

chattel only secured debt that was estimated to be secured but upon final liquidation was found to be unsecured, and up to 90 days after the date of discharge on the portion of real estate secured debt that was estimated to be secured but was found to be unsecured upon final disposition.

(ii) The Agency will pay the lender interest which accrues during and up to 90 days after the time period the lender is unable to dispose of acquired property due to state imposed redemption rights on any unsecured portion of the loan during the redemption period, if an estimated loss claim was paid by the Agency during the liquidation action.

* * * * *

(i) *Final loss claims.* (1) Lenders must submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account. All proceeds shall be applied to principal first and then toward accrued interest if the interest is still accruing. The application of the loss claim payment to the account does not automatically release the borrower of liability for any portion of the borrower's debt to the lender. The lender will continue to be responsible for collecting the full amount of the debt and sharing these future recoveries with the Agency in accordance with paragraph (j) of this section.

* * * * *

(5) The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days. Failure to do so will result in additional interest being paid to the lender for the number of days over 40 taken to process the claim.

* * * * *

Signed at Washington, DC, on March 9, 2007.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E7-5511 Filed 3-26-07; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[OTS-2007-0007]

RIN 1550-AC10

Permissible Activities of Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to revise its regulations, at 12 CFR 584.2 and 584.2-2, to expand the permissible activities of savings and loan holding companies (SLHCs) to the full extent permitted under the Home Owners' Loan Act (HOLA). In addition, OTS proposes to amend 12 CFR 584.4 to conform the regulation to the statute that it is intended to implement by replacing the absolute prohibition on certain SLHC transactions that is currently in the regulation with a prior approval requirement. The proposed regulation sets forth standards that OTS will use to evaluate applications submitted pursuant to the application requirement.

DATES: Comments must be received by April 26, 2007.

ADDRESSES: You may submit comments, identified by OTS-2007-0007, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Office of Thrift Supervision" from the agency drop-down menu, then click submit. Select Docket ID "OTS-2007-0007" to submit or view public comments and to view supporting and related materials for this interim rule. The "User Tips" link at the top of the page provides information on using [Regulations.gov](http://www.regulations.gov), including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *Mail:* Regulation Comments, Chief Counsel's Office, Office Of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS-2007-0007.

- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, OTS-2007-0007.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on [Regulations.gov](http://www.regulations.gov) without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: Go to <http://www.regulations.gov>, select

"Office of Thrift Supervision" from the agency drop-down menu, then click "Submit." Select Docket ID "OTS-2007-0007" to view public comments for this notice of proposed rulemaking.

View Comments On-Site: You may inspect comments in the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Donald W. Dwyer, Director, Applications, Examination and Supervision-Operations, (202) 906-6414; or Kevin A. Corcoran, (202) 906-6962, Deputy Chief Counsel for Business Transactions, Office of Chief Counsel; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Holding Company Activities

A. Background

Under section 10(c)(9) of the HOLA,¹ SLHCs² generally are permitted to engage only in activities that are permissible for financial holding companies under section 4(k) of the Bank Holding Company Act,³ or activities that are listed in section 10(c)(2) of the HOLA.⁴ The activities listed in section 10(c)(2) of the HOLA include certain specific activities.⁵ In

¹ 12 U.S.C. 1467a(c)(9).

² An SLHC generally is any company that directly or indirectly controls a savings association, or that controls any other company that is a savings and loan holding company. See 12 CFR 583.20 and 12 U.S.C. 1467a(a)(1)(D).

³ 12 U.S.C. 1843(k).

⁴ 12 U.S.C. 1467a(c)(2). SLHCs that were SLHCs on May 4, 1999, and meet certain other requirements, are excepted from the activities limitations of section 10(c)(9) of the HOLA. See 12 U.S.C. 1467a(c)(9)(C). The following discussion of activities limitations applies only to SLHCs that are not excepted from the activities limitations of section 10(c)(9).

