

to a formula, or to a schedule specifying the percentage or dollar change in the payment as set forth in the loan contract; or

(3) In the case of an open-end line-of-credit loan, the adjustment reflects an advance taken by the borrower under the line-of-credit and is permitted by the loan contract.

(d)(1) Any index used must be readily available and independently verifiable. If set forth in the loan contract, an association may use any combination of indices, a moving average of index values, or more than one index during the term of a loan.

(2) Except as provided in paragraph (d)(3) of this section, any index used must be a national or regional index.

(3) A Federal savings association may use an index not satisfying the requirements of paragraph (d)(2) of this section 30 days after filing a notice unless, within that 30-day period, OTS has notified the association that the notice presents supervisory concerns or raises significant issues of law or policy. If OTS notifies the association of such concerns or issues, the Federal savings association may not use such an index unless it applies for and receives OTS's prior written approval under the standard treatment processing procedures at part 516, subparts A and E of this chapter.

[61 FR 50971, Sept. 30, 1996, as amended at 66 FR 13007, Mar. 2, 2001]

§ 560.36 De minimis investments.

A Federal savings association may invest in the aggregate up to the greater of 1% of its total capital or \$250,000 in community development investments of the type permitted for a national bank under 12 CFR part 24.

[66 FR 65826, Dec. 21, 2001]

§ 560.37 Real estate for office and related facilities.

A federal savings 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 federal savings association's

present needs or its reasonable future needs for office and related facilities. A federal savings association may not make an investment that would cause the outstanding book value of all such investments (including investments under § 559.4(e)(2) of this chapter) to exceed its total capital.

[61 FR 66579, Dec. 18, 1996]

§ 560.40 Commercial paper and corporate debt securities.

Pursuant to HOLA section 5(c)(2)(D), a Federal savings association may invest in, sell, or hold commercial paper and corporate debt securities subject to the provisions of this section.

(a) *Limitations.* (1) Commercial paper must be:

(i) As of the date of purchase, rated in either one of the two highest categories by at least two nationally recognized investment ratings services as shown by the most recently published rating made of such investments; or

(ii) If unrated, guaranteed by a company having outstanding paper that is rated as provided in paragraph (a)(1)(i) of this section.

(2) Corporate debt securities must be:

(i) Securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value; and

(ii) Rated in one of the four highest categories as to the portion of the security in which the association is investing by a nationally recognized investment ratings service at its most recently published rating before the date of purchase of the security.

(3) A Federal savings association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any one person or entity affiliated with such issuer, together with other loans, shall not exceed the general lending limitations contained in § 560.93(c) of this part.

(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

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down to an amount that represents the investment value of the securities considered independently of the conversion feature; and

(iii) Federal savings associations are prohibited from exercising the conversion feature.

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

(b) Notwithstanding the limitations contained in this section, the Office may permit investment in corporate debt securities of another savings association in connection with the purchase or sale of a branch office or in connection with a supervisory merger or acquisition.

(c) *Underwriting.* Before committing to acquire any investment security, a Federal savings association must determine whether the investment is safe and sound and suitable for the association. The Federal savings association must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity. The Federal savings association must also determine that the issuer has adequate resources and the willingness to provide for all required payments on its obligations in a timely manner.

[61 FR 50971, Sept. 30, 1996, as amended at 66 FR 65826, Dec. 21, 2001]

§ 560.41 Leasing.

(a) *Permissible activities.* Subject to the limitations of this section, a Federal savings association may engage in leasing activities. These activities include becoming the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, obtaining an assignment of a lessor's interest in a lease of such property, and incurring obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

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

(1) The term *net lease* means a lease under which the Federal savings 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, except 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 paragraph (c)(2)(i) 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 Federal savings association is necessary to protect its interest as an owner or financier of the property.

(2) The term *full-payout lease* means a lease transaction in which any unguaranteed portion of the estimated residual value relied on by the association to yield the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25% of the original cost of the property to the lessor. In general, a lease will qualify as a full-payout lease if the scheduled payments provide at least 75% of the principal and interest payments that a lessor would receive if the finance lease were structured as a market-rate loan.

(3) The term *realization of investment* means that a Federal savings association that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

(i) Rentals;

(ii) Estimated tax benefits, if any; and

(iii) The estimated residual value of the property at the expiration of the term of the lease.

(c) *Finance leasing*—(1) *Investment limits.* A Federal savings association may exercise its authority under HOLA sections 5(c)(1)(B) (residential real estate loans), 5(c)(2)(A) (commercial, business,