Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Dated November 18, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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FEDERAL DEPOSIT INSURANCE CORPORATION

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies.

SUMMARY: This report has been prepared by the FDIC pursuant to Section 37(c) of the Federal Deposit Insurance Act (12 U.S.C 1831n(c)). Section 37(c) requires each federal banking agency to report to the Committee on Banking and Financial Services of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate any differences between any accounting or capital standard used by such agency and any accounting or capital standard used by any other such agency. The report must also contain an explanation of the reasons for any discrepancy in such accounting and capital standards and must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, telephone (202) 898-8906.

SUPPLEMENTARY INFORMATION: The text of the report follows: Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies.

A. Introduction

This report has been prepared by the Federal Deposit Insurance Corporation (FDIC) pursuant to Section 37(c) of the Federal Deposit Insurance Act, which requires the agency to submit a report to specified Congressional Committee describing any differences in regulatory capital and accounting standards among the federal banking and thrift agencies, including an explanation of the reasons for these differences. Section 37(c) also requires the FDIC to publish this report in the **Federal Register**. This report covers differences existing during 1995 and 1996 and developments affecting these differences.

The FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) (hereafter, the banking agencies) have substantially similar leverage and risk-based capital standards. While the Office of Thrift Supervision (OTS) employs a regulatory capital framework that also includes leverage and risk-based capital requirements, it differs in several respects from that of the banking agencies. Nevertheless, the agencies view the leverage and risk-based capital requirements as minimum standards and most institutions are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the banking agencies through December 31, 1996, have been substantially consistent with generally accepted accounting principles (GAAP). In the limited number of cases where the bank Call Report standards differed from (GAAP), the regulatory reporting requirements were intended to be more conservative than GAAP. The OTS requires each savings association to file the Thrift Financial Report (TFR), the reporting standards for which are consistent with GAAP. Thus, the reporting standards applicable to the bank Call Report have differed in some respect from the reporting standards applicable to the TFR.

On November 3, 1995, the FFIEC announced that it had approved the adoption of GAAP as the reporting basis for the balance sheet, income statement, and related schedules in the Call Report, effective with the March 31, 1997, report date. On December 31, 1996, the FFIEC notified banks about the Call Report revisions for 1997, including the previously announced move to GAAP. Adopting GAAP as the reporting basis for recognition and measurement purposes in the basic schedules of the Call Report was designed to eliminate existing differences between bank regulatory reporting standards and GAAP, thereby producing greater consistency in the information collected in bank Call Reports and general purpose financial statements and reducing regulatory burden. In addition, the move to GAAP for Call Report purposes in 1997 should for the most part eliminate the differences in accounting standards among the agencies.

Section 303 of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994 (12 U.S.C. 4803) requires the banking agencies and the OTS to conduct a systematic review of the regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate inconsistencies. It also directs the four agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be ‘‘consistent with the principles of safety and soundness, statutory law and policy, and the public interest.’’ The four agencies’ efforts to eliminate existing differences among their regulatory capital standards as part of the Section 303 review are discussed in the following section.

B. Differences in Capital Standards Among the Federal Banking and Thrift Agencies

B.1. Minimum Leverage Capital

The banking agencies have established leverage capital standards based upon the definition of tier 1 (or core) capital contained in their risk-based capital standards. These standards require the most highly-rated banks (i.e., those with a composite rating of ‘‘1’’ under the Uniform Financial Institutions Rating System) to maintain a minimum leverage capital ratio of at least 3 percent if they are not anticipating or experiencing any significant growth and meet certain

other conditions. All other banks must maintain a minimum leverage capital ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ration of not less than 4 percent).

The OTS has a 3 percent core capital and a 1.5 percent tangible capital leverage requirement for savings associations. Consistent with the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the OTS has proposed revisions to its leverage standards for savings associations so that its minimum leverage standard will be at least as stringent as the revised leverage standard that the OCC applies to national banks. However, from a practical standpoint, the 4 percent leverage requirement to be ''adequately capitalized'' under the OTS' Prompt Correction Action rule is the controlling standard for savings associations.

