

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 566

[No. 97-116]

RIN 1550-AA77

LIQUIDITY

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final Rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule that updates, simplifies, and streamlines its liquidity regulation. This final rule follows a detailed review of the regulation to determine whether it is necessary, imposes the least possible burden consistent with statutory requirements and safety and soundness, and is written in a clear, straightforward manner. Today's final rule is made pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Community Development and Regulatory Improvement Act of 1994.

EFFECTIVE DATE: [Insert date of publication in Federal Register]

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(202) 906-5751, Supervision Policy, or Susan Miles, Attorney, (202) 906-6798, Karen Osterloh, Assistant Chief Counsel, (202) 906-6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6 of the Home Owners' Loan Act (HOLA)¹ requires savings associations to hold a prescribed amount of statutorily defined liquid assets. The Director of the OTS may, by regulation, vary the amount of the liquidity requirement, but only within pre-established statutory limits. The requirement must be no less than four percent and no greater than ten percent of "the obligation of the institution on withdrawable accounts and borrowings payable on demand or with unexpired maturities of one year or less."² The Director may issue regulations defining the terms used in the statute, prescribing or limiting the extent to which certain assets included on the statutory liquidity list may be used to meet the liquidity requirement, and prescribing how to calculate the liquidity requirement.

¹ 12 U.S.C. 1465.

² 12 U.S.C. 1465(b)(2).

Regulations implementing the Director's authority under section 6 of the HOLA appear at 12 CFR Part 566 (1997). These rules define liquid assets to include cash and certain securities with detailed maturity limitations and marketability requirements.³ The rules currently impose a liquidity requirement of five percent of an institution's liquidity base and a separate, "short-term" liquidity requirement of one percent of that base. The liquidity base is defined as net withdrawable accounts plus short-term borrowings. Except for institutions with less than \$25,000,000 in assets, liquidity requirements are based on the "average daily balance" of the liquidity base during the preceding month. Institutions with less than \$25,000,000 in assets may calculate their liquidity base using month-end figures.

On May 14, 1997, the OTS published a notice of proposed rulemaking (NPR) seeking comment on its liquidity regulation.⁴ The OTS sought to reduce the burden of compliance with the statutory liquidity requirement to the maximum extent possible, consistent with statutory requirements and safety and soundness considerations. Specifically, the OTS proposed to: (1) reduce the liquidity

³ 12 CFR 566.1(g) (1997).

⁴ 62 Fed. Reg. 26449.

requirement from five percent of net withdrawable accounts and short-term borrowings to four percent; (2) remove the one percent short-term liquidity requirement; (3) set forth an explicit requirement that thrifts maintain a safe and sound level of liquidity; (4) streamline the calculations used to measure compliance with the liquidity requirement; (5) expand the categories of liquid assets that may count toward satisfying a savings association's liquidity requirement; and (6) reduce the liquidity base by excluding withdrawable accounts payable in more than one year from the definition of the term "net withdrawable accounts."

II. Summary of Comments and Description of the Final Rule

The public comment period on the proposed rule closed on July 14, 1997. The OTS received twelve comments on its proposal. Commenters included eight savings associations, two trade associations, one holding company, and one individual. Commenters generally concurred that the statutory liquidity requirement imposes an unnecessary burden on institutions and no longer serves any useful purpose. Seven commenters specifically urged the OTS to continue to seek legislation that would eliminate this requirement. Two of these commenters urged the elimination of the requirement for institutions rated 1 or 2 under the CAMELS system.

Eleven commenters supported the proposed rule. These commenters generally concluded that the proposed rule would reduce the regulatory burden to the extent permitted by the statute, while maintaining the safety and soundness of institutions. Several commenters suggested revisions to the proposed rule which are discussed below. One commenter opposed the proposed rule.

Today's final rule is substantially similar to the May proposal, but incorporates several changes and clarifications in response to comments received. Specific comments are discussed where appropriate in the analysis below.

A. Reducing the Liquid Asset Requirement From Five to Four Percent and Removing the One Percent Short-term Requirement

The OTS proposed to reduce the liquid asset requirement from five percent of the liquidity base to four percent, the lowest percentage permissible by statute. Additionally, the OTS proposed to eliminate the one percent short-term liquidity requirement, which is not mandated by statute. The agency believed that these changes were consistent with safety and soundness and the goal of reducing unnecessary burdens on the industry.

Commenters generally supported the reduction of the liquid asset requirement and the elimination of the short term liquidity requirement. One commenter noted that the OTS would retain sufficient flexibility through its examination process to determine the proper amount of liquid assets to support safe and sound operations. One commenter expressed general concern about this change, but did not cite specific reasons for its concern. These changes are adopted as proposed.

