Transmittal TR–237

Federal Register, Vol. 65, No. 209, pp. 64392-64401 **Number: TR–237**

In the attached notice of proposed rulemaking, the Office of Thrift Supervision (OTS) establishes thresholds and criteria that would require savings and loan holding companies to give the agency 30 day's advance notice before undertaking certain significant new business activities so the agency can assess the potential impact on the risk profile of the consolidated entity and subsidiary thrifts. The proposal covers activities that significantly increase holding company debt, substantially reduce capital or involve certain asset acquisitions.

The proposed rule is part of the agency's comprehensive strategy designed to strengthen oversight of thrift holding companies and curb activities that could materially harm thrift subsidiaries. The agency said there have been instances where holding companies have engaged in or committed to major transactions or activities that have or could have had a "substantial negative effect" on the thrift.

As proposed, the holding company would have to give OTS advance notice if:

1. debt, combined with all other transactions by the holding company or any subsidiaries other than the thrift during the past 12 months, increases non-thrift liabilities by 5 percent or more; and non-thrift liabilities, after the debt transaction, equal 50 percent or more of the holding company's consolidated core capital;
2. an asset acquisition or series of such transactions by the holding company or non-thrift subsidiary during the past 12 months that involves assets other than cash, cash equivalents and securities or other obligations guaranteed by the U.S. Government and exceeds 15 percent of the holding company's consolidated assets; and
3. any transaction that, when combined with all other transactions during the past 12 months, reduced the holding company's capital by 10 percent or more.

Exempt from the notice requirement would be any holding company with consolidated subsidiary thrift assets of less than 20 percent of total assets or consolidated holding company capital of at least 10 percent. OTS could object to or conditionally approve an activity or transaction if it finds a material risk to the safety and soundness and stability of the thrift. The review period could be extended by 30 days if necessary.

The notice of proposed rulemaking was published in the October 27, 2000, edition of the Federal Register, Vol. 65, No. 209, pp. 64392-64401. Written comments must be received on or before December 26, 2000, and should be addressed to: Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, N.W.,

Washington, DC 20552. Comments may be mailed, hand-delivered, faxed to 202/906-7755 or e-mailed to: public.info@ots.treas.gov. All commenters should include their name and telephone number.

For further information contact:

Kevin O'Connell (202) 906-5693
Senior Project Manager
Supervision Policy

Valerie J. Lithotomos (202) 906-6439
Counsel, Banking and Finance
Regulations and Legislation

Richard L. Little (202) 906-7244
Senior Counsel
Business Transactions

RESCINDED

Richard M. Riccobono

Richard M. Riccobono
Deputy Director
Office of Thrift Supervision

Attachment

Proposed Rules

Federal Register
Vol. 65, No. 209
Friday, October 27, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[Docket No. 2000–91]

RIN 1550–AB29

Savings and Loan Holding Companies Notice of Significant Transactions or Activities and OTS Review of Capital Adequacy

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to require certain savings and loan holding companies to notify OTS before engaging in or committing to engage in a limited set of debt transactions, transactions that reduce capital, some asset acquisitions, and other transactions. The proposal would generally exclude holding companies whose subsidiary savings associations' assets represent a small percent of consolidated assets and holding companies that would have consolidated tangible capital of ten percent or greater following the transaction.

OTS also seeks comment on its proposal to codify its current practices for reviewing the capital adequacy of savings and loan holding companies and, when necessary, requiring additional capital on a case-by-case basis. This notice identifies certain key factors that OTS uses to evaluate the need for additional holding company capital.

DATES: Comments must be received on or before December 26, 2000.

ADDRESSES:

Mail: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–91.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Docket No. 2000–91.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–7755, Attention Docket No. 2000–91; or (202) 906–6956 (if comments are over 25 pages).

E-Mail: Send e-mails to ''public.info@ots.treas.gov'', Attention Docket No. 2000–91, and include your name and telephone number.

Public Inspection: Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9 a.m. until 5 on business days. Comments and the related index will also be posted on the OTS Internet Site at ''www.ots.treas.gov''.

FOR FURTHER INFORMATION CONTACT: Kevin O'Connell, Senior Project Manager, (202) 906–5693, Supervision Policy; and Valerie J. Lithotomos, Counsel (Banking and Finance), (202) 906–6439, Regulations and Legislation Division, and Richard L. Little, Senior Counsel, (202) 906–6447, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The financial stability and health of a savings and loan holding company can have a direct impact on the financial condition of its subsidiary thrift. Savings and loan holding companies are frequently managed on a consolidated basis with their subsidiaries. Indeed, the benefits from such integration are key incentives for establishing holding companies. However, because of such integrated operations, problems in one entity in the corporate structure may affect other affiliated entities, including the thrift.

Increasingly, savings associations are becoming parts of highly integrated corporate structures. Instead of being held as passive investments, thrifts are acquired as a key component of an overall strategy for providing comprehensive services. These affiliations often involve outsourcing of critical functions of the savings association and cross-marketing of products. As a result, many savings associations are subject to decisions that are made with regard to the best interests of the corporate structure, often with little consideration of any potential positive or negative impact on the thrift standing alone. This highlights the need for increased supervisory vigilance to ensure that actions by an affiliate do not pose a material risk to the safety, soundness, or stability of the subsidiary savings association.

Actions by the savings and loan holding company, in particular, can affect the condition of its subsidiary thrift, especially where the parent organization undertakes significant new activities or has significant debt exposure. For example, the practice of double leveraging—where holding company debt is used to increase the capital of the subsidiary thrift—can generate the need for additional regulatory oversight at the savings and loan holding company level, especially when consolidated capital levels are low. In addition, a holding company that makes risky investments that generate less than anticipated returns or result in losses can exert undue pressure on the thrift to meet the demands of its other obligations. Similarly, a holding company that grows too fast may not have sufficient capital to support its operations and may, therefore, incur excessive debt or look to the thrift to fund its operations.

To address these issues, OTS is proposing to require certain holding companies to notify OTS before engaging in certain described debt transactions, transactions that reduce capital, some asset acquisitions, and other transactions determined by OTS on a case-by-case basis. This proposal is described in Section I. of this notice of proposed rulemaking (NPRM). OTS is also considering whether to codify its current practice for reviewing the capital adequacy of savings and loan holding companies and, when necessary, requiring additional capital on a case-by-case basis. OTS seeks comment on the factors it considers in determining the appropriate capital level. The capital considerations are described in Section II. of this NPRM.

