discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 3701.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with Section 1.6(e) of this title and should be addressed as follows: Administrator, Economic Research Service, U.S. Department of Agriculture, Washington, DC 20250.

§ 3701.6 Requests for published data and information.

Information on published data from ERS programs is contained in the ERS ''Reports'' newsletter, available without cost from the Economic Research Service, Information Center, U.S. Department of Agriculture, 1301 New York Avenue, NW., Washington, DC 20005.

Done at Washington, DC, this 19th day of December 1995.

John Dunmore,

Acting Administrator, Economic Research Service.

[FR Doc. 95–31185 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–18–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB69

Definition of Qualified Financial Contracts

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC or Corporation) has adopted a rule to include spot and other short-term foreign exchange agreements and repurchase agreements on qualified foreign government securities within the definition of ''qualified financial contracts'' under the Federal Deposit Insurance Act (FDI Act). The FDI Act authorizes the FDIC to expand the definition of qualified financial contract by promulgation of regulations to include agreements similar to those currently identified as qualified financial contracts within the FDI Act. The FDIC has determined that spot and other short-term foreign exchange agreements are similar to swap agreements, which are included within the qualified financial contract provisions of the statute and that repurchase agreements on qualified foreign government securities are similar to those repurchase agreements already recognized as qualified financial contracts under the statute.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon Powers Sivertsen, Assistant General Counsel, Legal Division, (202) 736–0112; Keith A. Ligon, Senior Counsel, Legal Division, (202) 736–0160; or Christine M. Bradley, Attorney, Legal Division, (202) 736–0106, Legal Division.

SUPPLEMENTARY INFORMATION:

Background

Sections 11(e)(8) through (10) of the FDI Act, 12 U.S.C. 1821(e)(8) through (10), provide special rules for the treatment of qualified financial contracts in the event the FDIC is appointed receiver or conservator for an insured depository institution. The statute seeks, among other things, to protect parties to qualified financial contracts by allowing for the liquidation, termination, and netting of their agreements. The statute defines certain securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements as qualified financial contracts.

Section 11(e)(8)(D) of the FDI Act identifies in some detail the types of contracts to be treated as qualified financial contracts, but additionally affords the FDIC express authority to adopt regulations extending the definition to any similar agreement. 12 U.S.C. 1821(e)(8)(D)(i).

Proposed Rule

In September 1995, the FDIC requested comment on a proposed regulation that would expand the definition of qualified financial contract to include agreements similar to the agreements identified within the FDI Act as qualified financial contracts. (60 FR 48935, Sept. 21, 1995). The FDIC proposed that spot and other short-term foreign exchange agreements and that repurchase agreements on securities issued or guaranteed by the central governments belonging to the Organization for Economic Cooperation and Development (OECD), or that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, be considered as qualified financial contracts under the FDI Act.

The FDIC intended that the definition of qualified financial contract be expanded to include certain instruments that facilitate appropriate liquidity, hedging and financial intermediation operations in financial institutions. Adoption of the regulation to include spot and other short-term foreign exchange contracts and repurchase agreements on qualified foreign government securities within the definition of qualified financial contract is not intended to exclude other agreements that may otherwise qualify to be qualified financial contracts under the language of section 11(e)(8)(D) itself.

Final Rule

The final rule adopted by the Corporation includes spot and other short-term foreign exchange agreements within the definition of qualified financial contract. The final rule clarifies that short-dated foreign exchange transactions such as spots, tomorrow/next day and same day/tomorrow transactions are similar agreements to those agreements identified within the statute as swap agreements.

The final rule also expands the definition of qualified financial contract to include repurchase agreements on securities issued or guaranteed by the central governments of countries that are either full members of the OECD or that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow (repurchase agreement on qualified foreign government securities). The final rule incorporates by reference the definition of ''central government'' as set forth in 12 CFR part 325, appendix A, II.C note 17 [1] and ''OECD-based group of countries'' as set forth in 12 CFR part 325, appendix A, II.B.2, note 12 (and incorporating any changes to these definitions that should occur by future amendment).