B. Adding a General Safety and Soundness Requirement

The OTS proposed to incorporate a general requirement that a savings association must maintain sufficient liquidity to ensure its safe and sound operation. This requirement reflects the OTS's position that the statutory requirement is not necessarily indicative of a safe level of liquidity. The OTS would determine the adequacy of an institution's liquidity on a case-by-case basis.

Most commenters agreed that it is appropriate to determine liquidity requirements based on factors unique to each association, and supported this proposed requirement. One commenter, however, opposed the general safety and soundness requirement, suggesting that the proposed rule was vague. The OTS

disagrees. The “safe and sound operation” standard is commonly used in banking parlance and in OTS regulations.⁵ Safety and soundness determinations are generally made on a case-by-case basis in light of the particular circumstances of each institution. In the context of liquidity, a thrift is generally required to ensure that its current and prospective sources of liquidity are sufficient to permit it to meet its obligations in a timely manner and to fulfill the legitimate banking needs of its community.⁶

One commenter encouraged the OTS to consider latent sources of liquidity when determining whether an association is maintaining sufficient liquidity for safety and soundness purposes. When OTS evaluates an institution’s liquidity, examiners consider additional sources of liquidity, not only those assets that meet the regulatory definition of liquid assets. Examiners consider the institution’s visible liquidity position (i.e., liquid assets such as cash and marketable securities) and the institution’s invisible liquidity position (i.e., available borrowing capacity).⁷

⁵ See 12 CFR 559.1, 560.1, 562.2, and 563.161(1997).

⁶ For additional guidance, savings associations should refer to the Thrift Activities Handbook, Liquidity-Asset/Liability Management, Chapter 500.

⁷ See Section 530, Cash Flow and Liquidity Management, Thrift Activities Handbook.

C. Streamlining the Average Balance Calculations of Liquid Assets and Liquidity Base

The current rule requires each savings association (except certain small associations and mutual savings banks) to calculate monthly average daily balances of liquid assets and the liquidity base. Thus, a savings association must calculate liquid assets and the liquidity base at the close of each business day, and then compute the average daily balance of the liquid assets and liquidity base for each month.

The proposal would streamline these calculations. While an institution would be required to continually satisfy the liquidity requirement, it would be required to calculate the liquidity base only on the last day of the preceding calendar quarter. This change would eliminate the need to calculate the average daily balance of the liquidity base for each month.

Commenters generally supported the proposed change to the liquidity base calculation as less burdensome, but suggested certain clarifications and modifications to further reduce the burden of compliance. For example, one commenter noted that it may be difficult or burdensome for some institutions to make the change to the new liquidity base calculation. The OTS goal is to

decrease, rather than increase, regulatory burden connected with the statutory liquidity calculation. Accordingly, the final rule permits institutions to choose to use either the current or new method as set forth in the proposal of calculating the liquidity base.

Several commenters asked OTS to clarify how the liquid asset amount is to be calculated. For example, commenters asked whether liquid assets would be based on the actual balance at the end of each business day, the end of each calendar month, or the end of each quarter, and whether liquid assets would be based on the average daily balance for each month or quarter.

The final rule does not require a savings association to hold the required amount of liquid assets every day. Such a requirement would increase, rather than decrease, the regulatory burden imposed on institutions under the current regulation. Conversely, while a requirement that a savings association must hold the required amount of liquid assets only on one day during a quarter or month would reduce regulatory burden, such a requirement would, in effect, nullify the statutory liquidity requirement, and would be contrary to the statutory directive that liquid assets be maintained at a level specified by the Director.⁸ Accordingly, the

⁸ See 12 U.S.C. 1465(b)(1).

final rule continues to require savings associations to calculate liquid assets based on an average daily balance over a period of time. However, instead of determining the average daily balance for each month, a savings association will now determine the average daily balance for each quarter.

Under the final rule, a savings association may choose to calculate its liquidity ratio in one of two ways. It can maintain an average daily balance of liquid assets in each calendar quarter of not less than four percent of either: (1) its liquidity base at the end of the preceding quarter, or (2) the average daily balance of its liquidity base during the preceding quarter. The method of calculating the average daily balances for a period would be unchanged under the final rule.

D. Expanding the Categories of Liquid Assets That Count Toward Satisfaction of the Liquidity Requirement

Under sections 6(b)(1)(C)(vi) and (vii) of the HOLA,⁹ as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),¹⁰ certain mortgage-related securities and mortgage loans qualify as liquid assets to the extent approved by the Director of the OTS. The first

⁹ 12 U.S.C. 1465(b)(1)(C)(vi), (vii).