I. Notice of Significant Transactions or Activities

Currently, OTS does not analyze proposed major transactions by holding companies before the transactions occur, other than in connection with reviewing applications for a limited group of transactions.[1] Moreover, there are few regulatory and statutory restrictions designed to reduce the risks posed to thrifts by such proposed transactions, other than capital distribution and various restrictions [2] on transactions with affiliates.[3]

On several occasions, OTS has learned during an examination or through the news or other media that a holding company has engaged in or has committed to engage in major transactions or activities that may have a substantial negative effect on the subsidiary thrift. By that point, however, OTS's ability to require the holding company to reverse or modify the transaction to protect the safety and soundness of the thrift may be limited.

To adequately monitor these types of transactions and to ensure that thrifts are adequately protected, OTS proposes to review significant holding company transactions and activities of certain holding companies before they occur in order to ensure that these transactions and activities do not pose a material risk to the financial safety, soundness, or stability of the subsidiary savings association. OTS notes that the Federal Reserve Board (FRB) does not have a similar review procedure. However, FRB requires bank holding companies to comply with detailed and static capital adequacy requirements [4] which generally makes a similar review process unnecessary. Rather than impose an across-the-board capital requirement, OTS is proposing this review process for a limited group of savings and loan holding companies engaging in a limited group of activities in order to ensure the safety and soundness of subsidiary thrifts.

OTS bases this rulemaking on its extensive statutory authority over savings and loan holding companies under section 10 of the Home Owners' Loan Act (HOLA). OTS, for example, is authorized to issue such regulations or orders as are ''necessary and appropriate'' to administer and carry out section 10 of the HOLA,[5] and also has general statutory authority to prescribe regulations necessary for carrying out all provisions of the HOLA.[6]

Accordingly, OTS is proposing to require that certain savings and loan holding companies notify OTS before engaging in several types of transactions, as more fully described below in the section-by-section summary. OTS seeks comment on all aspects of the proposal. OTS is particularly interested in whether the proposed notice procedure is the best way for OTS to obtain timely information regarding significant transactions and activities, while imposing the least possible regulatory burden.

Section-by-Section Analysis

Proposed Section 584.100—What Does This Subpart Do?

The proposed rule would add a new subpart B, entitled Notice of Significant Activities or Transactions, to part 584. Proposed § 584.100 states that subpart B requires certain savings and loan holding companies to notify OTS before engaging in or committing to engage in certain significant activities or transactions. Proposed § 584.100 also sets out the definitions that apply to the new subpart.[7]

Proposed Section 584.110—Must I File a Notice?

The purpose of the proposed rule is to ensure that OTS has adequate notice and an opportunity to object when a savings and loan holding company is about to engage in an activity that could have a material negative effect on the subsidiary savings association. While it is often a relatively simple matter to identify problem holding companies and holding companies that control troubled thrifts, it is far more difficult to predict which holding companies may engage in transactions that could raise supervisory concerns for their subsidiary thrifts. To ensure that the regulation is properly focused, OTS will exempt two classes of holding companies because their activities are unlikely to materially affect the subsidiary thrift. Similarly, OTS will only require notices for those activities and transactions that are significant in nature and reasonably present a potential for an adverse impact on the thrift institution. These activities and transactions are described below in proposed § 584.120.

The proposed rule would require savings and loan holding companies whose proposed transactions meet the standards in proposed § 584.120, to file a notice, with two exceptions. First, OTS would not require a holding company to file a notice if all of its subsidiary thrifts have consolidated assets that, when aggregated, represent less than 20 percent of the holding company's consolidated assets. This percentage indicates that all of the subsidiary thrifts constitute a small share of the holding company's overall business. In these structures, the regulated thrifts are not the primary line of business of the consolidated parent organization and, therefore, are less likely to be affected by the transactions covered by the proposal. OTS specifically requests comment on whether this percentage is appropriate. OTS also asks whether it should rely on other existing regulatory definitions, such as the definition of diversified savings and loan holding company,[8] to describe situations where the thrift is not the primary line of business of the parent holding company.

Second, a holding company would not be required to file a notice if it has a significant capital cushion. Where a holding company has a significant capital base, it is less likely that its transactions will present a significant risk to the subsidiary thrift. OTS

[1] For example, when a company files an application to acquire an existing thrift or to charter a de novo thrift, OTS reviews the proposed business plan to ensure that the activities of the holding company (and its affiliates) will not have a negative impact on the subsidiary thrift. OTS has required some holding companies, as a condition to the approval of the application, to notify the agency before the holding company causes the subsidiary thrift to make any material changes in the subsidiary thrift's business plan. Conversely, however, when a holding company purchases a subsidiary, even if that entity is large, highly leveraged and engaging in high-risk activities, no notice is required under current regulation.

[2] *See* 12 U.S.C. 1831o(d)(1)(B); 12 CFR part 563, subpart E. *See also* 12 U.S.C. 1467a(f).

[3] *See* 12 U.S.C. 1468; 12 U.S.C. 371c and 371c–1; 12 CFR 563.41 and 563.42.

[4] *See* 12 CFR part 225, Appendix A.

[5] *See e.g.,* 12 U.S.C. 1467a(g).

[6] 12 U.S.C. 1462a. *See also* 12 U.S.C. 1463(a)(2) and 12 U.S.C. 1464(a). OTS notes that sections 10(g)(5) and 10 (p) of the HOLA expressly permit OTS to restrict the ability of savings and loan holding companies to continue to conduct certain activities. 12 U.S.C. 1467a(g)(5) and (p). In this regard, the focus of the proposed rule and sections 10(g)(5) and 10 (p) are entirely different. The proposed notice is primarily preventive. It is designed to permit OTS to review proposed activities and to prevent a savings and loan holding company (or its affiliate) from undertaking new, risky activities. On the other hand, sections 10(g) and (p) are remedial. These statutes are designed to allow OTS to require corrective action when established, ongoing activities threaten the safety and soundness of a subsidiary thrift.

