

DEPARTMENT OF THE TREASURY**17 CFR Part 450**

RIN 1505-AB06

[Docket No. BPD GSRS 05-01]**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.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Web site at <http://www.publicdebt.treas.gov> or from the Electronic Code of Federal Regulations (e-CFR) Web site at <http://www.gpoaccess.gov/ecfr>. It is also available for public inspection and copying at the Treasury Department Library, Room 1318, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622-0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorenna (Executive Director), Lee Grandy (Associate Director), or Kevin Hawkins (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations

Staff, (202) 504-3632 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.¹ 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.² 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 GSA³ 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, including 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"⁴ 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 450.⁵ Based on the information provided by the appropriate regulatory agencies⁶ 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.⁷ Consequently, Treasury provided an exemption in § 450.3 for depository institutions⁸ subject to these standards with respect to their holdings in a fiduciary capacity.⁹

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.¹⁰ 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.¹¹ 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

⁷ 52 FR 5677 (February 25, 1987).

⁸ See 17 CFR 450.2(c). The GSA regulations at § 450.2(c) define "depository institution" as having the meaning stated in clauses (i) through (vi) of § 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461 (b)(1)(A)(i)-(vi)). Savings associations are included in the definition of depository institutions at 12 U.S.C. 461(b)(1)(A)(vi).

⁹ The exemption also extends to government securities held in a custodial capacity, provided the institutions have adopted policies and procedures that would apply to such custodial holdings all of the requirements imposed by their appropriate regulatory agency on government securities held in a fiduciary capacity, and the custodial holdings are subject to examination by the appropriate regulatory agency for compliance with such fiduciary requirements. Whether or not they are exempt under § 450.3, depository institutions that retain custody of government securities subject to a repurchase agreement are required to comply with the confirmation requirements for hold-in-custody repurchase agreements in the regulations under Title I of the GSA at § 403.5(d). See 17 CFR 403.5(a)(2) & 401.4(b)(1)(ii).

¹⁰ See *supra* note 2.

¹¹ See § 5(n) of Home Owners' Loan Act (HOLA) 12 U.S.C. 1464(n) for thrifts and 12 U.S.C. 92a for banks.

¹ See Letter from Scoot M. Albinson, Managing Director, Office of Thrift Supervision, Department of the Treasury, to Van Zeck, Commissioner of the Public Debt, Bureau of the Public Debt, Department of the Treasury (October 6, 2003).

² 69 FR 56968 (September 23, 2004).

³ Pub. L. 99-571, 100 Stat. 3208 (1986).

⁴ 31 U.S.C. 3121(h)(4) & 9110(d).

⁵ The GSA implementing regulations were published as a final rule on July 24, 1987 (52 FR 27901). The regulations, as amended, are codified at 17 CFR chapter IV. The requirements for depository institutions that hold government securities as a fiduciary, custodian, or otherwise are set out in subchapter B (17 CFR part 450).

⁶ See 17 CFR 450.2(a).

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

program. Additionally, the OTS has confirmation requirements that are consistent with those of the other bank regulators. All savings associations must comply with 12 CFR part 551, subpart A, which established recordkeeping and confirmation requirements for securities transactions. 67 FR 76293 (December 12, 2002).

¹⁵ 5 U.S.C. 601, *et. seq.*

¹⁶ 44 U.S.C. 3507(d).

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:

Authority: Sec. 201, Pub. L. 99-571, 100 Stat. 3222-23 (31 U.S.C. 3121, 9110); Sec. 101, Pub. L. 99-571, 100 Stat. 3208 (15 U.S.C. 78o-5(b)(1)(A), (b)(4), (b)(5)(B)).

■ 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.

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Dated: May 18, 2005.

Timothy S. Bitsberger,

Assistant Secretary for Financial Markets.

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¹² See *supra* note 2.

¹³ The proposed rule and the comment letter, dated October 25, 2004, are available for downloading from <http://www.publicdebt.treas.gov> and for inspection and copying at the Treasury Department Library at the address provided earlier in this final rule.

¹⁴ See 12 U.S.C. 1464(n)(2), also 12 CFR part 550. Savings associations regulated by the OTS are also subject to examination procedures that require a review of the institution's systems and procedures to ensure that assets are adequately protected; review of applicable laws, regulations and fiduciary principles governing the safekeeping of assets; review of the institution's accounting system to insure that records are accurate and reliable; and review of the adequacy of the institution's audit