Summary of Comments

The FDIC received 8 comment letters on the proposed regulation on the Definition of Qualified Financial Contracts. All commenters strongly support the Corporation's expansion of the definition of qualified financial contract to include spot and other short-term foreign exchange agreements and repurchase agreements on qualified foreign government securities. The commenters generally agree that promulgation of the proposed regulation

[1] The definition of central government includes departments and ministries of the central government, as well as central banks, but does not extend to state, provincial, or local governments or commercial enterprises owned by central governments. Nor does it extend to securities of local government entities or commercial enterprises guaranteed by the central government. 12 CFR part 325, II.C., note 17 (1995).

clarifies the treatment these contracts would receive in the event the FDIC were appointed receiver or conservator of an insured depository institution. Five of the commenters provided additional suggestions on the proposed rule, which are summarized below.

Definition of Spot Foreign Exchange Agreements

Two of the commenters suggested that the final regulation recognize spot and other short-term foreign exchange agreements as qualified financial contracts through the expansion of the existing definition of ‘‘swap agreement’’ as provided in 12 U.S.C. 1821(e)(8)(D)(vi), rather than by creating a definition specific to these short-term agreements. The commenters stated that by including spot and other short-term foreign exchange agreements within the definition of swap agreement, counterparties to the agreements would be assured that a master agreement for any such agreement would be treated as one swap agreement under 12 U.S.C. 1821(e)(8)(D)(vii).

Additionally, the commenters noted that expansion of the definition of swap agreement to include spot foreign exchange agreements is consistent with the manner in which the Bankruptcy Code was amended as a part of the Bankruptcy Reform Act of 1994. 11 U.S.C. 101(53B).

The Corporation agrees with this recommendation and has revised the final regulation to provide that ‘‘spot foreign exchange agreements’’ as defined in the regulation are to be considered qualified financial contracts through the specific expansion of the definition of swap agreement contained at 12 U.S.C. 1821(e)(8)(D)(vi). In light of this revision, the Corporation has determined that the phrase ‘‘or combination of agreements (including master agreements)’’, which appeared in the proposed regulation at § 360.5(b)(1), is unnecessary. Accordingly, this phrase is deleted in § 360.5(c)(1) of the final regulation. A swap agreement includes any combination of such agreements and a master agreement for such agreements is treated as one swap agreement under 12 U.S.C. 1821(e)(8)(vi) and (vii).

Repurchase Agreements on Qualified Foreign Government Securities

The Corporation received 4 comments on the proposal to expand the definition of repurchase agreements which are recognized as qualified financial contracts to include repurchase agreements on securities issued or guaranteed by the central governments of OECD countries. Although all of the commenters supported promulgation of the proposed regulation, three of the commenters suggested that they would prefer that the Corporation not restrict the expansion of the definition of repurchase agreement under 12 U.S.C. 1821(e)(8)(D)(v) to repurchase agreements on securities issued or guaranteed by the OECD countries. The fourth commenter endorsed the Corporation’s proposed expansion of the definition of repurchase agreements to include repurchase agreements issued or guaranteed by the OECD countries, and commented that the proposed scope of the definition was appropriate in order to limit potential exposure to the deposit insurance funds.

One commenter asserted that because repurchase agreements on the securities of any issuer should be recognized as qualified financial contracts through the definition of ‘‘securities contract’’ provided at 12 U.S.C. 1821(e)(8)(D)(ii), the regulation should not be restricted to repurchase agreements on securities issued or guaranteed by the central governments of the OECD countries, and, as a result, any repurchase agreement involving any type of security should be considered a qualified financial contract.

The FDI Act identifies the repurchase agreements which are qualified financial contracts with reference to the Bankruptcy Code definition of repurchase agreement. The Bankruptcy Code defines repurchase agreement as:

> an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers’ acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

11 U.S.C. 101(47). Consequently, the Bankruptcy Code definition and by incorporation the FDI Act definition of repurchase agreement does not include repurchase agreements on qualified foreign government securities. In order for such repurchase agreements to be treated as qualified financial contracts under the current statute, the FDIC is required to promulgate this final regulation under its regulatory authority. 12 U.S.C. 1821(e)(8)(D)(i).