[7] As a result of its placement in part 584, all of the definitions in 12 CFR part 583 (''*e.g.,* subsidiary'') would also apply to the new subpart.

[8] A diversified savings and loan holding company is ''any savings and loan holding company whose subsidiary savings association and related activities under 12 U.S.C. 1467a(c)(2) represent on either an actual or pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year.'' 12 CFR 583.11 and 12 U.S.C. 1467a(a)(1)(F).

proposes to exclude those savings and loan holding companies that would have consolidated tangible capital of ten percent or greater following the proposed transaction. This exclusion is not intended, in any way, as a *de facto* capital requirement for savings and loan holding companies. Rather, the purpose of this proposed exclusion is solely to exclude the most financially sound holding companies from the notice requirement. OTS specifically requests comment on whether this percentage is appropriate.

OTS specifically seeks comment on whether it is also appropriate to exempt holding companies that control only savings associations with limited operations (*e.g.*, a subsidiary thrift that conducts only fiduciary operations under part 550 of OTS's regulations). If so, what types of thrifts should be exempted?

Notwithstanding the two exceptions discussed above, an OTS Regional Director would have the authority to require any savings and loan holding company to file a notice if the Regional Director has concerns relating to the holding company's financial condition or the safety and soundness of its subsidiary thrift. The proposed rule would require the Regional Director to notify the holding company, in writing, of this determination.

Proposed Section 584.120—What Transactions or Activities Require a Notice?

The proposed rule would identify three categories of activities or transactions that would require the filing of a notice by a holding company described in proposed § 584.110. These activities and transactions would include: the issuance, renewal or guarantee of a certain level of debt; any activity or transaction resulting in a substantial reduction of capital; and certain asset acquisitions. Subject to specified quantitative thresholds, OTS believes these three areas would identify any major change on a holding company's balance sheet—namely, acquisitions of assets, increases in liabilities, or reductions in capital—that could have a material negative impact on the thrift. In addition to these three areas, OTS Regional Directors would have the discretion to inform a holding company in writing that a transaction or activity would pose a risk to the financial safety, soundness, or stability of the thrift and require the holding company to file a notice.

OTS proposes to require a notice if the holding company or any of its subsidiaries (other than the subsidiary thrift) will issue, renew or guarantee a certain level of debt.[9] Debt will trigger the notice requirement only if two criteria are met. First, the debt, when combined with all other debt transactions conducted by the holding company or any of its subsidiaries (other than a subsidiary thrift) during the past twelve months, must increase the amount of the holding company's consolidated non-thrift liabilities by five percent or more.[10] Second, the holding company's consolidated non-thrift liabilities after the debt transaction would have to equal 50 percent or more of the holding company's consolidated tangible capital.[11]

The following example illustrates the application of these criteria. On October 1, 1999, a holding company's consolidated non-thrift liabilities were $1.0 billion. The holding company plans to incur an additional $40 million in debt on September 30, 2000. On that date, the holding company projects that its consolidated non-thrift liabilities would increase to $1.06 billion. (This $60 million increase is made up of the $40 million in new debt issuance plus another $20 million in liabilities accrued during the prior 12 months). As of September 30, 2000, the holding company's consolidated tangible capital would stand at $1.8 billion. This holding company would be required to file a notice with OTS because both of the following conditions are met:

- With the new debt, the holding company's consolidated non-thrift liabilities would have increased by more than five percent during the prior twelve-month period. Under this example, the holding company's consolidated non-thrift liabilities would increase six percent from $1.0 billion to $1.06 billion.
- The holding company's consolidated non-thrift liabilities exceed 50 percent of its consolidated tangible capital. Under the example, the holding company's consolidated non-thrift liabilities would equal $1.06 billion on September 30, 2000. This amount exceeds $900 million (50 percent of $1.8 billion, the holding company's consolidated tangible capital).

A notice is also required for certain asset acquisitions by the holding company or its subsidiary (other than a subsidiary thrift). Under the proposed rule, an acquisition of assets (other than cash, cash equivalents, and securities or other obligations unconditionally guaranteed by the United States Government) would require a notice if the amount of the transaction would exceed fifteen percent of the holding company's consolidated assets. In determining whether the fifteen percent threshold is met, the holding company must combine the proposed transaction with all other asset acquisitions conducted during the past twelve months.

OTS also would require a notice if a holding company or its subsidiary (other than the subsidiary thrift) proposes to conduct any transaction, which when combined with all other transactions during the past twelve months, would reduce the ratio of the holding company's consolidated tangible capital to consolidated tangible assets[12] by ten percent or more. For example, a projected change of this ratio from 8 percent to 7.2 percent would trigger the notice requirement. To ensure adequate supervisory review, the proposed rule would require a holding company with negative consolidated tangible capital to file a notice, unless the Regional Director informs the holding company, in writing, that a notice is not required.

OTS requests comment on the transactions and activities that would require notice. Specifically:

- Has OTS appropriately identified the scope of proposed transactions and activities that may pose a material risk to the financial safety, soundness, or stability of the subsidiary savings association?
- What additional transactions or activities should require a notice? For example, should OTS require a notice when a savings and loan holding company or its subsidiary enters a new line of business or divests a significant asset or line of business? If so, how should OTS define new lines of business and the appropriate thresholds that would trigger a notice?
- Should all transactions by holding companies with negative consolidated tangible capital require a notice?
- Are the applicable percentages or numerical thresholds appropriate?
- In computing the thresholds under the proposed rule, a holding company must combine a proposed transaction with all other transactions within the three relevant categories (acquisitions of assets, increases in liabilities, and

[9] Debt of the subsidiary thrift includes debt of its consolidated subsidiaries.

[10] Consolidated non-thrift liabilities would be defined as the holding company's consolidated liabilities less the consolidated liabilities of the subsidiary savings associations.

[11] For the purposes of this rule, consolidated tangible capital would be defined as consolidated capital minus consolidated intangible assets and deferred policy acquisition costs.

[12] Consolidated tangible assets would be defined as the holding company's consolidated assets less its consolidated intangible assets and deferred policy acquisition costs.

reductions in capital) conducted during the prior twelve month period. Thus, once the threshold is met, the proposed rule would require a notice even though a proposed transaction itself is small. Should the rule exclude *de minimus* transactions? If so, what transactions should be considered *de minimus*?