⁵ These activities include furnishing or performing management services for a savings association subsidiary of such company (section 10(c)(2)(A)); conducting an insurance agency or escrow business (section 10(c)(2)(B)); holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company (section 10(c)(2)(C)); holding or managing properties used or occupied by a savings association subsidiary of such company (section 10(c)(2)(D)); acting as trustee under a deed of trust (section 10(c)(2)(E)); and purchasing, holding or disposing of stock acquired in a qualified stock

addition, section 10(c)(2)(F) sets forth two lists of activities in which all SLHCs may engage. Section 10(c)(2)(F)(ii) permits SLHCs to engage in activities in which multiple savings associations were authorized by regulation to engage directly on March 5, 1987.⁶ Section 10(c)(2)(F)(i) permits SLHCs to engage in activities:

which the Board of Governors of the Federal Reserve System, by regulation, has determined to be permissible for bank holding companies under section 1843(c) of this title, unless the Director, by regulation, prohibits or limits any such activity for savings and loan holding companies.* * *⁷

As authorized by the statute, OTS has limited the activities permitted for SLHCs under section 10(c)(2)(F)(i) of the HOLA. Although SLHCs potentially could engage in all activities that the Board of Governors of the Federal Reserve System (FRB) has permitted under its regulations for bank holding companies under section 4(c) of the Bank Holding Company Act (BHCA),

OTS regulations implementing section 10(c)(2)(F)(i) limit the activities that are permissible under this authority to activities that the FRB has permitted for bank holding companies under regulations implementing section 4(c)(8) of the BHCA, specifically 12 CFR 225.24 and 12 CFR 225.28.⁸ Section 225.28 is a list of non-banking activities that the FRB approved pursuant to section 4(c)(8) of the BHCA.⁹ Section 225.24 sets forth a regulatory procedure under which the FRB has approved non-banking activities, under the authority of section 4(c)(8) of the BHCA.¹⁰

In summary, the OTS Holding Company Regulations implementing section 10(c)(2)(F)(i) of HOLA provide authority for SLHCs to only engage in activities that the FRB has permitted under section 4(c)(8) of the BHCA, and do not provide authority for SLHCs to engage in activities listed in other subsections of section 4(c) of the BHCA.¹¹

Certain activities described in other subsections of section 4(c) are already

permissible for SLHCs under other authority. For example, section 4(c)(1) of the BHCA permits bank holding companies to, among other things, hold or operate properties used wholly or substantially by any banking subsidiary of such bank holding company, and to liquidate assets acquired from a bank subsidiary.¹² SLHCs may engage in these activities (with regard to savings association subsidiaries) without prior OTS approval, under sections 10(c)(2)(D) and (C) of the HOLA.

Other activities described in other subsections of section 4(c) are generally not currently permissible for SLHCs to engage in. For example, the foreign activities that the FRB has authorized by regulation for bank holding companies pursuant to section 4(c)(9) of the BHCA¹³ are not currently permissible for SLHCs.¹⁴

Current authority for non-grandfathered SLHCs to engage in non-thrift activities is summarized in the following table.

Statutory source of authority	HOLA sec. 10(c)(2)(A)–(E) and (G)	HOLA sec. 10(c)(2)(F)(i)	HOLA sec. 10(c)(2)(F)(ii)	HOLA sec. 10(c)(9)
Description	Specific activities	Activities permitted for bank holding companies under section 4(c)(8) of BHCA.	Activities FHLBB permitted for multiple SLHCs as of March 5, 1987.	Activities permissible for financial holding companies under section 4(k)(4) of the BHCA.
OTS Regulation Cite	12 CFR 584.2(b)	12 CFR 584.2–2	12 CFR 584.2–1	None.

B. Proposed Regulatory Changes

OTS believes that it is appropriate to consider whether to continue to limit the activities that OTS authorizes under section 10(c)(2)(F)(i) of HOLA to activities that the FRB has authorized under section 4(c)(8) of the BHCA. The existing regulations have not changed substantively since they were first promulgated in 1987.¹⁵

The regulatory scheme for SLHCs has changed significantly since the regulations were first promulgated. In 1987, most SLHCs were excepted from activities restrictions. Until the passage of the Gramm-Leach-Bliley Act¹⁶ (GLB Act) in 1999, SLHCs that controlled only one savings association were excepted from activities limitations, provided that the subsidiary savings

association met the qualified thrift lender test (QTL test).¹⁷ In addition, SLHCs that controlled more than one savings association were excepted from activities limitations, provided that the SLHC acquired all or all but one of its savings association subsidiaries in certain types of supervisory transactions, and all the subsidiary savings associations met the QTL test.¹⁸

issuance under section 10(q) of the HOLA (section 10(c)(2)(G)).