¹⁰ Pub. L. No. 101-73, 103 Stat. 183, 313-314 (1989).

category consists of mortgage-related securities that are defined in section 3(a)(41) of the Securities Exchange Act of 1934. The second category consists of mortgage loans on the security of a first lien on residential real property, if the mortgage loans qualify as backing for mortgage-backed securities issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) or are guaranteed by the Government National Mortgage Association (GNMA). The qualifying mortgage-related securities and mortgage loans must have one year or less remaining until maturity, or be subject to an agreement (including a repurchase agreement, put option, right of redemption, or takeout commitment) that requires another person to purchase the securities within a period that does not exceed one year. In addition, the person that agrees to purchase the securities must be an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) that is in compliance with applicable capital standards, a primary dealer in United States Government securities, or a broker or dealer registered under the Securities Exchange Act of 1934.

The OTS proposed to add the FIRREA categories to the definition of liquid assets. Commenters generally supported the addition of these new categories. Accordingly, these new categories are added in the final rule.

The proposed rule text described the specific requirements for loans and mortgage-related securities with cross-references to other regulations and statutes. One commenter argued that the cross-references are difficult to understand and urged the OTS to restate all applicable requirements in the rule text. The statutes and regulations cross-referenced by the proposed rule are rather lengthy. The OTS believes that the benefit of having a concise rule outweighs the inconvenience of having to look to the HOLA, the statute governing most savings association activities. Consequently, the cross-references are retained.

Another commenter recommended that the OTS should also include, in the definition of liquid assets, adjustable rate mortgage-backed securities issued by the FNMA, the FHLMC, or the GNMA. This commenter pointed out that the definition of liquid assets in the regulation suggests that an asset's final maturity always has a link to its price sensitivity or liquidity. The commenter noted that over the years the more common types of adjustable rate mortgage-backed securities have developed significant secondary market liquidity, and have price sensitivities that are lower than many of the currently qualifying liquid asset alternatives.

Section 6(b)(1) of the HOLA describes the specific types of assets that the OTS may consider to be liquid assets. The statutory listing includes “such obligations, including such special obligations, of the United States, a State, any territory or possession of the United States, or a political subdivision, agency or instrumentality of any one or more of the foregoing, and bankers’ acceptances, as the Director may approve.”¹¹ The OTS, and its predecessor, the Federal Home Loan Bank Board (FHLBB), have long included obligations of FNMA, GNMA, and FHLMC among such special obligations.¹² While section 6(b)(1)(c)(ii) of the HOLA does not contain any maturity requirement for such obligations, the current OTS regulation provides that, in order to qualify as a liquid asset, such obligations must have five years or less remaining until maturity. The ostensible basis for the imposition of these liquidity requirements was to reduce the risk of loss on the securities held as liquid assets.¹³

Upon review, the OTS believes that the maximum five-year maturity requirement for these specific obligations under § 566.1(g)(3) and the related maturity requirement for obligations of the United States under § 566.1(g)(2) are

¹¹ 12 U.S.C. 1465(b)(1)(c)(ii).

¹² See 12 CFR 566.1(g)(3)(1997).

¹³ See 39 Fed. Reg. 41263 (November 26, 1974).

outdated and unnecessary.¹⁴ In addition, we note that the other federal banking agencies do not impose, for liquidity purposes, a five-year maturity requirement for obligations. The continuing imposition of this requirement is contrary to our objectives of relieving unnecessary burden on the industry, and is consistent with the treatment of these assets by the other federal banking regulators in their safety and soundness examinations. Therefore, the OTS has removed the maturity requirement for these obligations.

E. Excluding Accounts With Unexpired Maturities Exceeding One Year From the Definition of “Net Withdrawable Accounts”

A savings association must maintain liquid assets of not less than a stated percentage of the amount of its liquidity base. The regulation defines “liquidity base” as net withdrawable accounts plus short term borrowings.¹⁵ It defines “net withdrawable accounts” as all withdrawable accounts less the unpaid balance of all loans secured by such accounts with certain exclusions.¹⁶ “Short term borrowings”

¹⁴ We note that the agency has adjusted this maturity requirement in the past. See 39 Fed. Reg. 17219 (May 14, 1974).

¹⁵ 12 CFR 566.1(c)(1997).

