

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 516, 528, 543, 544, 545, 552, 559, 563, 563b, 567, 574, and 575

[No. 2004-54]

RIN 1550-AB93

**EGRPRA Regulatory Review—
Application and Reporting
Requirements**

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Interim final rule.

SUMMARY: As a part of its review of regulations under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, Sept. 30, 1996) (EGRPRA), the Office of Thrift Supervision (OTS) is reducing regulatory burden on savings associations by updating and revising various application and reporting requirements. Specifically, OTS is: (1) Modifying the branch office and agency office application and notice requirements, (2) harmonizing publication and public comment procedures for various applications and notices, and (3) revising the meeting procedures. OTS is also eliminating various obsolete rules.

Today's changes are designed to reduce burden to the extent consistent with safe and sound supervision of the industry. They further the burden reduction efforts in OTS's recently published proposed and final rules implementing the Community Reinvestment Act (CRA).

DATES: This rule is effective on January 1, 2005. Comments must be received by January 24, 2005.

ADDRESSES: You may submit comments, identified by No. 2004-54, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail address:* regs.comments@ots.treas.gov. Please include No. 2004-54 in the subject line of the message and include your name and telephone number in the message.

- *Fax:* (202) 906-6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004-54.

- *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, Attention: No. 2004-54.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet Site at <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (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: Josephine Battle, Program Analyst, Thrift Policy, (202) 906-6870; Donald Dwyer, Director, Applications, Examinations and Supervision Operations, (202) 906-6414; Karen Osterloh, Special Counsel, Regulations and Legislation Division, (202) 906-6639; or Gary Jeffers, Senior Attorney, Business Transactions Division, (202) 906-6457, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 2003, OTS and the other Federal banking agencies began a joint effort to review their rules and identify outdated or otherwise unnecessary regulatory requirements. This review is required by section 2222 of EGRPRA, which directs the banking agencies to jointly or individually categorize their regulations by type, provide notice and solicit public comment on the categories, request commenters to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome, and eliminate unnecessary regulations to the extent that such action is appropriate. 12 U.S.C. 3311. As part of this EGRPRA process, OTS, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency published a notice seeking comment on unnecessary regulatory burden in their

rules governing application and reporting requirements.¹

Based on the comments submitted in response to the notice and additional comments voiced at EGRPRA outreach meetings, OTS is making various changes to its application and reporting requirements. These changes are designed to reduce burden to the extent consistent with the safe and sound supervision of the industry. They further the burden reduction efforts that OTS began in its final rule published in the **Federal Register** on August 18, 2004, which revised the definition of "small savings association" used in the CRA regulations. 69 FR 51155. They also complement the burden reductions contained in the proposed CRA rule published elsewhere in today's **Federal Register**. The related proposed CRA rule would revise the definition of "community development" to encourage savings associations to increase community development services in rural areas, and would provide additional flexibility in the assignment of CRA ratings to permit large retail savings associations to focus their community reinvestment efforts on activities needed by their communities.

Specifically, today's final rule: (1) Modifies the branch office and agency office application and notice requirements, (2) harmonizes publication and public comment procedures for various applications and notices, and (3) revises the meeting procedures. OTS is also eliminating various obsolete rules. These changes are discussed below.

II. Interim Final Rule

A. Branch and Home Offices

As part of the EGRPRA process, OTS reviewed the application requirements that apply to branch and home offices operated by Federal savings associations. Currently, OTS requires a Federal savings association to file an application or notice when it establishes a new branch office, changes the permanent location of an existing home or branch office, or changes the designation of an office as a home or branch office.² OTS permits a Federal savings association to change the

¹ 68 FR 35589 (June 16, 2003). The June 2003 notice also addressed powers and activities and international operations. In January 2004, the agencies published a second notice seeking comment on consumer protection provisions in lending-related rules. 69 FR 2852 (Jan. 21, 2004). In July 2004, the agencies published a third notice seeking comment on consumer protection provisions in other rules. 69 FR 43347 (July 20, 2004).