⁶ 12 U.S.C. 1467a(c)(2)(F)(ii). These activities are listed at 12 CFR 584.2–1(2006).

⁷ 12 U.S.C. 1467a(c)(2)(F)(i). Section 10(c)(2)(F)(i) of the HOLA originally was enacted as part of the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552 (Aug. 10, 1987)) and amended section 408(c) of the National Housing Act. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Pub. L. 101–73 103 Stat. 184 (Aug. 9, 1989)) moved section 408 of the NHA to section 10 of the HOLA.

⁸ See 12 CFR 584.2(b)(6)(i) and 584.2–2(a) (2006).

⁹ 12 U.S.C. 1843(c)(8). When the Federal Home Loan Bank Board (FHLBB) originally promulgated regulations implementing the section 10(c)(2)(F)(i) provision, it limited the activities to those permitted under section 4(c)(8). 53 FR 312 (Jan. 6, 1988). Although the FHLBB did not state why it did not authorize SLHCs to engage in activities the FRB approved under other subsections of section 4(c), the FHLBB stated that, based on its subsequent experience, it may “expand the list of permissible

nonbanking activities for S&L holding companies to include those activities approved by the FRB under other provisions of section 4(c) of the BHC Act.” 53 FR 319 (Jan. 6, 1988).

¹⁰ Activities that the FRB previously approved under this section are set forth at 12 CFR 225.86(a)(2)(2006).

¹¹ Section 10(c)(9) of HOLA, which, as described above, is a separate source of authority for SLHCs to engage in activities, permits SLHCs to engage in any activity permissible for financial holding companies pursuant to section 4(k) of the BHCA. While the financial holding company activities are generally broader than the bank holding company activities described in section 4(c) of the BHCA, section 4(k) does not include all of the activities described in the various subsections of section 4(c) (such as the foreign activities described in subsection 4(c)(9)). However, section 4(k)(4)(F) of the BHCA permits financial holding companies to engage in section 4(c)(8) activities, and section 4(k)(4)(G) permits financial holding companies to engage, in the United States, in certain activities that the FRB has permitted under section 4(c)(13). See 12 CFR 225.86(b)(2006).

¹² See 12 U.S.C. 1843(c)(1)(A) and (D).

¹³ See 12 CFR part 211, subpart B (2006).

¹⁴ Activities described in certain other subsections of section 4(c) of the BHCA are not applicable to SLHCs, even if OTS amends the Holding Company Regulations as proposed, because the provisions relate to shares acquired by a bank holding company prior to May 9, 1956 (the date of the enactment of the BHCA) (12 U.S.C. 1843(c)(10)) and companies that became bank holding companies as a result of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1843(c)(12)).

¹⁵ When OTS recodified the former regulations of the FHLBB in 1989, OTS did not change the provisions of the Holding Company Regulations that implemented section 10(c)(2)(F)(i). 54 FR 49411, 49711 (Nov. 30, 1989).

¹⁶ Pub. L. 106–102, 113 Stat. 338, section 401.

¹⁷ See section 10(c)(3) of HOLA. The QTL test is set forth at section 10(m) of HOLA, 12 U.S.C. 1467a(m).

¹⁸ Id.

Accordingly, the limitation of permissible activities to those the FRB had approved under section 4(c)(8) of the BHCA was relevant only to a small number of SLHCs.

The GLB Act, however, provided that, notwithstanding the previously existing exemption at section 10(c)(3), which had significantly limited the number of SLHCs subject to activities restrictions, all new SLHCs would be, with limited exceptions,¹⁹ subject to activities restrictions. Accordingly, for several years, all new SLHC structures have been subject to activities limitations. Rather than affecting only a small minority of SLHCs, the regulatory limitation in question is now applicable to every new SLHC structure.

In addition, for many years, bank holding companies have been permitted to engage in the activities described in section 4(c) of the BHCA, consistent with the regulations of the FRB. OTS is not aware of any safety and soundness or other reason why SLHCs should not be permitted to engage in the same activities.