¹⁶ 12 CFR 566.1(d)(1997).

is defined as borrowings where any portion of the principal is payable on demand or in one year or less.¹⁷

The OTS proposed to redefine "net withdrawable accounts" by excluding accounts with unexpired maturities exceeding one year and by deleting the word "all" from the phrase "all withdrawable accounts" in the first part of the definition. These changes would reduce a savings association's liquidity base which would reduce the association's liquid asset requirement.

Three commenters addressed this change. One commenter observed that this change is consistent with the regulation's current exclusion from the liquidity base of borrowings payable in more than one year. The commenter also noted that the statute does not specify different maturity requirements for withdrawable accounts and borrowings in the liquidity base.

Another commenter agreed with the proposed exclusion, provided that excluded accounts with maturities of more than one year are subject to an effective early withdrawal penalty. The OTS has decided not to impose an early withdrawal penalty requirement for excluded accounts with maturities of more

¹⁷ 12 CFR 566.1(e)(1997).

than one year. Such a requirement is unnecessary and would place an additional burden on savings associations, which is contrary to the spirit of this rulemaking.

Two commenters noted that associations would have to create new reports in order to exclude deposits with unexpired maturities exceeding one year from their liquidity bases. These commenters requested that the final rule explicitly permit institutions to elect to use either the proposed or the current, more stringent, method of calculating the liquidity base.

The OTS agrees. Accordingly, the final rule provides a savings association with the option to exclude deposits with unexpired maturities exceeding one year from its liquidity base as proposed, or to continue to use the more stringent method of calculating the liquidity base. To implement this change, the OTS has amended the current definition of net withdrawable accounts to give institutions the option of either applying the current definition of net withdrawable accounts or excluding withdrawable account deposits with maturities exceeding one year from the computation of net withdrawable accounts.

F. Technical Revisions

The OTS has made several technical revisions to § 566.1. These revisions include appropriate cross-references in paragraph (g)(8) to new paragraphs (g)(12) and (g)(13) and punctuation and other minor changes throughout paragraph (g).

III. Paperwork Reduction Act

The recordkeeping requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1550-0011. The information is needed by the OTS to assist in regulating savings association and their subsidiaries.

Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the OTS, 1700 G Street, NW, Washington, DC 20552.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at 12 CFR 506.1(b).

The recordkeeping requirements contained in this notice of final rule are found at 12 CFR 566.4(1997). The information is needed by the OTS in order to ensure that associations comply with a statutory liquidity requirement. The likely recordkeepers are OTS-regulated savings associations. Records are to be maintained in accordance with basic business practices, but not less than a period of three years.

IV. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a “significant regulatory action” for purposes of Executive Order 12866.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act

(Pub. L. 96-354, 5 U.S.C. 601), the OTS certifies that this regulation will not have a significant economic impact on a substantial number of small entities. It reduces the liquidity requirement from five percent to four percent, which should increase all savings associations' abilities to manage their assets. Additionally, the final regulation should ease the administrative burden of calculating compliance with liquidity requirements for all savings associations, including small savings associations.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule reduces regulatory burden. The OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more.

Accordingly, this rulemaking is not subject to § 202 of the Unfunded Mandates Act.

VII. Effective Date

Section 302 of the CDRIA requires that regulations that impose additional reporting, disclosure, or other new requirements take effect on the first date of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulations should become effective before that date. The OTS believes that CDRIA does not apply because this final rule imposes no new burden on thrifts. Further, the OTS believes that an immediate effective date is appropriate since the final rule relieves regulatory burden on savings associations. An immediate effective date would permit savings associations to better manage their assets by reducing the liquidity requirement from five to four percent and by eliminating the short term liquidity requirement. Additionally, the final rule should ease administrative burden of computing compliance with liquidity requirements. For these reasons, the OTS believes that an immediate effective date is appropriate for this final rule.

Section 553(d) of the Administrative Procedure Act requires an agency to publish a substantive rule at least 30 days before its effective date. Section

553(d) of the APA permits waiver of the 30-day delayed effective date requirement for, inter alia, good cause or where a rule relieves a restriction. The OTS further finds that the 30-day delayed effective date requirement may be waived because this final rule relieves regulatory restrictions.

List of Subjects in 12 CFR Part 566

Liquidity, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby amends part 566, chapter V, title 12, Code of Federal Regulations, as set forth below:

PART 566 - LIQUIDITY

1. The authority citation for part 566 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1465, 1467a;
15 U.S.C. 1691, 1691a.