² 12 CFR 545.92, 545.93 and 545.95.

location of a home or branch office in a "short-distance relocation" without obtaining prior OTS approval. However, the association must notify OTS at least 30 days before the relocation to permit OTS to determine whether the proposed relocation satisfies all short-distance relocation requirements.³ OTS does not require any branch application or notice for drive-in or pedestrian offices that meet certain requirements.⁴

Currently, State-chartered savings associations are not required to file any application or notice with OTS regarding changes to their home or branch offices. This has not raised any significant safety and soundness concerns for State-chartered savings associations. Accordingly, OTS has decided to modify its branch and home office application and notice requirements for Federal savings associations to ease regulatory burden to the extent feasible. OTS has made the following changes.

Elimination of application and notice requirements for re-designations of home and branch offices. Under the existing rules, a Federal savings association must file an application or notice and receive OTS prior approval before it re-designates a home office or branch office.⁵ Because office re-designations do not raise significant supervisory or compliance issues, today's interim final rule eliminates this requirement. To ensure that OTS has the current addresses of all home offices, however, the home office rule requires Federal savings associations to notify their appropriate OTS Regional Offices if the permanent address of its home office changes.

Elimination of application and notice requirements for certain highly rated Federal savings associations. Under the interim final rule, certain highly rated Federal savings associations will be permitted to change the location of a home or branch office or establish a new branch office without filing an application or notice with OTS. Under this exception, a Federal savings association is not required to submit an

application or notice if it satisfies all of the following criteria:

- Its composite rating under the Uniform Financial Institutions Rating Systems (CAMELS) was 1 or 2 during the most recent examination.
- Its CRA rating was satisfactory or outstanding during the most recent examination.
- Its compliance rating was 1 or 2 during the most recent examination.
- It satisfies all of its capital requirements under 12 CFR part 567. The Federal savings association must meet this standard both before and immediately following the establishment or relocation of the office.
- OTS has not notified the Federal savings association that it is in troubled condition.⁶

OTS believes that these standards will ensure that only those Federal savings associations that are operated in a safe and sound manner and consistent with applicable CRA and compliance requirements will be exempted from application and notice requirements.

To ensure that the public continues to be afforded an opportunity to comment on a Federal savings association's record of compliance with the CRA and other matters, OTS will require the association to solicit comment by publishing a newspaper notice indicating that it intends to change the location of a home or branch office or establish a new branch office.⁷ If no commenter objects to the proposed action during a 30-day comment period following the publication, an application or notice will not be required. If a comment opposing the application is filed, the Federal savings association will be required to file an application or notice unless OTS determines that the comment raises issues that are not relevant to the branch and home office approval standards or determines that OTS action in response to the comment is not required.

OTS is considering imposing an additional condition on the use of this exception. Branch offices can be costly to build and operate. Moreover, excessive growth can present other supervisory issues. OTS regulations currently limit the amount of the book value of a Federal savings association's investment in real estate used for office

and related facilities to the amount of its total capital.⁸ OTS is concerned that this limitation may not be sufficient to ensure safe and sound operations. Accordingly, the final rule may require an application or notice if the savings association's investment in branch and home offices exceeds a specified limit, or the association is engaged in multiple branch expansions. OTS specifically requests comment on this point.

Elimination of notice requirement for short-distance relocations. As noted above, the current rules require a Federal savings association to notify OTS at least 30 days before a short-distance relocation of a home or branch office. OTS is eliminating this notice as overly burdensome. OTS has also updated the terminology used in this section to reflect U.S. Census Bureau usage.⁹

Compliance with section 5(m). Section 5(m)(1) of the Home Owners' Loan Act (HOLA) states:

(A) No savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Director's prior written approval.

(B) No savings association shall establish any branch in the District of Columbia or move its principal office or any branch in the District without the Director's prior written approval.¹⁰

Because the existing regulations require OTS approval before a Federal savings association may establish a branch office or relocate a home or branch office, section 5(m) of the HOLA has not imposed any burden on Federal savings associations. There is no compelling reason to treat Federal savings associations in the District of Columbia differently from savings associations located elsewhere with respect to branch and home office applications. Accordingly, the Director of OTS is providing his prior written approval under section 5(m) to permit Federal savings associations incorporated under the laws of, organized in, or doing business in the District of Columbia to relocate home or branch offices and to establish branch offices, if the Federal savings association is eligible for the exceptions described in this section. OTS also plans to seek a legislative change eliminating section 5(m) of the HOLA as unnecessary.