Finally, in 1987, few SLHCs had foreign operations. Since then, however, many foreign entities have acquired, or have expressed interest in acquiring, a savings association. To the extent that sections 4(c)(9) and 4(c)(13) of the BHCA, and regulations that the FRB has promulgated thereunder, authorize bank holding companies with foreign operations to engage in certain activities, it would appear appropriate to provide the same authority to SLHCs.

The regulations limiting the section 4(c) activities to those authorized under section 4(c)(8) are 12 CFR 584.2(b)(6) and 584.2-2(a). OTS proposes to revise these regulations to replace the references to 12 CFR 225.24 and 225.28 with general references to regulations promulgated by the FRB under the authority of section 4(c) of the BHCA. These changes would enable SLHCs to engage in activities that the FRB has permitted under any regulation that the FRB has promulgated under section 4(c) of the BHCA.

Section 10(c)(4) of the HOLA generally requires prior OTS approval with respect to the activities described in section 10(c)(2)(F)(i) of the HOLA. Certain of these activities are already permitted under OTS regulations without prior OTS approval, or are permitted under FRB regulations without prior FRB approval. Accordingly, in order to avoid imposing

additional restrictions on currently permissible activities, and provide for parity between bank holding companies and SLHCs to the extent possible, OTS proposes to state in the regulation that activities that are authorized under section 10(c)(2)(F)(i) of HOLA, but are also permissible under other provisions of section 10(c) of the HOLA or under FRB regulations without prior FRB approval are preapproved.

II. Approval Requirement for Certain Acquisitions by SLHCs

Section 10(e)(1)(A)(iii) of HOLA includes two different restrictions on the activities of SLHCs. First, the statute prohibits SLHCs from directly or indirectly acquiring, without OTS approval, more than five percent of the voting shares of a savings association that is not a subsidiary of the acquiring SLHC, or more than five percent of the voting shares of a SLHC that is not a subsidiary of the acquiring SLHC.²⁰

Second, the statute prohibits multiple SLHCs from acquiring or retaining more than five percent of the voting shares of any company not a subsidiary that is engaged in any business activity other than the activities specified in section 10(c)(2) of HOLA.

The Holding Company Regulations, at 12 CFR 584.4, implement these statutory requirements. Section 584.4, however, has not been amended since OTS recodified the FHLBB regulations in 1989,²¹ and therefore, no longer accurately reflects the provisions of the statute. Specifically, the American Homeownership and Economic Opportunity Act of 2000²² (AHEO Act) amended section 10(e)(1)(A)(iii) to replace the former absolute prohibition on SLHCs acquiring more than five percent of the voting shares of a savings association or SLHC not a subsidiary of the acquiring SLHC (subject to the exceptions noted above), with a regulatory approval requirement.²³ The regulation continues to contain an absolute prohibition, without providing for a regulatory approval requirement. Accordingly, OTS proposes to amend the regulation to make it consistent with the statute.

In addition, although the AHEO Act established a regulatory approval requirement for the acquisitions in question, the statute did not establish

approval standards for applications submitted as a result of the approval requirement. OTS proposes to amend the regulation to set forth approval standards for applications submitted under section 10(e)(1)(A)(iii) and 584.4.

When OTS recommended that Congress amend section 10(e)(1)(A)(iii) to eliminate the prohibition on SLHCs acquiring more than five percent of the voting shares of a non-subsidiary savings association or SLHC, OTS noted that the prohibition was inconsistent with the rules applicable to bank holding companies. Section 3(a) of the BHCA allows bank holding companies to acquire more than five percent of the voting shares of non-subsidiary banks, with FRB approval.²⁴ In addition, bank holding companies, including those that control savings associations, are permitted, with prior FRB approval, to acquire voting stock of savings associations (including, but not limited to, non-controlling investments exceeding five percent).²⁵

Given that OTS sought the amendment to section 10(e)(1)(A)(iii) to provide SLHCs parity with bank holding companies, OTS believes that it is appropriate to look to the requirements applicable to bank holding companies in similar situations in establishing approval criteria. In this regard, section 3(c) of the BHCA sets forth the standards for bank holding company acquisitions under section 3(a). The statute requires that the FRB: (i) Not approve an acquisition if it has certain anticompetitive effects; (ii) consider the financial and managerial resources and future prospects of the companies and banks involved, and the convenience and needs of the community to be served; (iii) not approve an application if the company fails to provide adequate assurance that it will make available such information as the FRB determines appropriate to determine and enforce compliance with applicable requirements; and (iv) in the case of a foreign bank, not approve an application if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis in the bank's home country.²⁶

