

TB 38-2a was rescinded 4/18/01 - obsolete

Handbook: Thrift Activities
Subject: Capital Adequacy

Section: 320
TB 38-2a

May 24, 1991

Capital Adequacy: Guidance on the Status of Capital and Accounting Forbearance and Capital

RESCINDED

Summary: This Bulletin informs all savings associations that have been operating under capital or accounting forbearances that Section 5(t) of the Home Owners' Loan Act ("HOLA") eliminates such forbearances. Accordingly, these forbearances should be eliminated in determining whether an association complies with the new capital regulation. All associations that do not comply with the new capital regulation must submit a capital plan. This Bulletin also clarifies the treatment of capital instruments held by a deposit insurance fund or related entity (such as the Resolution Trust Corporation (RTC) and the FSLIC Resolution Fund (FRF)). Thrift Bulletin 38-2 (TB 38-2), dated January 9, 1990, is rescinded with the issuance of this Bulletin. **The differences between TB 38-2 and TB 38-2a are in the treatment of capital instruments held by a deposit insurance fund or related entity.**

For Further Information Contact:

The Regional Office in which you are located or the Policy Division of OTS, Washington, D.C.

Thrift Bulletin 38-2a

Introduction

Questions have been raised regarding the status of previously granted forbearances and waivers as well as the treatment of FSLIC-owned warrants and other capital instruments. This Bulletin provides guidance to savings associations on these matters.

Capital Compliance

The Office of Thrift Supervision is applying the new capital standards to all savings associations, including those associations that have been operating under previously granted capital and accounting forbearances. Section 5(t) of HOLA as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) eliminates these forbearances. All savings associations

presently operating with these forbearances, therefore, should eliminate them in determining whether they comply with the new minimum regulatory capital standards. (Any FSLIC capital contributions that resulted in the creation of goodwill will be subject to the requirements for goodwill established in the capital regulation.)

If the association determines that it will fail its minimum regulatory capital requirements upon the elimination of capital and accounting forbearances, it must submit a capital plan to its Regional Director in accordance with the regulatory capital regulation and Thrift Bulletin 36a.

A capital plan will not be acceptable if it includes the continuation of previously granted capital and accounting forbearances. Capital plans already submitted that propose to continue previous capital and accounting forbearances will either be disapproved, returned for revision and resubmittal, or conditionally approved with the requested forbearance denied.

Capital Instruments Held by a Deposit Insurance Fund or Related Entity

Capital instruments owned by a party with a financial obligation to a savings association will be treated in accordance with Generally Accepted Accounting Principles (GAAP), unless such instruments are defined by law to be capital (e.g., net worth certificates) or unless the FDIC Board of Directors explicitly requests that they not be subject to offset and the OTS Director approves such request. For example, under 12 CFR 567, for the purpose of the inclusion in capital of instruments owned by the FSLIC/FRF, the FDIC, or the RTC, the Office will rely on the presentation standards established under GAAP. FSLIC/FRF, FDIC, or RTC holdings of capital instruments (including, but not limited to, warrants, preferred stock and subordinated debentures) will be required to be offset by any receivables (on the asset side of the balance sheet) from, respectively, the FSLIC/FRF, the FDIC, or the RTC for the purpose of calculating the

Thrift Bulletin

TB 38-2a

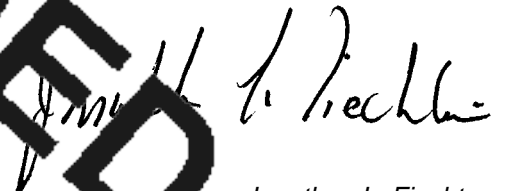
amount of such holdings may be included in capital unless one of the exceptions noted above applies. The amount of such off-setting is limited to the amount of the FDIC/FFB, FDIC, or RTC capital instrument.

When there is no offsetting requirement, the value of warrants (to the

extent that such warrants, when exercised, would qualify as capital) and other capital instruments that would qualify as tangible and core capital may be counted as such unless the holder of the warrants and other instruments is a federal deposit insurance fund or related entity. If the holder of the capital instruments

is a federal deposit insurance fund or related entity, then they must be classified as supplementary capital, unless the FDIC Board of Directors explicitly requests that they be counted as tangible and core capital and the OTS Director approves such request.

RESCINDED



— Jonathan L. Fiechter
Deputy Director for Washington Operations