2. Section 566.1 is amended by:

- a. Revising paragraph (d);
- b. Revising paragraph (g)(2);
- c. Revising paragraph (g)(3) introductory text;
- d. Revising paragraphs (g)(4)(i)(A) and (B);
- e. Revising paragraphs (g)(8), (g)(9) and (g)(10);
- f. Adding, in paragraph (g)(11)(i), the word “or” between the phrase “(“Association member”),” and the phrase “an insured financial institution,”;
- g. Adding paragraphs (g)(12) and (g)(13); and
- h. Removing paragraph (h).

The additions and revisions read as follows:

§ 566.1 Definitions.

* * * * *

(d) Net withdrawable accounts. The term net withdrawable accounts means withdrawable accounts less the unpaid balance of loans secured by such accounts. In computing net withdrawable accounts, a savings association may, at its option, exclude withdrawable accounts maturing in more than one year.

Tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to any applicable regulations, U. S. Treasury General Accounts, and U. S. Time Deposit Accounts are not withdrawable accounts.

* * * * *

(g) * * *

(2) Except as the Office may otherwise direct in a specific case, obligations of the United States.

(3) Obligations issued or fully guaranteed as to principal and interest, by:

* * * * *

(4) * * *

(i) * * *

(A) Negotiable and will mature in one year or less;

(B) Not negotiable and will mature in 90 days or less: or

* * * * *

(8) Shares or certificates in any open-end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders,

to investments described in the other provisions of paragraphs (g)(1) through (g)(7), (g)(9), (g)(12), and (g)(13) of this section;

(9) Corporate debt obligations and commercial paper denominated in dollars, Provided, That:

(i) Such corporate debt obligations:

(A) Continue to be rated in one of the four highest categories by the most recently published rating of such obligations by a nationally recognized investment rating service;

(B) Are marketable as defined by § 541.7 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 categories by the most recently published rating of such paper by two nationally recognized investment rating services, or, if unrated, is guaranteed by a company having outstanding paper that is so rated; and

(B) Will mature in 270 days or less; and

(iii) An amount not in excess of one percent of such institution's assets invested in eligible corporate debt obligations or commercial paper of a single issuer shall be counted as a liquid asset;

(10) Reserves required to be maintained pursuant to title I of the Depository Institutions Deregulation and Monetary Control Act of 1980 and established pursuant to 12 CFR Part 204, whether in the form of:

(i) Vault cash, as defined in 12 CFR 204.2, provided that vault cash shall be included only once in calculating the aggregate amount of liquid assets;

(ii) Balances maintained directly with the Federal Reserve Bank in the district in which the savings association is located; or

(iii) A pass through account as defined in 12 CFR 204.2;

* * * * *

(12) Mortgage-related securities as described in 12 U.S.C. 1465(b)(1)(C)(vi); and

(13) Mortgage loans on the security of a first lien on residential real property as described in 12 U.S.C. 1465(b)(1)(C)(vii).

* * * * *

3. Section 566.2 is amended to read as follows:

§ 566.2 Requirements.

(a) Safety and soundness requirement. In addition to meeting the minimum requirement under paragraph (b), each savings association must maintain sufficient liquidity to ensure its safe and sound operation.

(b) Minimum statutory liquidity requirement. (1) Except as otherwise provided in paragraph (c) of this section, each savings association shall maintain an average daily balance of liquid assets in each calendar quarter of not less than 4 percent of:

(i) The amount of its liquidity base at the end of the preceding calendar quarter; or

(ii) The average daily balance of its liquidity base during the preceding quarter.

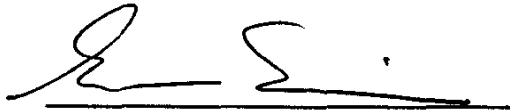
(2) The average daily balance of either liquid assets or liquidity base in a quarter is calculated by adding the respective balance as of the close of each business day in a quarter, and for any non-business day, as of the close of the nearest preceding business day, and dividing the total by the number of days in the quarter.

(c) Reduction and suspension of liquidity requirements. The Office may, to the extent and under conditions it may prescribe, permit a savings association to reduce its liquid assets below the minimum amount required by paragraph (b)

of this section to meet withdrawals or pay obligations. The Office may suspend part or all of the liquidity requirements of paragraph (b) of this section whenever it determines that conditions of national emergency or unusual economic stress exist. Any such suspension, unless sooner terminated by its terms or by the Office, shall terminate after 90 days, but the Office may again suspend part or all of such requirement at any time.

DATED: November 13, 1997

By the Office of Thrift Supervision.

A handwritten signature in black ink, appearing to read 'E. S.', written over a horizontal line.

Ellen S. Seidman
Director