These approval standards are, in all material respects, identical to the approval standards for acquisitions by SLHCs under section 10(e)(2) of the HOLA and OTS regulations thereunder at 12 CFR 574.7(c). Accordingly, OTS proposes to amend section 584.4 to

¹⁹ The exceptions include the "grandfathering" exception, at section 10(c)(9)(C), discussed earlier, the reorganization exception, set forth at section 10(c)(9)(D), and the family trust exception, set forth at section 10(c)(9)(E).

²⁰ 12 U.S.C. 1467a(e)(1)(A)(iii). The statute establishes eight exceptions from the approval requirement. See 12 U.S.C. 1467a(e)(1)(A)(iii)(I)-(VIII).

²¹ 54 FR 49411, 49712.

²² Pub. L. 106-569 (Dec. 27, 2000), at section 1202, 114 Stat. 3032.

²³ The AHEO amendments left in place the absolute prohibition relating to multiple SLHCs.

²⁴ See also, 12 CFR 225.11(c)(2006).

²⁵ See 12 CFR 225.24 and 12 CFR 225.28(b)(4)(2006).

²⁶ 12 U.S.C. 1842(c).

cross-reference the standards in section 10(e)(2) of HOLA and 12 CFR 574.7(c).

In addition, the Community Reinvestment Act (CRA) requires that OTS take into account a savings association's CRA record in reviewing any application for a deposit facility.²⁷ The CRA defines an "application for a deposit facility" as including, among other things, the "acquisition of shares in, or the assets of, a regulated financial institution requiring approval under [section 10(e) of the HOLA]."²⁸ The OTS regulations implementing the CRA include a corresponding requirement.²⁹ Accordingly, OTS believes that it is appropriate to consider the CRA record of any depository institution subsidiary of the acquiring SLHC when considering an application under section 10(e)(1)(A)(iii) and 12 CFR 584.4.

Given that CRA performance of any subsidiary depository institution of the acquiring SLHC would be a factor in OTS's consideration of applications under 584.4, OTS believes it is appropriate to obtain public comment in connection with such applications. Accordingly, the proposed regulation includes a cross-reference to the public notice and comment procedures in 12 CFR part 516.

Finally, in light of the amendments to 584.4 proposed above, OTS proposes to reorganize 584.4 as set forth herein. The additional proposed changes would not affect the substance of the regulation.

III. Findings and Certifications

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, OTS may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. OTS is requesting comment on a proposed

information collection. OTS also gives notice that the proposed collection of information was submitted to OMB for review and approval (44 U.S.C. 3507(d)). At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the information collection should be modified. Any material modifications will be submitted to OMB for review and approval. All comments will become a matter of public record.

Send comments, referring to the collection by title of the proposal or by "SLHC Activities (1550-NEW)," to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725 - 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395-6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906-6518, or by e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. To obtain a copy of the submission to OMB, contact Marilyn K. Burton at marilyn.burton@ots.treas.gov, (202) 906-6467, or facsimile number (202) 906-6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agency's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

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

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

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

In this proposed rule, OTS is soliciting comments concerning the following information collection.

Title: Savings and Loan Holding Companies Activities.

OMB Control Number: 1550-NEW.

Type of Review: New collection.

Frequency of Response: On occasion.

Affected Public: Savings and loan holding companies.

Abstract: The proposed expansion of permissible activities for SLHCs under section 10(c)(2)(F)(i) of HOLA will result in the collection of additional information. Section 10(c)(4) of HOLA requires SLHCs to obtain OTS approval prior to commencing any activity described in section 10(c)(2)(F)(i) of HOLA. Additionally, the amendment of 12 CFR 584.4 to conform with the statute by including an approval process for covered acquisitions is a new collection of information.

Estimated Number of Respondents: 4.

Estimated Burden Hours per Response: 2 hours.

Estimated Total Burden: 8 hours.

Rule section	Subject	Number of respondents	Number of responses per respondent	Average annual burden hours per response	Annual disclosure & recordkeeping burden
584.2-2	Application to engage in certain activities	2	1	2	4
584.4	Application by SLHC to acquire non-controlling interest exceeding five percent of non-subsidiary savings association or SLHC.	2	1	2	4

B. 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.

C. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act (RFA), the Director of OTS has certified that this

²⁷ 12 U.S.C. 2903(a)(2).