As a result of the Section 303 review of the four agencies' regulatory capital standards, the agencies are considering adopting a uniform leverage requirement that would subject institutions rated a composite 1 under the Uniform Financial Institutions Rating System to a minimum 3 percent leverage ratio and all other institutions to a minimum 4 percent leverage ratio. This change would simplify and streamline the banking agencies' leverage rules and would make all four agencies' rules in this area uniform. On February 4, 1997, the FDIC Board of Directors approved the publication for public comment of a proposed amendment to the FDIC's leverage capital standards that would implement this change. This proposal is to be published jointly with the other agencies.

B.2. Interest Rate Risk

Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) mandates that the agencies' risk-based capital standards take adequate account of interest rate risk. The banking agencies requested comment in August 1992 and September 1993 on proposals to incorporate interest rate risk into their risk-based capital standards. In August 1995, each of the banking agencies amended its capital standards to specifically include an assessment of a bank's interest rate risk, as measured by its exposure to declines in the economic value of its capital due to changes in interest rates, in the evaluation of bank capital adequacy. At the same time, the banking agencies issued a proposed joint policy statement describing the process the agencies would use to measure and assess the exposer of the economic value of a bank's capital. After considering the comments on the proposed policy statement, the banking agencies issued a Joint Agency Policy Statement on Interest Rate Risk in June 1996 which provides guidance on sound practices for managing interest rate risk. This policy statement does not establish a standardized measure of interest rate risk nor does it create an explicit capital charge for interest create risk. Instead, the policy statement identifies the standards upon which the agencies will evaluate the adequacy and effectiveness of a bank's interest rate risk management.

In 1993, the OTS adopted a final rule which adds an interest rate risk component to its risk-based capital standards. Under this rule, savings associations with a greater than normal interest rate exposure must take a deduction from the total capital available to meet their risk-based capital requirement. The deduction is equal to one half of the difference between the institution's actual measured exposure and the normal level of exposure. The OTS has partially implemented this rule by formalizing the review of interest rate risk; however, no deductions from capital are being made. As described above, the approach adopted by the banking agencies differs from that of the OTS.

B.3. Subsidiaries

The banking agencies generally consolidate all significant majority-owned subsidiaries of the parent organization for regulatory capital purposes. The purpose of this practice is to assure that capital requirements are related to all of the risks to which the bank ins exposed. For subsidiaries which are not consolidated on a line-for-line basis, their balance sheets may be consolidated on a pro-rata basis, bank investments in such subsidiaries may be deducted entirely form capital, or the investments may be risk-weighted at 100 percent, depending upon the circumstances. These options for handling subsidiaries for purposes of determining the capital adequacy of the parent organization provide the banking agencies with the flexibility necessary to ensure that institutions maintain capital levels that are commensurate with the actual risks involved.

Under OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries engaged in activities that are permissible for national banks and subsidiaries engaged in ''impermissible'' activies for national banks. For regulatory capital purposes, subsidiaries of savings associations that engage only in permissible activities are consolidated on a line-for-line basis, if majority-owned, and on a pro rata basis, if ownership is between 5 percent and 50 percent. As a general rule, investments in, and loans to, subsidiaries that engage in impermissible activities are deducted when determing the capital adequacy of the parent. However, for subsidiaries which were engaged in impermissible activities prior to April 12, 1989, investments in, and loans to, such subsidiaries that were outstanding as of that date were grandfathered and were phased out of capital over a five-year transition period that expired on July 1, 1994. During this transition period, investments in subsidiaries engaged in impermissible activities which had not been phased out of capital were consolidated on a pro rata basis. The phase-out provisions were amended by the Housing and Community Development Act of 1992 with respect to impermissible and activities. The OTS was permitted to extend the transition period until July 1, 1996, on a case-by-case basis if certain conditions were met.

B.4. Intangible Assets

The banking agencies' rules permit purchased credit card relationships and mortgage servicing rights to count toward capital requirements, subject to certain limits. Both forms of intangible assets are in the aggregate limited to 50 percent of Tier 1 capital. In addition, purchased credit card relationships alone are restricted to no more than 25 percent of an institution's Tier 1 capital. Any mortgage servicing rights and purchased credit card relationships that exceed these limits, as well as all other intangible assets such as goodwill and core deposit intangibles, are deducted from capital and assets in calculating an institution's Tier 1 capital.