As noted above, OTS Regional Directors would have the discretion to require notices for other transactions or activities. In identifying significant transactions, OTS has relied upon quantified changes to the holding company's balance sheet. Some transactions with significant long-term consequences, however, may not have any immediate impact on the holding company's balance sheet. These transactions would include recourse transactions and certain guarantees. These transactions are examples of when the Regional Directors might exercise their discretionary authority to require notices.

Proposed Section 584.130—How Do I File My Notice?

Under the proposed rule, a savings and loan holding company would be required to file a written notice with its OTS Regional Office at least 30 days before the earlier of engaging in or committing to engage in the transaction or activity. The holding company would be required to include the basis for the filing requirement, a description of the transaction or activity, the purpose of the transaction or activity, an analysis of the impact on consolidated earnings and consolidated capital, and an analysis of its impact on the subsidiary savings association. The holding company would also be required to identify the amount of the debt, capital reduction or asset acquisition, indicate the intended use of the funds or the reasons for the capital reduction or asset acquisition, and summarize the relevant terms of the transaction (including a description of any significant covenants or collateral requirements). OTS specifically requests comment on whether the information in the proposed notice is necessary and sufficient to enable OTS to accurately assess the transaction's impact on the subsidiary thrift.

To minimize regulatory burden, the proposed rule would permit a holding company to file a schedule proposing transactions or activities over a specified period, not to exceed twelve months. If OTS approves the proposed schedule, the holding company would be permitted to engage in the proposed transactions or activities without filing another notice for that twelve month period. If there has been a material change in circumstances, the OTS Regional Director may advise the holding company, in writing, that it must file a new notice for scheduled activities or transactions. *See* proposed § 584.150(c).

A savings and loan holding company may also combine a notice with a related notice or application. To do so, the holding company must state that the related notice or application is intended to serve as a notice under proposed § 584.120, and must submit the notice or application in a timely manner.

Proposed Section 584.140—On What Grounds Will OTS Disapprove or Condition the Proposed Activity or Transaction?

Under the proposed rule, the OTS Regional Director could disapprove or condition a proposed transaction if a proposed transaction or activity would pose a material risk to the financial safety, soundness, or stability of the subsidiary thrift. In making this determination, the OTS Regional Director would consider, among other things, the following factors:

- The extent to which the transaction or activity is funded by debt, and on what terms.
- The effect of the transaction or activity on the cash flow and liquidity of the thrift.
- The impact of the transaction or activity on the risk to the overall organization.
- Whether the transaction or activity is self-sustaining or requires financial support from other business segments, especially the subsidiary savings association.
- The projected effect of the transaction or activity on the capital and earnings of the consolidated entity.

These factors are not exclusive. The OTS Regional Director may consider other factors deemed relevant and may impose appropriate conditions on the transaction. OTS requests comment on whether these factors are appropriate considerations in determining whether to disapprove or condition a notice, and whether additional factors should be added.

Proposed Section 584.150—When May I Engage in the Proposed Activity or Transaction?

The savings and loan holding company (or its subsidiary) would be permitted to engage in the activity or transaction 30 days after OTS receives all required information, unless OTS notifies the holding company, in writing, that it has disapproved the notice. OTS would be permitted to extend the 30 day review period for an additional 30 days. The holding company (or its subsidiary) could engage in the proposed activity or transaction earlier if OTS notifies the holding company, in writing, that OTS does not intend to disapprove the notice.

II. OTS's Practice for Reviewing Capital Adequacy for Savings and Loan Holding Companies

The level and composition of capital held by a company is an important measure of the company's overall financial health, as well as the health of its subsidiaries. For financial institutions, capital serves several purposes: it is available to bear risk and absorb unexpected losses; it protects the Federal Deposit Insurance Corporation's insurance fund; it provides a permanent source of revenue for the shareholders and funding for the institution; it provides a base for further growth; and it gives the shareholders assurance that the financial institution is managed in a safe and sound manner.

Capital adequacy is one of the critical factors that Federal banking agencies consider in the regulation of financial institutions' holding companies. FRB, for example, has required bank holding companies to comply with specific capital adequacy guidelines since 1983.[13] While OTS has not established, and is not proposing to establish, capital guidelines applicable to all savings and loan holding companies, OTS reviews the financial resources of a savings and loan holding company, including capital adequacy, in the examination and supervisory processes. OTS also reviews the financial resources of prospective holding companies in evaluating holding company and other applications, and has the authority to require additional capital on a case-by-case basis.

Low levels of holding company capital can raise supervisory concerns in a number of ways. For example, in one situation, a highly leveraged holding company began to have severe cash flow problems during the real estate crisis in the early to mid-90s. As a result, creditors canceled lines of credit and the holding company came close to defaulting on its obligations. The holding company's cash flow needs caused the thrift to adopt riskier lending and aggressive pricing strategies to enable it to fund the holding company's operations through the payment of dividends and tax sharing payments. As a result, the thrift's asset quality and its financial condition deteriorated.

[13] These guidelines are at 12 CFR part 225, Appendix A.

In another situation, the holding company engaged in the practice of double leveraging to facilitate the subsidiary thrift's purchase of additional branches. The holding company sought to fund the branch acquisitions, in part, by issuing a substantial amount of new debt. As a result of the transaction, the holding company's capital significantly reduced both on a relative basis, due to the growth in assets, and on a tangible level, since the branch purchase resulted in goodwill. The sharply reduced level of tangible capital raised concerns about the holding company's ability to service the debt without making undue demands on the thrift. In this instance, however, OTS was able to address these concerns by conditioning the approval of the thrift's purchase on the holding company maintaining an agreed upon level of capital.

OTS would have similar concerns if a holding company decided to quickly expand the scope of its business without a similar increase in its capital base. For example, a holding company that doubled in size while maintaining the same amount of capital would reduce its capital to assets ratio by 50%. With a smaller capital cushion, the holding company would have less flexibility to react to unexpected, adverse market conditions. A smaller capital cushion would also limit the holding company's ability to come to the aid of its subsidiary thrift, and if the holding company itself came under financial distress, would increase the chances it would pressure the thrift for financial resources.