²⁸ 12 U.S.C. 2902(3)(E). Although the statutory reference is to section 408(e) of the National

Housing Act, which was repealed in FIRREA, OTS has interpreted the provision as referring to the successor provision, section 10(e) of the HOLA.

²⁹ See 12 CFR 563e.29(a)(5).

proposed rule will not have a significant impact on a substantial number of small entities within the meaning of the RFA. 5 U.S.C. 603.

D. *Unfunded Mandates Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires an agency to 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. 2 U.S.C. 1532. OTS has determined that this proposed rule would not have such an impact. Rather, the rule would provide that nonexempt SLHCs have broader authority to engage in activities than are specified under current regulations. Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 584

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

For the reasons stated in the preamble, the Office of Thrift Supervision proposes to amend 12 CFR part 584 as follows:

PART 584—SAVINGS AND LOAN HOLDING COMPANIES

1. Revise the part heading for part 584 to read as shown above.

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

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

3. Revise § 584.2(b)(6)(i) to read as follows:

584.2 Prohibited activities.

* * * * *

(b) * * *

(6) * * *

(i) That the Board of Governors of the Federal Reserve System has permitted for bank holding companies pursuant to regulations promulgated under section 4(c) of the Bank Holding Company Act; or

* * * * *

4. Amend § 584.2–2(a) by revising the first sentence and adding a new sentence at the end to read as follows:

(a) *General.* For purposes of § 584.2(b)(6)(i) of this part, the services and activities permissible for bank holding companies pursuant to regulations that the Board of Governors of the Federal Reserve System has

promulgated pursuant to section 4(c) of the Bank Holding Company Act are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations: * * *

Activities that are permissible under other provisions of section 10(c) of the HOLA without prior OTS notice or approval, and activities that are permissible without prior notice or approval under regulations that the Board of Governors of the Federal Reserve System has promulgated pursuant to section 4(c) of the Bank Holding Company Act are preapproved.

5. Revise § 584.4 to read as follows:

§ 584.4 Certain acquisitions by savings and loan holding companies.

(a) *Acquisitions by a savings and loan holding company of more than five percent of a non-subsidiary savings association or savings and loan holding company.* No savings and loan holding company, directly or indirectly, or through one or more subsidiaries or through one or more transactions, shall, without prior written OTS approval, acquire by purchase or otherwise, or retain, more than five percent of the voting stock or shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary. A savings and loan holding company seeking approval of an acquisition under this section must file an application under 12 CFR part 516, subpart A. Applications filed under this section are subject to the publication, public comment, and meeting provisions of 12 CFR part 516, subparts B, C, and D. OTS will review applications filed under this section under the review standards set forth for savings and loan holding company applications in section 10(e)(2) of the HOLA, § 574.7(c) of this chapter, and § 563e.29(a) of this chapter.

(b) *Certain acquisitions by multiple savings and loan holding companies.*

No multiple savings and loan holding company (other than a savings and loan holding company described in § 584.2a(a)(1)(ii) of this part) may, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire or retain more than five percent of the voting shares of any company that is not a subsidiary that is engaged in any business activity other than those specified in § 584.2(b) of this part.

(c) *Exception for certain acquisitions of voting shares of savings associations and savings and loan holding companies.* Paragraphs (a) and (b) of this section do not apply to voting shares of

a savings association or of a savings and loan holding company—

(1) Held as a *bona fide* fiduciary (whether with or without the sole discretion to vote such shares);

(2) Held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) Held in an account solely for trading purposes or over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(4) Acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition or for such additional time (not exceeding three years) as the Office may permit if, in the Office's judgment, such an extension would not be detrimental to the public interest;

(5) Acquired under section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act (or section 408(m) of the National Housing Act as in effect immediately prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(6) Held by any insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940: *Provided*, That all shares held by all insurance company affiliates of such savings association or savings and loan holding company may not, in the aggregate, exceed five percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company, and such shares are not acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company; and

(7) Acquired pursuant to a qualified stock issuance if such a purchase is approved pursuant to § 574.8 of this chapter.