In February 1994, the OTS issued a final rule making its capital treatment of intangible assets generally consistent with the banking agencies' rules. However, the OTS rule grandfathers preexisting core deposit intangibles up to 25 percent of core capital and all purchased mortgage servicing rights acquired before February 1990.

B.5. Capital Requirements for Recourse Arrangements

B.5.a. Leverage Capital Requirements—Through December 31, 1996, the banking agencies required full leverage capital charges on most assets sold with recourse, even when the recourse is limited. This included transactions where the recourse arises

because the seller, as servicer, must absorb credit losses on the assets being serviced. Two exceptions to this general rule pertained to certain pools of first lien one-to-four family residential mortgages and to certain agricultural mortgage loans. As required by Section 208 of the RCDRIA, an additional exception took effect in 1995 for small business loans and leases sold with recourse by ''qualified insured depository institutions.'' Banks had to maintain leverage capital against most assets sold with recourse because the banking agencies' regulatory reporting rules that were in effect through December 31, 1996, generally did not permit assets sold with recourse to be removed from a bank's balance sheet (see ''Sales of Assets With Recourse'' in Section C.1. below for further details). As a result, such assets continued to be included in the asset base which was used to calculate a bank's leverage capital ratio.

Because the regulatory reporting rules for thrifts enable them to remove assets sold with recourse from their balance sheets when such transactions qualify as sales under GAAP, the OTS capital rules do not require thrifts to hold leverage capital against such assets.

As a result of the adoption of GAAP as the reporting basis for bank Call Reports in 1997, banks will no longer be precluded from removing assets transferred with recourse from their balance sheets if the transfers qualify for sale treatment under GAAP. Thus, this capital difference disappears in 1997.

B.5.b. Low Level Recourse Transactions—The banking agencies and the OTS generally require a full risk-based capital charge against assets sold with recourse. However, in the case of assets sold with limited recourse, the OTS has limited the capital charge to the lesser of the amount of the recourse or the actual amount of capital that would otherwise be required against that asset, i.e., the full effective risk-based capital charge. This is known as the ''low level recourse'' rule.

The banking agencies proposed in May 1994 to adopt the low level recourse rule that the OTS already had in place. Such action was mandated four months later by Section 350 of the RCDRIA. The FDIC adopted the low level recourse rule in March 1995, and the other banking agencies have taken similar action. Hence, this difference in capital standards has been eliminated.

B.5.c. Senior-Subordinated Structures—Some securitized asset arrangements involve the creation of senior and subordinated classes of securities. When a bank originates such a transaction and retains the subordinated interest, the banking agencies require that capital be maintained against the entire amount of the asset pool. However, when a bank acquires a subordinated interest in a pool of assets that it did not own, the banking agencies assign the investment in the subordinated security to the 100 percent risk weight category.

In general, the OTS requires a thrift that holds the subordinated interest in a senior-subordinated structure to maintain capital against the entire amount of the underlying asset pool regardless of whether the subordinated interest has been retained or has been purchased.

In May 1994, the banking agencies proposed to require banking organizations that purchase subordinated interests which absorb the first dollars of losses from the underlying assets to hold capital against the subordinated interest plus all more senior interests. This proposal was part of a larger proposal issued jointly by the four agencies to address the risk-based capital treatment of recourse and direct credit substitutes (i.e., guarantees on a third party's assets). The four agencies have considered the comments on the entire proposal and have been developing a revised proposal on recourse and direct credit substitutes that will also encompass the risk-based capital treatment of asset securitization transactions.

B.5.d. Recourse Servicing—The right to service loans and other assets may be retained when the assets are sold. This right also may be acquired from another entity. Regardless of whether servicing rights are retained or acquired, recourse is present whenever the servicer must absorb credit losses on the assets being serviced. The banking agencies and the OTS require risk-based capital to be maintained against the full amount of assets upon which a selling institution, as servicer, must absorb credit losses. Additionally, the OTS applies a capital charge to the full amount of assets being serviced by a thrift that has purchased the servicing from another party and is required to absorb credit losses on the assets being serviced.

