved the redesignation.	(2) Before redesignating a service corporation as an operating subsidiary, you should consult with the OCC licensing office in the district in which your home office is located. You must maintain adequate internal records, available for examination by the OCC, demonstrating that the redesignated operating subsidiary meets all of the applicable requirements of this part and that your board of directors has approved the redesignation.

	Operating subsidiary	Service corporation
(q) What are the consequences of failing to comply with the requirements of this part?	(1) If an operating subsidiary, or any lower-tier entity in which the operating subsidiary invests pursuant to paragraph (f)(1) of this section fails to meet any of the requirements of this section, you must notify the appropriate OCC licensing office. Unless otherwise advised by the OCC, if the company cannot comply within 90 days with all of the requirements for either an operating subsidiary or a service corporation under this section, or any other investment authorized by 12 U.S.C. 1464(c) or part 160 of this chapter, you must promptly dispose of your investment.	(2) If a service corporation, or any lower-tier entity in which the service corporation invests pursuant to paragraph (f)(2) of this section, fails to meet any of the requirements of this section, you must notify the appropriate OCC licensing office. Unless otherwise advised by the OCC, if the company cannot comply within 90 days with all of the requirements for either an operating subsidiary or a service corporation under this section, or any other investment authorized by 12 U.S.C. 1464(c) or part 160 of this chapter, you must promptly dispose of your investment.

[76 FR 49025, Aug. 9, 2011., as amended at 77 FR 37282, June 21, 2012; 78 FR 37946, June 25, 2013]

§ 159.4 What activities are preapproved for service corporations?

This section sets forth the activities that have been preapproved for service corporations. Section 159.3(e)(2) of this part sets forth the procedures for engaging in a broader scope of activities on a case-by-case basis. You should read these two sections together to determine whether you must file a notice with the OCC under § 159.11 of this part, or whether you must file an application under part 116 of this chapter and receive prior written OCC approval for your service corporation to engage in a particular activity. The notice or application should be filed with the appropriate OCC licensing office. To the extent permitted by § 159.3(e)(2) of this part, a service corporation may engage in the following activities:

- (a) Any activity that all Federal savings associations may conduct directly, except taking deposits.
- (b) Business and professional services. The following services are preapproved for service corporations only when they are limited to financial documents or financial clients or are generally finance-related:
 - (1) Accounting or internal audit;
 - (2) Advertising, marketing research and other marketing;
 - (3) Clerical;
 - (4) Consulting;
 - (5) Courier;
 - (6) Data processing;
 - (7) Data storage facilities operation and related services;

- (8) Office supplies, furniture, and equipment purchasing and distribution;
- (9) Personnel benefit program development or administration;
- (10) Printing and selling forms that require Magnetic Ink Character Recognition (MICR) encoding;
- (11) Relocation of personnel;
- (12) Research studies and surveys;
- (13) Software development and systems integration; and
- (14) Remote service unit operation, leasing, ownership or establishment.
- (c) Credit-related activities.
 - (1) Abstracting;
 - (2) Acquiring and leasing personal property;
 - (3) Appraising;
 - (4) Collection agency;
 - (5) Credit analysis;
 - (6) Check or credit card guaranty and verification;
 - (7) Escrow agent or trustee (under deeds of trust, including executing and deliverance of conveyances, reconveyances and transfers of title); and
 - (8) Loan inspection.
 - (d) Consumer services.
 - (1) Financial advice or consulting;
 - (2) Foreign currency exchange;
 - (3) Home ownership counseling;
 - (4) Income tax return preparation;
 - (5) Postal services;
 - (6) Stored value instrument sales;
 - (7) Welfare benefit distribution;
 - (8) Check printing and related services; and
 - (9) Remote service unit operation, leasing, ownership, or establishment.
 - (e) Real estate related services.

(1) 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, in accordance with a prudent program of property development;

(2) Acquiring improved real estate or manufactured homes to be held for rental or resale, for remodeling, renovating, or demolishing and rebuilding for sale or rental, or to be used for offices and related facilities of a stockholder of the service corporation;

(3) Maintaining and managing real estate; and

(4) Real estate brokerage for property owned by a savings association that owns capital stock of the service corporation, the service corporation, or a lower-tier entity in which the service corporation invests.

(f) Securities activities, liquidity management, and coins.

(1) Execution of transactions in securities on an agency or riskless principal basis solely upon the order and for the account of customers or the provision of investment advice. The service corporation must register with the Securities and Exchange Commission and state securities regulators, as required by applicable Federal and state law and regulations;

(2) Liquidity management;

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

(4) Purchase or sale of coins issued by the U.S. Treasury.

(g) *Investments.* (1) Tax-exempt bonds used to finance residential real property for family units;

(2) Tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(3) Small business investment companies and new markets venture capital companies licensed by the U.S. Small Business Administration;

(4) Rural business investment companies; and

(5) Investing in savings accounts of an investing thrift.

(h) Community development and charitable activities:

(1) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing,

small farms, or businesses that are local in character;

(2) Investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as providing housing, services, or jobs);

(3) Investments in low-income housing tax credit and new markets tax credit projects and entities authorized by statute (e.g., community development financial institutions) to promote community, inner city, and community development purposes; and

(4) Establishing a corporation that is recognized by the Internal Revenue Service as organized for charitable purposes under 26 U.S.C. 501(c)(3) of the Internal Revenue Code and making a reasonable contribution to capitalize it, *provided* that the corporation engages exclusively in activities designed to promote the well-being of communities in which the owners of the service corporation operate.