⁸ 12 CFR 560.37.

⁹ The U.S. Census Bureau now uses the term "principal city" in lieu of "central city."

¹⁰ 12 U.S.C. 1464(m)(1).

³ 12 CFR 545.95(c).

⁴ 12 CFR 545.92(g). In addition, an existing association that converts to a Federal savings association may maintain an existing office, and a Federal savings association that acquires offices through consolidation, purchase of bulk assets, merger or purchase from a receiver of an association may maintain an acquired office, except to the extent that the OTS approval order specifies otherwise. 12 CFR 545.92(h). A separate branch application or notice is not required for these offices because OTS considers issues regarding these offices in connection with the conversion, consolidation, merger, or purchase application or notice.

⁵ 12 CFR 545.95.

⁶ These requirements are the same as those for expedited processing at 12 CFR 516.5.

⁷ A Federal thrift must follow the publication requirements in part 516, subpart B of this chapter with certain modifications specified in the interim final rule. For example, because the thrift will not submit an application or notice to OTS for these offices, the interim final rule states that 12 CFR 516.55(g), which addresses public inspection of filings, does not apply.

Other changes. OTS has made other changes that reduce regulatory burdens. For example, OTS has eliminated restrictions on the establishment of drive-in or pedestrian offices. Like the current rule, the interim final rule does not require an application or notice for a drive-in or pedestrian office that is within 500 feet of an approved branch or home office. The functions of the office must be limited to services that are ordinarily provided at a teller window. Under the current rule, a drive-in or pedestrian office requires prior OTS approval if a public entrance of another SAIF-insured association is closer to the drive-in or pedestrian window. OTS has eliminated this requirement as unnecessary.

OTS has also substantially reorganized and rewritten its rules on branch and home offices. The interim final rule:

- Retains the existing definition of branch office at § 545.92(a).
- Reiterates statutory limitations on the location of a home or branch office at § 545.92(b). These limitations include sections 5(r) and 10(e)(3) of the HOLA, and section 13(k)(4) of the Federal Deposit Insurance Act.¹¹ These limits are currently addressed in 12 CFR 545.93(a) and (b).
- Reiterates OTS's position on Federal preemption with respect to branching by Federal savings associations at § 545.92(c). Preemption is addressed in the current rules at 12 CFR 545.93(d).
- States the revised application and notice filing requirements at § 545.93.
- Consolidates the existing application and notice processing rules and approval standards at § 545.95. The current rules governing processing of branch and home office applications and notices are contained in three separate overlapping regulations. See 12 CFR 545.92(b)–(f), 545.93(c), and 545.95(a)–(b).

As noted above, the interim final rule restates the approval standards in the current rule. OTS considers several other issues in its review of these applications, including compliance with the National Historic Preservation Act and the National Environmental Policy Act. OTS is considering including these other factors in the final rule and specifically requests comment on this point.

While Federal savings associations will no longer be required to file applications and notices for many branch office changes, OTS and others will, nonetheless, continue to have access to information on branch offices.

All savings associations annually must send branch office data to OTS. This data may be accessed on the OTS home page under Data and Research>Corporate Directory>Summary of Deposits (www.ots.treas.gov/pagehtml.cfm?catNumber=25). Internet users may search for office deposits by institution, State, county or city. As a result, the general public, regulators, and bankers may: (1) Find the branches nearest to their home or office; (2) Evaluate an institution's share of the deposits in a particular market area; and (3) Analyze deposit information on existing branches in a particular market. OTS also intends to revise its internal examination procedures to ensure that its branch and home office location information is accurate and ensure that associations comply with all branching restrictions contained in the HOLA and OTS regulations. In addition, OTS will encourage all Federal savings associations to consult with their appropriate regional office before they open or relocate any office for which a branch application or notice is not required.