The aggregate amount of shares held under this subparagraph (c) (other than pursuant to subparagraphs (c)(1), (c)(2), (c)(3), (c)(4) and (c)(6)) may not exceed 15 percent of all outstanding shares or the voting power of a savings association or savings and loan holding company.

(d) *Acquisitions of uninsured institutions.* No savings and loan holding company may, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire control of an uninsured institution or retain, for more than one year after the date any savings association subsidiary becomes uninsured, control of such association.

Dated: March 20, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR PARTS 748 and 749

RIN 3133-AD24

Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines

AGENCY: National Credit Union
Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to amend its regulations to address a federally-insured credit union's obligation to maintain a records preservation program. The proposed rule draws from existing guidance to clarify requirements for preserving vital records and to suggest important items for consideration in restoring vital member services. NCUA believes the revised language and new appendix will facilitate the recovery of essential operations after a catastrophic act resulting in continued member confidence in the credit union system. The agency also proposes to amend its regulations to clarify the meaning of catastrophic act.

DATES: Comments must be received on or before May 11, 2007.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *NCUA Web Site:* http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- *E-mail:* Address to regcomments@ncua.gov. Include "[Your name] Comments on Proposed Rule Parts 748 and 749," in the e-mail subject line.
- *Fax:* (703) 518-6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6540 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Andrew Healey, Program Officer, Division of Supervision, Office of Examination and Insurance, at (703) 518-6360 or Linda K. Dent, Staff Attorney, Office of General Counsel, at (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

Lessons learned from previous catastrophic acts, including the dramatic effects of the Katrina and Rita hurricanes, indicate the importance of preserving vital records and swiftly restoring vital member services. In particular, NCUA's review of events in the hurricanes' aftermath demonstrates the need for advance planning and preparation in successfully responding to a catastrophic act.

Challenges such as providing members with access to funds and account information, loss of, or lack of, access to facilities, and locating and communicating with staff were some of the immediate issues credit unions faced. Fortunately, affected credit unions did not face these challenges alone. Help came from NCUA, other credit unions, trade organizations, and service providers. For example, NCUA operated a call center to assist credit union members in contacting their institutions. Agency field staff checked on credit union facilities, helped locate staff, assisted credit unions with equipment needs, and helped credit unions restore share and loan data where necessary. Other credit unions mobilized to send needed cash, provided operating space, made staff available, and sent needed equipment to affected credit unions. Trade organizations served as a clearinghouse to match those with resources with those in need. Shared branch facilities signed on institutions enabling them to service displaced members.

In reviewing these experiences, the Board determined credit unions, which had considered potential threats and identified critical functions necessary

for the retrieval of vital records, were able to address anticipated challenges and unforeseen difficulties and restore vital member services. These institutions were able to provide members with access to their funds and handle member inquiries in a relatively short time period. The proposed amendments draw from these experiences to identify program elements the Board considers essential to restoring vital records and member services.

Many of these elements are covered in previous NCUA guidance issued to federally-insured credit unions (FICUs) on disaster recovery planning. Despite the existence of this guidance, the Board is concerned that some credit unions may not be maintaining sufficient plans and safeguards to respond to events causing the destruction of vital records or catastrophic acts. The Board believes this proposal is necessary to ensure credit unions address these critical issues in the paramount interest of maintaining services to members and confidence in the credit union system if a catastrophic act occurs.

Proposed Changes

The proposed changes specifically address the Board's concerns regarding restoration of vital member records and services. The proposed changes establish minimum standards for preserving vital records and include recommendations concerning restoring member services considered vital to a credit union's continued operation.

Part 748

The Board proposes to revise the definition of catastrophic act to clarify that any event causing an interruption in vital member services for more than two business days is a qualifying event.

Part 749

Several of the proposed changes pertain to format and grammar and are made to clarify the rule's language. For example, the Board proposes to eliminate the question format currently used in the section headings and replace these with language simply describing each section's contents. Section 749.1 includes two changes of note. Changes to the vital records definition clarify that share, deposit, and loan balances for each member's account should be available as of the most recent business day, while a financial report of the credit union's asset and liability accounts and bank reconciliations should be available as of the most recent month's end. All other vital records should be updated as changes occur. A new paragraph (d) is added requiring