The agencies' aforementioned May 1994 proposal also would require banking organizations that purchase certain loan servicing rights which provide loss protection to the owners of the loans serviced to hold capital against those loans. The treatment of purchased recourse servicing is also being addressed in the revised proposal on recourse and direct credit substitutes that the agencies are developing.

B.6. Collateralized Transactions

The FRB and the OCC have lowered from 20 percent to zero percent the risk weight accorded collaterialized claims for which a positive margin of protection is maintained on a daily basis by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government or the central governments of countries that are members of the Organization of Economic Cooperation and Development (OECD).

The FDIC and the OTS still assign a 20 percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government or OECD central governments.

As part of their Section 303 review of capital standards, the banking and thrift agencies issued a joint proposal in August 1996 that would permit collateralized claims that meet criteria that are uniform among all four agencies to be eligible for a zero percent risk weight. In general, this proposal would allow less capital to be held by institutions supervised by the FDIC and the OTS for transactions collateralized by cash or U.S. or OECD government securities. The proposal would eliminate the differences among the agencies regarding the capital treatment of collateralized transactions.

B.7. Limitation on Subordinated Debt and Limited-Life Preferred Stock

Consistent with the Basle Accord, the banking agencies limit the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to an amount not to exceed 50 percent of Tier 1 capital. In addition, all maturing capital instruments must be discounted by 20 percent in each of the last five years before maturity. The banking agencies adopted this approach in order to emphasize equity versus debt in the assessment of capital adequacy.

The OTS has no limitation on the ratio of maturing capital instruments as part of Tier 2 capital. Also, for all maturing instruments issued on or after November 7, 1989 (those issued before are grandfathered with respect to the discounting requirement), thrifts have the option of using either (a) the discounting approach used by the banking regulators, or (b) an approach which allows for the full inclusion of all such instruments provided that the amount maturing in any one year does not exceed 20 percent of the thrift's total capital.

B.8. Presold Residential Construction Loans

The four agencies assign a 50 percent risk weight to loans that a builder has obtained to finance the construction of one-to-four family residential properties. These properties must be presold, and the lending relationships must meet certain other criteria. The OTS and OCC rules indicate that the property must be presold before the construction loan is made in order for the loan to qualify for the 50 percent risk weight. The FDIC and FRB permit loans to builders for residential construction to qualify for the 50 percent risk weight once the property is presold, even if that event occurs after the construction loan has been made.

As a result of the Section 303 review of the four agencies' regulatory capital standards, the OTS and OCC are considering adopting the treatment of presold residential construction loans followed by the FDIC and the FRB, thereby making the agencies' rules in this area uniform. This would not require an amendment of the FDIC's risk-based capital standards.

B.9. Nonresidential Construction and Land Loans

The banking agencies assign loans for nonresidential real estate development and construction purposes to the 100 percent risk weight category. The OTS generally assigns these loans to the same 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, the excess portion is deducted from capital.

B.10. Privately-Issued Mortgage-Backed Securities

The banking agencies, in general, place privately-issued mortgage-backed securities in either the 50 percent or 100 percent risk-weight category, depending upon the appropriate risk category of the underlying assets. However, privately-issued mortgage-backed securities, if collateralized by government agency or government-sponsored agency securities, are generally assigned to the 20 percent risk weight category.

The OTS assigns privately-issued high-quality mortgage-related securities to the 20 percent risk weight category. These are, generally, privately-issued mortgage-backed securities with AA or better investment ratings.

B.11. Other Mortgage-Backed Securities

The banking agencies and the OTS automatically assign to the 100 percent risk weight category certain mortgage-backed securities, including interest-only strips, principal-only strips, and residuals. However, once the OTS' interest rate risk amendments to its risk-based capital standards take effect, stripped mortgage-backed securities will be reassigned to the 20 percent or 50 percent risk weight category, depending upon these securities' characteristics. Residuals will remain in the 100 percent risk weight category.

