Government Securities Act
Regulations: Custodial Holdings of
Government Securities

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (“Treasury,” “We,” or “Us”) is issuing in final form an amendment to the regulations issued under the Government Securities Act of 1986, as amended (“GSA”), that are applicable to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of customers. The provisions of the GSA regulations for custodial holding of government securities held by depository institutions generally provide an exemption from these rules for a depository institution’s holdings of such government securities that are subject to the fiduciary standards of the Board of Governors of the Federal Reserve System (“the Board”), the Federal Deposit Insurance Corporation (“FDIC”), or the Office of the Comptroller of the Currency (“OCC”). We published a proposed rule amendment to the exemption on September 23, 2004, and are now adopting the change as proposed. Specifically, this amendment modifies the exemption to include savings associations subject to the fiduciary standards of the Office of Thrift Supervision (“OTS”).

EFFECTIVE DATE: May 23, 2005.


FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), Lee Grandy (Associate Director), or Kevin Hawkins (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 304–3632 or e-mail us at govsecreg@bpd.treas.gov.

SUPPLEMENTARY INFORMATION: On October 6, 2003, we received a letter from the OTS requesting that the exemption at 17 CFR 450.3 of the GSA regulations for holdings subject to fiduciary standards be expanded to include OTS-regulated savings associations.

On September 23, 2004, we published a proposed amendment to § 450.3 that would make OTS-regulated savings associations eligible for the exemption under the same conditions that apply to depository institutions regulated by the OCC, the FDIC and the Board.

We received one comment letter that strongly supported the proposed amendment. Therefore, as explained in more detail below, we are adopting the rule as proposed.

I. Background

A. GSA Regulations

Title II of the GSA requires Treasury to prescribe, by regulation, standards for the safeguarding and use of government securities. The standards apply to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of a customer. The regulations are to provide for the adequate segregation of government securities subject to repurchase transactions. Prior to the adoption of regulations, Treasury is required to determine, with respect to each appropriate regulatory agency, whether its “rules and standards adequately meet the purposes of the regulations” to be issued, and if Treasury so determines, it must exempt any depository institution subject to those rules or standards from the regulations.

Treasury issued regulations under Title II of the GSA in 1987 at 17 CFR part 450. Based on the information provided by the appropriate regulatory agencies and Treasury’s own analysis, Treasury determined in 1987 that the rules and standards of the OCC, the FDIC, and the Board adequately met the purposes of the regulations.

Consequently, Treasury provided an exemption in § 450.3 for depository institutions subject to these standards with respect to their holdings in a fiduciary capacity.

B. OTS Request

In 1987, when Treasury developed the GSA regulations, savings associations were not eligible for the exemption because the Federal Home Loan Bank Board, OTS’s predecessor, had not completed its examination procedures or guidance related to the GSA regulations. Savings associations were not included in the exemption and, therefore, were required to comply with the requirements contained in part 450 with respect to all government securities held for the account of customers in a capacity as a fiduciary or a custodian, as well as the requirements under applicable fiduciary law, including OTS fiduciary regulations at 12 CFR part 550.

On October 6, 2003, the OTS submitted a written request that the exemption at § 450.3 be extended to include OTS-regulated savings associations that meet its conditions. The OTS request states that when Congress gave Federal savings associations trust powers in 1980, the intent was to provide them with the ability to offer trust services on the same basis as national banks. Without this same ability, the OTS states that savings associations are at a competitive disadvantage and subject to duplicative rules.

The OTS further states in its request that it now has examination procedures for the GSA regulations in place, and...
that OTS’s regulation of fiduciary, custodial and other holdings of government securities adequately protects customer accounts. Further, the OTS states that the regulatory oversight of fiduciary activities of savings associations is the same as other Federal banking agencies, and its trust regulations, policies and procedures are similarly aligned with those of the OCC.

II. Comments Received in Response to the Proposed Rule

On September 23, 2004, we issued a proposed amendment to the GSA regulations to make savings associations regulated by the OTS eligible for the exemption in § 450.3.12 We received one comment letter on the proposed rule amendment, from America’s Community Bankers (“ACB”). which strongly supported the proposal.13 ACB stated that “extending the exemption to savings associations supervised by the OTS would ensure that savings associations are not subject to duplicative requirements and would meet the objectives of the GSA regulations.”

III. Analysis

After considering the comment letter, and based on the information provided by the OTS and our analysis, we are amending the GSA regulations to add savings associations regulated by the OTS to the exemption in § 450.3 under the same conditions that currently apply to depository institutions regulated by the OCC, the FDIC and the Board. We are not changing any other provisions of the current rule.

The OTS is responsible for ensuring that fiduciary powers are exercised by savings associations in a manner consistent with the best interests of fiduciary beneficiaries and other parties at interest through conformity with applicable Federal and State law and sound fiduciary principles. The OTS also is responsible for ensuring that in the safekeeping of fiduciary assets, such assets are kept separate from the savings association’s assets.14 Accordingly, based on the information provided by the OTS and Treasury’s own analysis, we have determined that the rules and standards of the OTS adequately meet the purposes of part 450.

We believe this change will ensure that savings associations subject to the jurisdiction of the OTS are not subject to duplicative requirements. In developing this amendment, we have consulted with the staffs of the bank regulatory agencies and the Securities and Exchange Commission.

While the Treasury does not anticipate that subsequent modifications of the applicable OTS rules and standards will make this exemption inappropriate, we expect (as provided in §450.3(b)) that the OTS would inform us of any material revisions to such rules and standards.

IV. Special Analysis

This final rule makes a technical amendment to the GSA regulations that expands the exemption from the part 450 requirements, thus making OTS-regulated savings associations eligible for the exemption. This amendment does not meet the criteria for a “significant regulatory action” for the purposes of Executive Order 12866.

In addition, pursuant to the Regulatory Flexibility Act,15 we certify that the regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. The rule is deregulatory in that it provides a basis for exempting OTS-regulated savings associations from the requirements of part 450. Accordingly, a regulatory flexibility analysis is not required.

The Office of Management and Budget previously approved the collections of information contained in this final rule in accordance with the Paperwork Reduction Act under Control Number 1535–0089.16 Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The collections of information related to this final rule are contained in part 450 of the GSA regulations. This rule expands the exemption at §450.3 to include savings associations regulated by the OTS that meet the conditions of the exemption. The OTS estimates that 132 savings associations will qualify for the exemption, thus making them no longer subject to part 450.

List of Subjects in 17 CFR Part 450

Banks, banking, Depository institutions, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 17 CFR part 450 is amended as follows:

PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

1. The authority citation for part 450 continues to read as follows:


2. Section 450.3 is amended by revising paragraph (a) to read as follows:

§ 450.3 Exemption for holdings subject to fiduciary standards.

(a) The Secretary has determined that the rules and standards of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision governing the holding of government securities in a fiduciary capacity by depository institutions subject thereto are adequate. Accordingly, such depository institutions are exempt from this part with respect to their holdings of government securities in a fiduciary capacity and their holdings of government securities in a custodial capacity provided that:

(1) Such institution has adopted policies and procedures that would apply to such custodial holdings all the requirements imposed by its appropriate regulatory agency that are applicable to government securities held in a fiduciary capacity, and

(2) Such custodial holdings are subject to examination by the appropriate regulatory agency for compliance with such fiduciary requirements.

Dated: May 18, 2005.

Timothy S. Bitsberger,
Assistant Secretary for Financial Markets.

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