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Handbook: Thrift Activities  
Subject: Capital Adequacy

Section: 320  
TB 50

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# Regulatory Review of Certain Third Party Contracts

**Summary:** Savings associations with a MACRO rating of 4 or 5 may not enter into third-party contracts outside the normal course of business unless the contract is approved by the Regional Director.

*For Further Information Contact:* Your Regional Office or the Policy Division of the Office of Thrift Supervision.

### *Thrift Bulletin 50*

### **General Policy**

Many savings associations hire consulting firms, investment bankers, lawyers, accountants or other third parties to provide services not usually required in the normal course of business such as services associated with proposed mergers and capital raising efforts, major asset sales and dispositions, internal investigations by the association's board of directors, and defenses against regulatory determinations. A review of these contracts at failed institutions indicates that frequently they have been a waste of scarce resources.

Such contracts require justification and approval by the board of directors of the savings association and, where the savings association has a MACRO rating of 4 or 5, prior review by the Regional Director. The Regional Director may establish a de minimis threshold amount to apply

on a case by case basis. This bulletin does not cover contracts in the normal course of business, such as annual audits, debt collection or routine legal services.

### **Guidelines**

Contracts should not contain provisions detrimental to the savings association or contrary to the public interest and should receive close scrutiny since these costs may ultimately increase the cost of the failure to the deposit insurance fund. The following guidelines will be used by regulatory personnel when reviewing such contracts.

- Services must be clearly identified and relate to the savings association's approved business or capital plan.
- When submitting a contract to its Regional Director for clearance, the savings association must offer evidence that fees to be paid and terms of payment are within prevailing market norms and are consistent with the interests of the insurance fund.

- Reimbursable expenses, if provided, should include only necessary costs directly related to the service provided. Costs such as entertainment and unnecessary travel are not considered reasonable.
- Each contract must contain a provision stating that the institution may cancel for non- or unsatisfactory performance.
- In most circumstances, only one contract should be awarded for each service to be performed. OTS generally considers multiple contracts to different providers for the same service to be a dissipation of assets. This presumption, however, would not prevent the association from bearing the cost of counsel for outside directors of the association.

### **Processing Timeframes**

The Regional Director will notify the applicant in writing as to whether it may enter into the proposed contract within ten calendar days of receipt.



—Jonathan L. Fiechter  
Deputy Director for  
Washington Operations