B.12. Junior Liens on One-to-Four Family Residential Properties

In some cases, a bank may make two loans on a single residential property, one secured by a first lien, the other by a second lien. In this situation, the FRB and the OTS view both loans as a single extension of credit secured by a first lien and assign the combined loan amount a 50 percent risk weight if this amount represents a prudent loan-to-value ratio. If the combined amount exceeds a prudent loan-to-value ratio, the loans are assigned to the 100 percent risk weight category. The FDIC also combines the first and second liens to determine the appropriateness of the loan-to-value ratio, but it applies the risk weights differently than the FRB and the OTS. If the combined loan amount represents a prudent loan-to-value ratio, the FDIC risk weights the first lien at 50 percent and the second lien at 100 percent; otherwise, both liens are risk-weighted at 100 percent. This combining of first and second liens is intended to avoid possible circumvention of the capital requirement and to capture the risks associated with the combined loans.

The OCC treats all first and second liens separately. It assigns the loan secured by the first lien to the 50 percent risk weight category and the loan secured by the second lien to the 100 percent risk weight category.

As a result of the Section 303 review of the four agencies' regulatory capital standards, the agencies are considering adopting the OCC's treatment of junior liens on one-to-four family residential properties in order to eliminate this difference among the agencies' risk-based capital guidelines. On February 4, 1997, the FDIC Board of Directors approved the publication for public comment of a proposed amendment to the FDIC'S guidelines that would treat first and junior liens separately with qualifying first liens risk-weighted at 50 percent and all junior liens risk-weighted at 100 percent. This amendment, which is to be published jointly with the other agencies, will simplify the risk-based capital standards and treat all junior liens consistently.

B.13. Mutual Funds

Rather than looking to a mutual fund's actual holdings, the banking agencies assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. Thus, the banking agencies take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund because the composition and risk characteristics of its future holdings cannot be known in advance. In no case, however, may a risk-weight of less than 20 percent be assigned to an investment in a mutual fund.

The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time, but not less than 20 percent. In addition, both the OTS and the OCC guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a pro rata basis. However, the OTS and the OCC apply the pro rata allocation differently. While the OTS applies the allocation based on the actual holdings of the mutual fund, the OCC applies it based on the highest amount of holdings the fund is permitted to hold as set forth in its prospectus.

The four agencies' Section 303 review of their regulatory capital standards has led them to consider adopting the OCC's pro rata allocation alternative for risk weighting investments in mutual funds, thereby making their risk-based capital rules in this area uniform. On February 4, 1997, the FDIC Board of Directors approved the publication for public comment of a proposed amendment to the FDIC's risk-based capital standards that would allow banks to apply a pro rata allocation of risk weights to a mutual fund based on the limits set forth in the prospectus. This proposal is to be published jointly with the other agencies.

B.14. "Covered Assets"

The banking agencies generally place assets subject to guarantee arrangements by the FDIC or the former Federal Savings and Loan Insurance Corporation in the 20 percent risk weight category. The OTS places these "covered assets" in the zero percent risk-weight category.

B.15. Pledged Deposits and Nonwithdrawable Accounts

Instruments such as pledged deposits, nonwithdrawable accounts, Income Capital Certificates, and Mutal Capital Certificates do not exist in the banking industry and are not addressed in the capital guidelines of the three banking agencies.

The capital guidelines of the OTS permit savings associations to include pledged deposits and nonwithdrawable accounts that meet OTS criteria, Income Capital Certificates, and Mutal Capital Certificates in capital.

B.16. Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 may defer and amortize certain losses related to agricultural lending that were incurred on or before December 31, 1991. These losses must be amortized over seven years. The unamortized portion of these losses is included as an element of Tier 2 capital under the banking agencies' risk-based capital standards.

Thrifts were not eligible to participate in the agricultural loan loss amortization program established by this statute.