In the course of its supervisory monitoring and examination of savings and loan holding companies, OTS currently reviews the financial condition, including the capital adequacy, of holding companies. In cases like those discussed above, OTS may require the holding company to maintain a specified level of capital. This gives OTS an additional tool to safeguard thrifts without unduly restricting the business objectives of holding companies.

OTS is considering whether it should adopt a rule codifying its current practice for reviewing capital adequacy, on a case-by-case basis, and, when necessary, requiring additional capital for savings and loan holding companies. Such a rule would also clarify the factors that OTS uses in reviewing a holding company's capital adequacy, would promote a better understanding of OTS's supervisory approach, and would help to ensure that capital principles are consistently applied in the holding company context.

As noted above, OTS has extensive regulatory authority under the HOLA to regulate savings and loan holding companies. This authority includes its powers under section 10(g)(1)[14] to issue such regulations necessary or appropriate to ensure compliance with and prevent evasions of section 10,[15] and its general rulemaking authority under the HOLA.[16]

While the factors OTS may consider in its review of capital will vary from case-to-case, the following factors are relevant, but not all-inclusive, in determining whether capital is adequate and if additional capital is necessary for a savings and loan holding company:

Debt

- What is the ratio of holding company consolidated debt as a percentage of consolidated tangible capital? Is the level of debt generally rising? What investments or activities does the debt fund? Could the terms, conditions or covenants of the debt have an adverse effect on the thrift? What is the level of interest expense? Is the interest expense a significant percentage of recurring income? What debt ratings has the holding company received from nationally recognized credit rating organizations?

Capital

- How much consolidated tangible capital does the holding company have as a percentage of consolidated tangible assets? What are the overall quality and composition of the holding company's capital? Does the holding company rely on hybrid instruments that possess debt characteristics? Does the holding company have the ability to raise new equity capital or generate capital internally?

Cash Flow and Earnings

- Does the holding company have sufficient cash flow? To what extent does the holding company rely on dividends from the thrift to service the holding company's debt or fulfill other holding company obligations? What sources of liquidity, other than the thrift, does the holding company have? What are the quality and quantity of such sources?
- What are the quality and level of the holding company's earnings? Does the holding company rely on non-recurring sources of earnings? How does the volatility of earnings affect pro forma business plan projections? Has the holding company stress tested its projections?

Overall Risk Profile

- How significant is the thrift in the holding company's corporate structure? What risks do the holding company's activities and assets present? What significant risk does the thrift face? Has the holding company influenced the thrift to engage in riskier activities? Does the holding company have off-balance sheet contracts or activities that result in a high degree of risk exposure? What level of inter-company transactions do the holding company and other affiliates have with the thrift? What is the quality of management and risk management systems? Is the overall financial condition of the holding company deteriorating, stable, or improving?

OTS specifically requests comment on whether the listed factors are relevant to OTS's review of capital adequacy. OTS also solicits comment on whether other factors would be relevant to OTS's review.

OTS has not decided whether it will promulgate a final rule addressing holding company capital in connection with this rulemaking or whether it will use the comments provided as the basis for a future proposal. However, as part of today's proposal, it is OTS's intent to describe its current approach to holding company capital, in sufficient detail, to support a final rule codifying the practice.

OTS intends to use different procedures for requiring additional capital, depending on the circumstances. For example, in the application process, OTS may condition the approval of an application on a holding company maintaining a certain capital level. In other instances, OTS would notify a savings and loan holding company of a determination that additional capital may be appropriate. The notice would include such information as the amount of capital needed, a proposed schedule for compliance, and the specific reasons why OTS believes that additional capital is necessary or appropriate. OTS would also provide the savings and loan holding company with an opportunity to respond and to provide additional information for OTS to consider in establishing the capital standard. OTS requests specific comment on whether these procedures would be appropriate.

III. Request for Comments

In addition to the specific request for comment in the preamble, OTS invites comment on all aspects of the Notice of Proposed Rulemaking.

[14] 12 U.S.C. 1467a(g)(1).

[15] 12 U.S.C. 1467a.

[16] 12 U.S.C. 1462a(b), 1463(a) and 1464.

IV. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley (GLB) Act (12 U.S.C. 4809) requires federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposed rule easier to understand. For example:

(1) Have we organized the material to suit your needs?

(2) Are the requirements in the rule clearly stated?

(3) Does the rule contain technical language or jargon that isn't clear?

(4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

(5) Would more (but shorter) sections be better?

(6) What else could we do to make the rule easier to understand?

V. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866. OTS intends to exempt a substantial percentage of savings and loan holding companies from the notice requirement and would require a notice for a limited number of transactions. Nevertheless, OTS acknowledges that the rule would impose costs on savings and loan holding companies that are required to file a notice requirement. Therefore, OTS invites the thrift industry to provide any cost estimates and related data that it thinks would be useful to OTS in evaluating the overall costs of the rule.

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 [17] requires federal agencies to prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule, or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. OTS cannot, at this time, determine whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, OTS includes the following IRFA.

A description of the reasons why OTS is considering the proposed rule, a statement of the objectives of the proposal, and the legal basis for the proposed rule are contained in the supplementary material above.

[17] 5 U.S.C. 601.

A. Small Entities to Which the Proposed Rule Would Apply

1. Background.

The proposed rule would apply to savings and loan holding companies and subsidiaries of savings and loan holding companies (other than savings association subsidiaries). A savings and loan holding company would be required to file a notice before it or its non-thrift subsidiary may engage in specified activities. While a subsidiary of a savings and loan holding company would not be required to file a notice, OTS could, by disapproving a notice, prevent the subsidiary from engaging in certain proposed actions.[18]

The proposed rule would apply to savings and loan holding companies and their subsidiaries, regardless of size. The rule, however, includes a significant exemption that would substantially limit its application to small businesses. This exception is discussed below.

OTS analysis of savings and loan holding companies and their non-thrift subsidiaries is complicated by the fact that these entities may engage in a wide range of activities. The Small Business Administration (SBA) applies different size standards for various industries in order to determine whether a particular business is small.[19] OTS has reviewed the activities of its holding companies to determine if there is a prevailing standard that it may apply in this rulemaking.