The second comment on the FDIC’s limited expansion of the definition of repurchase agreement under 12 U.S.C. 1821(e)(8)(D)(v) concentrates on the growth of the international market for repurchase agreements on foreign government securities. One commenter stated that the growth of this market is not limited to securities issued or guaranteed by the central governments of the OECD countries. Another commenter submitted that non-OECD government securities were becoming a growing portion of the market for repurchase agreements on foreign government securities. These commenters conclude that there is no difference between repurchase agreements on OECD government securities and repurchase agreements on non-OECD government securities other than the nature of the risks posed by the underlying securities.

Qualified financial contracts are accorded special status under the FDI Act and are treated differently from other contracts upon appointment of the FDIC as conservator or receiver for an insured depository institution. Any expansion of the definition of qualified financial contract results in a commensurate potential increase in cost to the receivership or conservatorship, which indirectly creates potential losses to the deposit insurance funds. By limiting the expansion of the definition of repurchase agreements, the FDIC is balancing the growing internationalization of major banking and financial markets with the potential risks posed to the deposit insurance funds arising from the credit risk inherent in such an expansion.

In 1989, the FDIC implemented risk-based capital guidelines in order to implement the International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Accord).[2] The Basle Committee concluded that claims unconditionally guaranteed by governments of countries that are full members of the OECD should be distinguished from claims similarly guaranteed by governments of non-OECD countries.[3] The Basle

[2] The Basle Accord is a risk-based framework that was originally proposed by the Basle Committee on Banking Supervision (Basle Supervisors’ Committee) and endorsed by the central bank governors of the Group of 10 (G–10) countries in July 1988. The Basle Supervisors’ Committee was comprised at that time of representatives of the central bank and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[3] Long-term claims on banks of OECD countries also generally receive lower risk weights than corresponding claims on the banks of non-OECD countries. See , *e.g.*, Proposed Rule for Capital Maintenance Guidelines, 60 FR 8582 (1995).

Committee analyzed the credit risk and country transfer risk associated with government securities and determined that membership in OECD was an appropriate basis for granting a more favorable risk weighting.[4]

The OECD is an international organization of countries which are committed to market-oriented economic policies, including the promotion of private enterprise and free market prices, liberal trade policies, and the absence of exchange controls. These commitments are expressed in the Code of Liberalisation of Capital Movements and the Code of Liberalisation of Current Invisible Operations (collectively, the Codes). OECD members are expected to ensure that the obligations accepted under either Code are honored, including the removal of legal or administrative regulations that would otherwise frustrate the movement of capital from one member country to another. The OECD countries' adherence to the Codes is generally associated with a relatively low transfer risk when considering transactions between member countries.

The same considerations which were analyzed by the Basle Committee and the FDIC in establishing its risk-based capital guidelines, including the commitments of the OECD countries under the Codes, are important in determining how the definition of qualified financial contract should be expanded under 12 U.S.C. 1821(e)(8)(D)(i). Consequently, the FDIC is retaining the provision restricting the repurchase agreements recognized as qualified financial contracts to repurchase agreements on securities issued or guaranteed by the central governments of the countries belonging to the OECD or that have concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

Other Comments

One commenter suggested that the FDIC conform its definition of qualified financial contract to the definition of ''financial contract'' as used by the Board of Governors of the Federal Reserve System (Board) in Regulation EE, Netting Eligibility for Financial Institutions, 12 CFR part 231 (59 FR 4780, Feb. 2, 1995). Regulation EE defines financial contract with reference to the definition of qualified financial contract contained in the FDI Act (12 U.S.C. 1821(e)(8)(D), as amended), except that Regulation EE specifies that a forward contract includes a contract with a maturity date of two days or less after the date the contract is entered into (i.e., a ''spot'' contract). 12 CFR 231.2(c)(1995).