C. Differences in Reporting Standards Among the Federal Banking and Thrift Agencies

C.1. Sales of Assets with Recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse before January 1, 1997, is recognized as a sale if: (1) the transferor surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

Through December 31, 1996, the practice of the banking agencies generally has been to allow banks to report transfers of receivables as sales only when the transferring institution: (1) retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, except for the types of transfers noted below, transfers of assets with recourse could not normally be reported as sales on the Call Report. However, this general rule did not apply to the transfer of first lien one-to-four family residential mortgage loans and agricultural mortgage loans under one of the government programs (Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and Federal Agricultural Mortgage Corporation). Transfers of mortgages under these programs were treated as sales for Call Report purposes, provided the transfers would be reported as sales under GAAP. Furthermore, private transfers of first lien one-to-four family residential mortgages also were reported as sales if the transferring institution retained only an insignificant risk of loss on the assets transferred. However, under the risk-based capital framework, transfers of mortgage loans with recourse under the government programs or in private transfers that qualify as sales for Call Report purposes are viewed as off-balance sheet items that are assigned a 100 percent credit conversion factor. Thus, for risk-based capital purposes, capital is generally required to be held for the full amount outstanding of mortgages sold with recourse in such transactions, subject to the low-level recourse rule discussed earlier in this report.

Through year-end 1996, the OTS accounting policy has been to follow FASB Statement No. 77. However, in the calculation of risk-based capital under the OTS guidelines, assets sold with recourse that have been removed from the balance sheet in accordance with Statement No. 77 are converted at 100 percent and also are subject to the low-level recourse rule. This effectively negates that sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes.

Another exception to the banking agencies' general rule for reporting transfers with recourse applies to sales of small business loans and leases with recourse by ''qualified insured depository institutions.'' Section 208 of the RCDRIA specifies that the regulatory reporting requirements applicable to these recourse transactions must be consistent with GAAP. Section 208 also requires the banking agencies and the OTS to adopt more favorable risk-based capital requirements for these recourse exposures than those described above. During August and September 1995, the FRB published a final rule and the FDIC, the OCC, and the OTS published interim rules (with requests for comment) which implemented Section 208 in a uniform manner.

C.2. Futures and Forward Contracts

Through December 31, 1996, the banking agencies have not, as a general rule, permitted the deferral of losses on futures and forward contracts used for hedging purposes. All changes in market value of futures and forward contracts are reported in current period income. The banking agencies adopted this reporting standard prior to the issuance of FASB Statement No. 80, which permits hedge or deferral accounting under certain circumstances. Hedge accounting in accordance with FASB Statement No. 80 is permitted by the banking agencies only for futures and forward contracts used in mortgage banking operations.

The OTS practice is to follow GAAP for futures and forward contracts. In accordance with FASB Statement No. 80, when hedging criteria are satisfied, the accounting for a contract is related to the accounting for the hedged item. Changes in the market value of the contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in the deferral of losses which are reflected as basis adjustments to assets and liabilities on the balance sheet.

C.3. Excess Servicing Fees

As a general rule, through December 31, 1996, the banking agencies did not follow GAAP for excess servicing fees, but required a more conservative treatment. For loan sales that occurred prior to 1997, excess servicing arose when loans were sold with servicing retained and the stated servicing fee rate exceeded a normal servicing fee rate. Except for sales of pools of first lien one-to-four family residential mortgages for which the banking agencies' approach was consistent with the provisions of FASB Statement No. 65 that were in effect through year-end 1996, excess servicing fee income in banks was to be reported as realized over the life of the transferred asset.

In contrast, for loan sales that occurred prior to 1997, the OTS allowed the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach was consistent with the then applicable provisions of FASB Statement No. 65.

C.4. Offsetting of Assets and Liabilities

FASB Interpretation No. 39, ''Offsetting of Amounts Related to Certain Contracts,'' became effective in 1994. Interpretation No. 39 interprets the longstanding accounting principle that ''the offsetting of assets and liabilities in the balance sheet is improper except where a right of setoff exists.'' Under Interpretation No. 39, four conditions must be met in order to demonstrate that a right of setoff exists. Then, a debtor with ''a valid right of setoff may offset the related asset and liability and report the net amount.'' The banking agencies allow banks to apply Interpretation No. 39 for Call Report purposes solely as it relates to on-balance sheet amounts associated with off-balance sheet conditional and

exchange contracts (e.g., forwards, interest rate swaps, and options). Under the Call Report instructions in effect through December 31, 1996, the netting of other assets and liabilities is not permitted unless specifically required by the instructions.