(i) Activities conducted on behalf of a customer on an other than "as principal" basis.

(j) Activities reasonably incident to those listed in paragraphs (a) through (i) of this section if the service corporation engages in those activities.

§ 159.5 How much may a Federal savings association invest in service corporations or lower-tier entities?

The amount that a Federal savings association ("you") may invest in a service corporation or any lower-tier entity depends upon several factors. These include your total assets, your capital, the purpose of the investment, and your ownership interest in the service corporation or entity.

(a) Under section 5(c)(4)(B) of the HOLA, you may invest up to 3% of your assets in the capital stock, obligations, and other securities of service corporations. Any investment you make under this paragraph that would cause your investment, in the aggregate, to exceed 2% of your assets must serve primarily community, inner city, or community development purposes. You must designate the investments serving those purposes, which include:

(1) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing,

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small farms, or businesses that are local in character;

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

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

(4) Other community, inner city, or community development-related investments approved by the OTS or the OCC.

(b) In addition to the amounts you may invest under paragraph (a) of this section, and to the extent that you have authority under other provisions of section 5(c) of the HOLA and part 160 of this chapter, and available capacity within any applicable investment limits, you may make loans to any non-consolidated subsidiary, subject to the lending limits in part 32 of this chapter.

(c) For purposes of this section, the term “obligations” includes all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

[76 FR 49025, Aug. 9, 2011, as amended at 78 FR 37946, June 25, 2013]

§ 159.10 How must separate corporate identities be maintained?

(a) Each Federal savings association and subordinate organization thereof must be operated in a manner that demonstrates to the public that each maintains a separate corporate existence. Each must operate so that:

(1) Their respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of their separate corporate procedures;

(3) Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise; and

(5) Unless the parent savings association has guaranteed a loan to the subordinate organization, all borrowings by the subordinate organization indicate that the parent is not liable.

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(b) OCC regulations that apply both to Federal savings associations and subordinate organizations shall not be construed as requiring a savings association and its subordinate organizations to operate as a single entity.

§ 159.11 What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?

When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association (“you”) must file a notice (“Notice”) under part 116, subpart A of this chapter at least 30 days before establishing or acquiring a subsidiary or engaging in new activities in a subsidiary. The Notice should be filed with the appropriate OCC licensing office and must contain all of the information the Federal Deposit Insurance Corporation (FDIC) requires under 12 CFR 362.15. Providing the OCC with a copy of the notice you file with the FDIC will satisfy this requirement. If the OCC notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive the OCC’s prior written approval under the standard treatment processing procedures at part 116, subpart A and E of this chapter before establishing or acquiring the subsidiary or engaging in new activities in the subsidiary.

§ 159.12 How may a subsidiary of a Federal savings association issue securities?

(a) A subsidiary may issue, either directly or through a third party intermediary, any securities that its parent Federal savings association (“you”) may issue. The subsidiary must not state or imply that the securities it issues are covered by Federal deposit insurance. A subsidiary may not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that you are insolvent or have been placed into receivership.

(b) You must file a notice with the appropriate OCC licensing office in accordance with § 159.11 of this part at least 30 days before your first issuance of any securities through an existing

subsidiary or in conjunction with establishing or acquiring a new subsidiary. If the OCC notifies you within 30 days that the notice presents supervisory concerns or raises significant issues of law or policy, you must receive the OCC's prior written approval before issuing securities through your subsidiary.

(c) For as long as any securities are outstanding, you must maintain all records generated through each securities issuance in the ordinary course of business, including a copy of any prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the OCC. Such records must include, but are not limited to:

(1) The amount of your assets or liabilities (including any guarantees you make with respect to the securities issuance) that have been transferred or made available to the subsidiary; the percentage that such amount represents of the current book value of your assets on an unconsolidated basis; and the current book value of all such assets of the subsidiary;

(2) The terms of any guarantee(s) issued by you or any third party;

(3) A description of the securities the subsidiary issued;

(4) The net proceeds from the issuance of securities (or the pro rata portion of the net proceeds from securities issued through a jointly owned subsidiary); the gross proceeds of the securities issuance; and the market value of assets collateralizing the securities issuance (any assets of the subsidiary, including any guarantees of its securities issuance you have made);

(5) The interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(6) The minimum denomination of the subsidiary's securities; and

(7) Where the subsidiary marketed or intends to market the securities.

§ 159.13 How may a Federal savings association exercise its salvage power in connection with its service corporation or lower-tier entities?

(a) In accordance with this section, a Federal savings association ("you") may exercise your salvage power to

make a contribution or a loan (including a guarantee of a loan made by any other person) to your service corporation or lower-tier entity ("salvage investment") that exceeds the maximum amount otherwise permitted under law or regulation. You must notify the appropriate OCC licensing office at least 30 days before making such a salvage investment. This notice must demonstrate that:

(1) The salvage investment protects your interest in the service corporation or lower-tier entity;

(2) The salvage investment is consistent with safety and soundness; and

(3) You considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (a)(1) and (a)(2) of this section.

(b) If the OCC notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive the OCC's prior written approval under the standard treatment processing procedures at part 116, subparts A and E of this chapter before making a salvage investment.

(c) If your service corporation or lower-tier entity is a GAAP-consolidated subsidiary, your salvage investment under this section will be considered an investment in a subsidiary for purposes of part 167 of this chapter.

PART 160—LENDING AND INVESTMENT

Sec.

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