Based on data for publicly traded holding companies,[20] OTS estimates that the primary asset of approximately 78.2 percent of all holding companies is the thrift. These holding companies would likely fall within one of two SBA size standards: (1) The size standard for offices of bank holding companies and offices of other holding companies (annual receipts of less than $5 million); [21] or (2) The size standard for depository credit intermediation (less than $100 million in assets). An additional 13.8 percent of savings and loan holding companies are engaged in financial management activities (insurance, brokerage, or real estate development). The prevailing SBA size standard for these companies is less than $5 million in annual receipts.[22] The remaining holding companies engage in a variety of diverse commercial activities for which no consistent size standard is evident. Accordingly, OTS has analyzed its available data by applying two size standards—the $5 million in annual receipts and the $100 million in assets size standards.[23]

2. Analysis

Based on March 31, 2000 data, OTS calculates that there are approximately 959 savings and loan holding companies. The 959 holding companies are aligned in approximately 531 holding company structures for the purposes of this analysis. A thrift may be directly or indirectly controlled by more than one holding company. A holding company structure, as used in this preamble, includes all holding companies within the same family of companies.

As of March 31, 2000, OTS estimates that approximately 16.6 percent or 88 of the 531 OTS regulated holding company structures were small under the asset-based definition (*i.e.*, these holding company structures hold assets of less than $100 million.) About 150 of the thrift holding company structures (28.2 percent) are small businesses using the revenue-based definition.

As noted above, OTS has proposed an exemption that would substantially limit the rule's application to small businesses. Under the proposed rule, OTS would exempt a holding company from the notice requirement if it will have consolidated tangible capital of 10 percent or greater after the proposed transaction. OTS estimates that this proposed exemption would exempt 81.3

[18] OTS is also considering issuing a final rule for reviewing the capital adequacy of savings and loan holding companies and, when necessary, requiring additional capital. Since these requirements will be imposed on a case-by-case basis and since this rule would merely codify current practices, OTS does not anticipate that this aspect of the rule will have a significant impact on a substantial number of small entities.

[19] *See* 65 FR 30836 (May 15, 2000), to be codified at 13 CFR 121.201.

[20] OTS used financial data for 404 publicly traded thrift holding companies as a statistical sample for revenue, assets, and capital for all thrift holding companies.

[21] 65 FR at 30858 (NAICS Codes 551111 and 551112). Entities that fall within this category are primarily engaged in holding the securities (or other equity interests) of companies and enterprises for the purpose of owning a controlling interest or influencing the management decisions of these firms. These companies do not administer, oversee, and manage other establishments of the company or enterprise whose securities they hold. Entities that hold the securities of a depository institution and operate the entity are classified at NAICS Industry Group 5221, Depository Credit Intermediation. 65 FR at 30856. These businesses are subject to a $100 million in assets limitation.

[22] NAICS Subsector 523—Financial Investments and Related Activities and Subsector 524—Insurance Carriers and Related Activities. 65 FR at 30856. The size standard for direct property and casualty insurance carriers, however, is based on the number of employees.

[23] OTS has established these definitions of small savings and loan holding companies for the sole purpose of this Regulatory Flexibility Act Analysis, after consultation with the Small Business Administration's Office of Advocacy.

percent of small holding companies under the asset-based definition, and 70.5 percent of small holding companies using the revenue-based definition. Based on these percentages, OTS estimates that from 16 to 44 small holding company structures may be subject to the proposed rule.[24]

The following tables estimate the number of thrift holding companies at various asset and revenue levels and illustrates the impact of the proposed tangible capital exemption at various revenue and asset levels.[25] The proposed exemption more favorably affects smaller holding companies. Regardless of whether the asset size test or revenue test is used, a greater proportion of smaller holding companies are exempt than larger holding companies.

Asset size	Number	Percent of total	No. exempt	Percent exempt
Less than $100mm	88	16.6	72	81.3
$100mm–$250mm	142	26.8	90	63.3
$250mm–$500mm	114	21.4	45	39.8
$500mm–$2b	127	23.9	39	30.5
Greater than $2b	60	11.3	12	20.0
Total	531	100.0	258	48.6

1999 revenue	Number	Percent of total	No. exempt	Percent exempt
Under $5mm	150	28.2	106	70.5
$5mm–$10mm	138	25.9	63	45.6
$10mm–$50mm	158	29.7	60	38.1
$50mm–$100mm	47	8.8	9	20.0
Greater than $100mm	39	7.4	7	17.2
Total	531	100.0	244	48.6

OTS does not know how many non-thrift subsidiaries are held by small thrift holding companies, how frequently small thrift holding companies and their subsidiaries will engage in transactions subject to the proposed rule, or how often OTS will object to a proposed transaction because the activity will pose a material risk to the financial safety, soundness, or stability of a subsidiary savings association. Accordingly, OTS specifically seeks comments on these and any other issues.

B. Requirements of the Proposed Rule

As described more fully in the supplementary information section, the proposed rule would require savings and loan holding companies to notify OTS before they (or their subsidiaries, other than savings association subsidiaries) engage in certain types of activities. OTS may object to the proposed transaction if certain prerequisites are met.

The primary economic impact of this proposed rule is the additional expenses that holding companies may incur to prepare and submit notices. In addition to these expenses, when OTS objects to a proposed transaction or activity, there may be the additional expenses associated with seeking reconsideration of the OTS determination and with abandoning and not pursuing a proposed transaction.

To minimize the potential burdens of the proposed notice requirement, this proposed rule would:

- Exempt certain holding companies whose activities do not present a significant risk to a subsidiary thrift. Under the proposed rule, a notice is not required where the parent holding company would have a substantial capital cushion.
- Apply only to certain types of transactions that meet specific criteria established to identify those transactions that may pose a possible threat to the safety, soundness, or stability of the thrift.
- Minimize the filing burden by prescribing the content of the notice, permitting notices to include schedules of proposed transactions or activities for up to twelve months, and permitting consolidated filings with related applications.
- Minimize regulatory burden by providing an expeditious review period. Generally, the period is 30 days.
- Permit OTS to disapprove a transaction only under limited circumstances. Specifically, OTS may object only if it finds that the proposed transaction or activity would pose a material risk to the financial safety, soundness, or stability of the thrift.