The FDIC has determined that the definition of financial contract as used by the Board in Regulation EE does not affect the FDIC's definition of qualified financial contract under the FDI Act. As the Board stated in the final publication of Regulation EE, the definition of financial contract within Regulation EE is relevant only to a determination of whether a particular institution qualifies as a ''financial institution'' under the regulation. Once an institution qualifies as a financial institution under Regulation EE, its ability to avail itself of the netting provisions as set forth in 12 U.S.C. 4401–4407 is determined with reference to the definition of ''netting contract'' contained at 12 U.S.C. 4402(14). (59 FR 4780, 4783, Feb. 2, 1994). The FDIC has determined that its proposed regulation on the Definition of Qualified Financial Contracts does not change the interpretation of Regulation EE or the netting provisions of sections 4401–4407 of title 12.

Finally, one commenter requested that the FDIC delete the provisos outlined in paragraph (d) of the § 360.5.[5] The FDIC has determined that paragraph (d) should be retained to clarify that nothing in this regulation is intended to affect any rights and powers the Corporation might otherwise have in its capacity of insurer and regulator of certain depository institutions.

In order to facilitate the continued participation of United States financial institutions in major financial markets after January 1, 1996, the Board of Directors has determined that good cause exists for waiving the 30-day delayed effective date ordinarily required by the Administrative Procedures Act (5 U.S.C. 553). The Board of Directors has also determined that section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160)(1994) (RCDRIA) does not apply to the issuance of the final rule.[6]

List of Subjects in 12 CFR Part 360

Banks, banking, Saving associations.

For the reasons set out in the preamble, the FDIC Board of Directors amends 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(11), 1821(e)(8)(D)(i), 1823(c)(4); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

2. Section 360.5 is added to part 360 to read as follows:

§ 360.5 Definition of qualified financial contracts.

(a) *Authority and purpose.* Sections 11(e) (8) through (10) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e) (8) through (10), provide special rules for the treatment of qualified financial contracts of an insured depository institution for which the FDIC is appointed conservator or receiver, including rules describing the manner in which qualified financial contracts may be transferred or closed out. Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e)(8)(D)(i), grants the Corporation authority to determine by regulation whether any agreement, other than those identified within section 11(e)(8)(D), should be recognized as qualified financial contracts under the statute. The purpose of this section is to identify additional agreements which the Corporation has determined to be qualified financial contracts.

(b) *Repurchase agreements.* The following agreements shall be deemed ''repurchase agreements'' under section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(v)): A repurchase agreement on qualified foreign government securities is an agreement or combination of agreements (including master agreements) which provides for the transfer of securities that are direct obligations of, or that are fully guaranteed by, the central governments (as set forth at 12 CFR part 325, appendix A, section II.C, n. 17, as may be amended from time to time) of the OECD-based group of countries (as set forth at 12 CFR part 325, appendix A, section II.B.2., note 12 as may be amended from time to time) against the transfer of funds by the transferee of such securities with a simultaneous agreement by such transferee to transfer to the transferor thereof securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

[4] Transfer risk generally refers to the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of needed foreign exchange in the country of the obligor. See, *e.g.*, 60 FR 8582 (1995).

[5] Paragraph (d) of § 360.5 appeared as paragraph (c) in the Proposed Rule.

[6] Section 302 of RCDRIA provides that any new regulations and amendments to existing regulations which impose reporting, disclosure or other requirements on insured depository institutions may only take effect on the first day of a calendar quarter unless certain exceptions are satisfied.

(c) *Swap agreements.* The following agreements shall be deemed ''swap agreements'' under section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(vi)): A spot foreign exchange agreement is any agreement providing for or effecting the purchase or sale of one currency in exchange for another currency (or a unit of account established by an intergovernmental organization such as the European Currency Unit) with a maturity date of two days or less after the agreement has been entered into, and includes short-dated transactions such as tomorrow/next day and same day/tomorrow transactions.

(d) Nothing in this section shall be construed as limiting or changing a party's obligation to comply with all reasonable trading practices and requirements, non-insolvency law requirements and any other requirements imposed by other provisions of the FDI Act. This section in no way limits the authority of the Corporation to take supervisory or enforcement actions, or to otherwise manage the affairs of a financial institution for which the Corporation has been appointed conservator or receiver.

By Order of the Board of Directors.