The OTS practice has been to follow GAAP as it relates to offsetting in the balance sheet.

C.5. Push Down Accounting

Push down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of a substantive change in control. Under push down accounting, when a depository institution is acquired, yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution as well as in any consolidated financial statements of the institution's parent.

The banking agencies require push down accounting when there is at least a 95 percent change in ownership. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission.

The OTS requires push down accounting when there is at least a 90 percent change in ownership.

C.6. Negative Goodwill

Under Accounting Principles Board Opinion No. 16, ''Business Combinations,'' negative goodwill arises when the fair value of the net assets acquired in a purchase business combination exceeds the cost of the acquisition and a portion of this excess remains after the values otherwise assignable to the acquired noncurrent assets have been reduced to a zero value.

The banking agencies require negative goodwill to be reported as a liability on the balance sheet and do not permit it to be netted against goodwill that is included as an asset. This ensures that all goodwill assets are deducted in regulatory capital calculations consistent with the internationally agreed-upon Basle Accord.

The OTS permits negative goodwill to offset goodwill assets on the balance sheet.

C.7. In-Substance Defeasance of Debt

In-substance defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust established solely for satisfying the debt. According to FASB Statement No. 76, the liability is considered extinguished for financial reporting purposes if the possibility that the debtor would be required to make further payments on the debt, beyond the funds placed in the trust, is remote. With defeasance, the debt is netted against the assets placed in the trust, a gain or loss results in the current period, and both the assets placed in the trust and the liability are removed from the balance sheet.

For Call Report purposes through December 31, 1996, the banking agencies did not permit banks to report the defeasance of their liabilities in accordance with Statement No. 76. Instead, banks were to continue reporting any defeased debt as a liability and the securities contributed to the trust as assets. No netting was permitted, nor was any recognition of gains or losses on the transaction allowed. The banking agencies did not adopt Statement No. 76 because of uncertainty regarding the irrevocability of trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors. In June 1996, the FASB issued a new accounting standard (FASB Statement No. 125) that supersedes Statement No. 76 for defeasance transactions occurring after 1996, thereby bringing GAAP in line with the Call Report treatment for these transactions.

The OTS practice has been to follow GAAP for defeasance transactions.

Dated at Washington, D.C., this 17th day of November, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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BILLING CODE 6714–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Notice of Opportunity to Submit Amicus Curiae Briefs in an Unfair Labor Practice Proceeding Pending Before the Federal Labor Relations Authority; FLRA Case No. WA–CA–40743

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file amicus curiae briefs in a case pending before the Federal Labor Relations Authority. In the subject case, the Authority is determining whether section 2(d) of Executive Order 12871 constitutes an agency election to bargain on matters set forth in section 7106(b)(1) of the Federal Service Labor-Management Relations Statute (5 U.S.C. 7106(b)(1)), and whether such an election can be enforced in Authority unfair labor practice and subsequent court review proceedings.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as amici curiae on a significant issue arising in a case pending before the Authority. The issue is common to a number of other cases also pending before the Authority. The Authority is considering the cases pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1994 & Supp. II 1996) (Statute). The issue concerns an agency's obligation to negotiate on subjects set forth in section 7106(b)(1) of the Statute in light of the provisions of sections 2(d) and 3 of Executive Order 12871. Section 2(d) of Executive Order 12871 provides in relevant part that agency heads subject to Chapter 71 of title 5, United States Code shall ''negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same[.]'' Section 3 of Executive Order 12871 provides in relevant part that it ''is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, [or] its agencies * * *.''

DATES: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Case Control Office by 5 p.m. on Thursday, December 18, 1997. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

ADDRESSES: Mail or deliver briefs to Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Room 415, Washington, D.C. 20424–0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: The case presenting the issue on which amicus briefs are being solicited is before the Authority on exceptions to a recommended decision and order of an Administrative Law Judge (Judge) resolving unfair labor practice allegations. The following summary is offered.