OTS does not have a practicable or reliable basis for quantifying the costs of this proposed rule. While OTS does not believe that the rule would be burdensome, OTS cannot predict the economic impact on savings and loan holding companies (or their subsidiaries that are non-thrift subsidiaries) of the proposed rule. Rather than merely guess at the regulatory burden of the proposed rule, OTS solicits comment on potential burdens and on ways to minimize the burdens.

[24] The tangible capital exception would exempt a much smaller percentage of large holding companies from the notice requirement. For example, only 20 percent of the thrift holding companies holding over $2 billion in assets would be exempt under the proposed tangible capital criteria. Similarly, 17.2 percent of thrift holding companies with revenues of $100 million or more would be exempt under this exception.

There is a second exception for savings and loan holding companies whose subsidiary thrifts represent less than 20 percent of the consolidated assets. However, OTS estimates that this exemption should not significantly reduce the number of small holding companies that are subject to this rule. As noted above, OTS estimates that the primary asset of approximately 78.2 percent of all holding companies is the thrift itself.

[25] As noted above, OTS used a statistical sample of publicly traded thrift holding companies to obtain information for all thrift holding companies. The percentages of exempt holding companies listed in the tables are the actual percentages derived from this sample. The number of exempt holding companies was derived by multiplying these percentages by the 531 thrift holding company structures. The numbers in the ''Number Exempt'' column were rounded to the nearest whole number.

C. Significant Alternatives

Consistent with the purposes of this rulemaking, OTS has exercised its discretion to minimize the burden of this proposed rule on small entities. Although OTS could exempt small savings and loan holding companies from the notice requirement, OTS does not believe that this action is appropriate. The purpose of the notice is to ensure that holding companies and their subsidiaries do not engage in transactions that could pose a material risk to the financial safety, soundness, or stability of the subsidiary thrift. There is no rationale for exempting thrifts from this regulatory protection merely because they are affiliated with small holding companies.

OTS, however, has attempted to ensure that holding companies, including small holding companies, are not unduly burdened by the notice requirements. Specifically, the proposal recognizes that transactions involving a holding company with a substantial capital cushion are less likely to present a significant risk to the subsidiary thrift. By exempting savings and loan holding companies that will have consolidated tangible capital of ten percent or greater, OTS excludes 70.5 percent to 81.3 percent of small thrift holding companies from the coverage of this rule.

OTS considered reducing the tangible capital threshold to minimize the impact on small thrift holding companies. Using the asset-based definition of small holding company, OTS data indicates that reducing the tangible capital threshold to 9 percent would increase the percentage of exempted small companies from 81.3 percent to 86.4 percent. Reducing the tangible capital threshold to 8 percent would increase the percentage of exempted small holding companies to 87.9 percent.

Using the revenue-based definition of small holding company, OTS data indicates that reducing the tangible capital threshold to 9 percent would increase the percentage of exempt small companies from 70.5 percent to 80.4 percent. Reducing the threshold to 8 percent would further increase the percentage exempted to 88.4 percent. In this preamble, OTS specifically seeks comment whether a tangible capital threshold of less than 10 percent, however, would be sufficient to protect the subsidiary thrift.

In addition to this alternative, the supplementary material solicits comment on a number of alternatives that could reduce regulatory burden on holding companies, including small holding companies. These include, but are not limited to, the following questions:

- Should OTS consider a different threshold to describe situations where a thrift is not the primary line of business of the parent holding company?
- Should OTS exempt holding companies that control savings associations with limited operations (*e.g.*, a subsidiary thrift that conducts only fiduciary operations)?
- Should OTS redefine the types of transactions and activities that are subject to a notice?

OTS requests comment on whether these or other alternatives would reduce the burdens and whether any exceptions for small institutions would be appropriate. Also, OTS welcomes comment on the appropriateness of its approach, and on any other alternatives that would satisfy the objectives of this proposal.

D. Other Matters

The proposed rule does not appear to duplicate or overlap with any other rules or requirements. However, it is possible that a transaction within the scope of this proposed rule may be related to another transaction for which an application or notice is required under another regulation or statute. For example, a holding company may propose to incur additional debt in connection with its acquisition of a new branch office for its subsidiary savings association. Under these circumstances, the savings association would be required to file a related branch notice or application. To the extent that related notice or applications may exist, the proposed rule permits the holding company to combine the notice with any related notice or application.

OTS generally seeks comment on any Federal statutes or rules that may duplicate, overlap, or conflict with the proposal.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act and the OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

VIII. Paperwork Reduction Act

OTS invites comment on:

(1) Whether the collection of information contained in this notice of proposed rulemaking are necessary for the proper performance of OTS's functions, including whether the information has practical utility;

(2) The accuracy of the estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology;

(5) Estimates of capital or start-up costs and costs of operation, minutes, and purchase of services to provide information.

Respondents are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS will use any comments received to develop its new burden estimates. Comments on the collection of information should be sent to the Dissemination Branch (1550), Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552, with a copy to the office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503.

The collection of information requirements in this proposed rule is found in 12 CFR 584.110 through 584.130. OTS requires this information for the proper supervision of activities and transactions by savings and loan holding companies. The likely respondents are savings and loan holding companies.

Estimated number of respondents: 190.

Estimated average annual burden hours per respondent: 5.

Estimated total annual disclosure and recordkeeping burden: 950.

List of Subjects in 12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 584, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 584—REGULATED ACTIVITIES

1. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

2. A heading for a new subpart A is added preceding § 584.1 to read as follows:

Subpart A—Regulated Activities

3. A new subpart B is added to read as follows:

Subpart B—Notice of Significant Transactions or Activities

Sec.

Subpart B—Notice of Significant Transactions or Activities

§ 584.100 What does this subpart do?

(a) This subpart requires certain savings and loan holding companies (''you'') to notify OTS before engaging in or committing to engage in significant transactions or activities.

(b)(1) As used in this subpart B:

(i) *Consolidated non-thrift liabilities* means your consolidated liabilities less the consolidated liabilities of your subsidiary savings association(s).