Dated at Washington, DC, this 19th day of December, 1995.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–31247 Filed 12–26–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 500, 504, 510, 515, 529, 533, 543, 545, 552, 556, 562, 563, 563d, 563g, 571, 583, and 584

[No. 95–201]

RIN 1550–AA85

Regulatory Review

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS or Office) is today issuing a final rule eliminating duplicative, unduly burdensome, and unnecessary regulations. These amendments result from a review of OTS regulations pursuant to section 303(a) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) and the Regulatory Reinvention Initiative of the Vice President's National Performance Review.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Francis E. Raue, Policy Analyst, Supervision Policy, (202) 906–5750; or Valerie J. Lithotomos, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6439, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS conducted a comprehensive review of its regulations in the spring of 1995 pursuant to section 303 of CDRIA and the Administration's Reinvention Initiative. Staff in both the Washington and Regional Offices reviewed the regulations and policy statements contained in Chapter V of Title 12 of the Code of Federal Regulations (CFR) to: ''streamline and modify those regulations and policies in order to improve efficiency, reduce unnecessary costs, * * * eliminate unwarranted constraints on credit availability [and] remove inconsistencies and outmoded and duplicative requirements.'' [1] The OTS sought industry input through town meetings and industry roundtable meetings held by the Acting Director and Regional Directors.

As a result of this effort, the OTS identified a number of ways in which its regulations could be improved and, on August 28, 1995, issued a notice of proposed rulemaking.[2] The preamble to the proposed rulemaking described a multi-step process that the agency intends to follow to implement the results of its regulatory review.

The first step in that process is to eliminate regulations that are clearly outdated, duplicative, or otherwise unnecessary. Today's final rule draws this first step to a close.

The second step is to conduct focused, intensive reviews of key areas of OTS's regulations in an effort to find additional ways to streamline and reduce burden. This effort is already underway. Over the next several months, OTS expects to issue proposals that will reduce the burden imposed by its regulations governing lending, subsidiaries, corporate governance, and preemption.

A third step in the review process is to determine whether the OTS's regulations should be reorganized to make them more user-friendly. In the August 28 preamble, the agency posed five questions regarding the overall structure and content of its regulations.[3] The OTS appreciates the comments received in response to these questions and will take them into consideration in future rulemakings that specifically address the organizational issues raised by the comments.

II. Summary of Comments

The August 28, 1995, notice of proposed rulemaking targeted approximately eight percent of OTS's regulations for immediate repeal. The public comment period on the August 28 proposal closed on October 27, 1995. Two federal savings banks, one savings and loan holding company, and one national trade association submitted comments. In addition to its comment letter, the national trade association, America's Community Bankers (ACB), included the results of a survey which ACB sent to a number of OTS-supervised institutions.[4]

Generally all of the commenters supported the OTS initiative to streamline and eliminate unnecessary and burdensome rules in the proposal. They indicated that the deletions and modifications, with a few exceptions, would be helpful.

However, one commenter recommended that paragraphs (a) and (c) of § 545.15 not be deleted. Paragraph (a) provides generally that a Federal savings association shall require at least seven days advance notice of withdrawals from savings accounts that do not have fixed or minimum terms of at least seven days. The commenter asked that this paragraph be retained because it believes that the elimination of the seven-day withdrawal notice on savings accounts may conflict with

[1] Section 303 of CDRIA, 12 U.S.C. 4803(a)(1)(A), (B).

[2] See 60 FR 44442 (August 28, 1995).

[3] The specific questions in the preamble were:

1. Should OTS consolidate common definitions of general applicability now in parts 541, 561, 563, and 583 in a new part 501?

2. Should OTS consolidate the remaining safety and soundness regulations in part 545 into part 563?

3. Should OTS delete regulations that only repeat statutory authority or list an implied power?

4. Should policy statements in parts 556 and 571 be deleted and either recast as regulations or placed as guidance in the appropriate regulatory handbook?

5. What is the best method of communicating different types of information, guidance, policies, restrictions, and requirements?

[4] ACB is a trade association representing 2,000 savings associations and community financial institutions and related business firms. ACB's survey was sent to 94 OTS-supervised institutions; 43 institutions completed the survey. As reported by ACB, 86 percent of the respondents deem simplification of OTS rules to be worth the time and attention of the OTS and the industry.