(ii) *Consolidated tangible assets* means your consolidated assets less your consolidated intangible assets and deferred policy acquisition costs.

(iii) *Consolidated tangible capital* means your consolidated capital less your consolidated intangible assets and deferred policy acquisition costs.

(iv) *Subsidiary savings association* means the subsidiary savings association itself and its consolidated subsidiaries.

(2) In applying the definitions in this paragraph (b), you must compute assets, intangible assets, liabilities, and capital consistent with generally accepted accounting principles.

§ 584.110 Must I file a notice?

(a) *General.* You must file a notice before you may engage in or commit to engage in transactions described under § 584.120, unless one or more of the following applies:

(1) Your subsidiary savings association(s) has consolidated assets that, when aggregated, represent less than 20 percent of your consolidated assets; or

(2) You will have consolidated tangible capital of 10 percent or greater following the transaction.

(b) *Required by Region.* You must file a notice before you engage in or commit to engage in a transaction or activity if your Regional Director informs you, in writing, that OTS has concerns relating to your financial condition, or the safety and soundness of your subsidiary savings association. The Regional Director will identify, in writing, the types of transactions and activities that will require you to file a notice. These transactions may include, but are not limited to, the transactions and activities described in § 584.120.

§ 584.120 What transactions or activities require a notice?

(a) Unless you are excepted under § 584.110(a), you must file a notice before you engage in or commit to engage in any transaction or activity described in the following chart. In determining the thresholds in the chart, you must combine the proposed transaction with all other transactions within the three relevant categories (acquisitions of assets, increases in liabilities, and decreases in capital) conducted during the prior twelve months.

You must file a notice if you or your subsidiary (other than a savings association) will . . .	And the proposed transaction will . . .
(1) Issue, renew, or guarantee debt . . .	Increase the amount of your consolidated non-thrift liabilities by five percent or more. You are not required to file a notice for debt, however, if your consolidated non-thrift liabilities will be less than 50 percent of your consolidated tangible capital after the proposed debt transaction.
(2) Acquire assets (other than cash, cash equivalents, and securities or other obligations unconditionally guaranteed by the United States Government) . . .	Exceed an amount equal to fifteen percent of your consolidated assets.
(3) Engage in any transaction . . .	Reduce the ratio of your consolidated tangible capital to consolidated tangible assets by ten percent or more. If your consolidated tangible capital is less than zero, you must file a notice unless your Regional Director informs you, in writing, that a notice is not required.

(b) *Other transactions or activities.* You must file a notice if your OTS Regional Director informs you, in writing, that a transaction or activity may pose a risk to the financial safety, soundness, or stability of the subsidiary savings association and will require a notice.

§ 584.130 How do I file my notice?

(a) *Regional Office.* You must file a written notice with the applicable OTS Regional Office at the address listed in § 516.1 of this chapter, at least 30 days before the earlier of engaging in or committing to engage in a transaction or activity.

(b) *Content.* You must include the following information in your written notice:

(1) The basis for the filing requirement.

(2) A description of the transaction or activity, its purpose, and an analysis of its impact on the savings association. You must identify the amount of the debt, capital reduction, or asset acquisition, indicate the intended use of the funds or reason for capital reduction or asset acquisition and an analysis of the impact on consolidated earnings and consolidated capital, and summarize the relevant terms of the transaction, including a description of any significant covenants or collateral requirements.

(c) *Schedules.* You may include a schedule proposing transactions or activities over a specified period, not to exceed 12 months.

(d) *Combining notice.* You may combine your notice with related notices or applications. If you submit a combined filing, you must:

(1) State that the related notice or application is intended to serve as a notice or application under this subpart; and

(2) Submit the notice or application in a timely manner.

§ 584.140 On what grounds will OTS disapprove or condition the proposed activity or transaction?

The OTS Regional Director will disapprove or condition your notice if the proposed transaction or activity will pose a material risk to the financial safety, soundness, or stability of your subsidiary savings association.

§ 584.150 When may I engage in the proposed activity or transaction?

(a) You or your subsidiary may engage in the proposed transaction or activity 30 days after OTS receives all required information, unless OTS informs you, in writing, of one of the following:

(1) OTS disapproves the notice.

(2) OTS extends the 30-day review period for an additional period not to exceed 30 days. You or your subsidiary may engage in the proposed transaction or activity when the extended period expires, unless OTS informs you, in writing, that it disapproves the notice.

(b) In addition, you or your subsidiary may engage in the proposed transaction or activity after OTS notifies you, in writing, that it does not intend to disapprove the notice.

(c) Notwithstanding paragraphs (a) and (b) of this section, you may not engage in a proposed transaction or activity if:

(1) Your notice included a schedule of proposed transactions or activities under § 584.130(c); and

(2) The OTS Regional Director determines that there has been a material change of circumstances, and informs you, in writing, that you must file a new notice under this subpart.

Dated: October 23, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–27705 Filed 10–26–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. FAA–00–7018; Admt. No. 187–11]

RIN 2120–AG17

Fees for FAA Services for Certain Flights; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; Extension of comment period.

SUMMARY: On June 6, 2000, the FAA published an Interim Final Rule (IFR) establishing fees for FAA air traffic and related services for certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States and invited comments for a 120-day period. The IFR went into effect on August 1, 2000, and the comment period was originally scheduled to close on October 4, 2000. However, on September 29, 2000, the FAA extended the comment period to October 27, 2000, to ensure that affected entities, mostly foreign, have sufficient time to comment on the contents of the docket. Due to recently passed legislation and the availability of other relevant accounting and economic information, the FAA is extending the comment period another 60 days, to December 26, 2000.

DATES: Comments must be received on or before December 26, 2000.

ADDRESSES: Address your comments to the Docket Management System (DMS), U.S. Department of Transportation, Room Plaza Level 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number ''FAA–00–7018'' at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments in this rulemaking in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Randall Fiertz, Office of Performance Management, (APF–2), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7140; fax (202) 493–4191.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from this rulemaking are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date. Late-filed comments will be considered to the extent practicable. The Interim Final Rule, as well as the Final rule, may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–00–7018.'' The postcard will be date-stamped and mailed to the commenter.

Availability of Interim Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.