B. Agency Offices

OTS has also reviewed its rules on agency offices to determine whether these rules impose any unnecessary regulatory burden. Under the current OTS rule, a Federal savings association may establish or maintain an agency office to service and originate (but not approve) loans and contracts; to manage or sell real estate owned by the Federal savings association; and to conduct fiduciary activities or activities ancillary to the association's fiduciary business.¹² A Federal savings association may conduct other activities at agency offices. However, it must obtain prior OTS approval before it may do so.¹³

Most requests for additional activities at agency offices involve the approval of loans and contracts. Because these requests have not presented supervisory concerns, OTS believes that it may eliminate the notice requirement for loan and contract approval at agency offices without impacting safety and soundness. Accordingly, the interim final rule at § 545.96(a) states that a Federal savings association may approve loans and contracts at agency offices. As a result, a Federal savings association is not required to seek OTS approval to conduct such activities at an agency office.

OTS requests comment on whether there are other activities that may be

added to the listing of permissible agency office activities without impacting safety and soundness. Based on the public comments, OTS may include additional revisions addressing these activities in the final rule.

C. Application Processing

12 CFR part 516 sets out OTS procedures for processing applications, notices, and other filings. While part 516 prescribes uniform procedures applicable to most applications, it also recognizes that regulations for specific types of applications may prescribe different processing procedures and timeframes. See 12 CFR 516.1(b)(4) and (c).

Commenters on the EGRPRA review suggested that OTS review these different processing procedures and timeframes, and amend its rules to synchronize and harmonize these procedures to the extent possible to reduce confusion. The commenters specifically identified inconsistent publication and public comment procedures as problematic.

OTS agrees that it is appropriate to provide more consistency between the publication and public comment procedures for various filings. Based on its review of conflicting requirements, OTS is revising certain applications procedures.

1. Public Notice Requirements

Timing of publication. OTS requires applicants to publish a newspaper notice soliciting public comment on certain types of applications. Under the uniform application procedures at 12 CFR part 516, subpart B, an applicant must publish a newspaper notice no earlier than seven days before the filing of the application and no later than the date of filing of the application.¹⁴ By contrast, OTS regulations governing applications for conversions from mutual to stock form and change of control applications require an application to make its newspaper publication no earlier than three calendar days before, and no later than three calendar days after, filing of the application.¹⁵ OTS is conforming the publication dates for the mutual to stock conversion rules and the change of control rules to the publication requirements for other applications.

Number of publications. OTS also reviewed whether it may make the number of required newspaper publications more consistent for OTS applications. OTS existing rules require a one-time newspaper publication for

¹¹ 12 U.S.C. 1464(r), 1467a(e)(3), and 1823(k)(4).

¹² 12 CFR 545.96(a).

¹³ 12 CFR 545.96(b).

¹⁴ 12 CFR 516.60.

¹⁵ 12 CFR 563b.180(a) and 574.6(d).

most applications.¹⁶ Regulations governing applications filed under the Bank Merger Act (BMA), however, provide for weekly publications over a 30-day period.¹⁷

Because the underlying BMA statute (12 U.S.C. 1828 (c)(3)) states that BMA notices must be published "at appropriate intervals" in a newspaper of general circulation, the only way to achieve a uniform requirement would be to require multiple notices for all applications. OTS believes that it would be unduly burdensome to make its rules consistent on this point and has retained the single publication requirement for all applications, except BMA applications.

2. Public Comment Procedures

Public comment period. Several EGRPRA commenters urged OTS to make the public comment period consistent for all applications. The comment period for most applications is 25 calendar days from the filing date of the application.¹⁸ The comment period for a change of control application, however, is 20 days from the filing date. OTS may extend this period for an additional 20 days, for a total of 40 days.¹⁹ The BMA rules at 12 CFR 563.22(e)(4) generally provide for a 30-day public comment period. This time period is prescribed by statute.²⁰ The mutual to stock conversion rules provide for a 20-day comment period.²¹

OTS has established a single comment period for all applications. OTS is establishing a standard public comment period of 30 days after the date of publication of the initial public notice. This change will provide greater uniformity in application processing, which was important to the commenters on the EGRPRA application.

Late-filed comments. The existing rules require OTS to consider a late-filed comment if certain requirements are met.²² To provide OTS with

sufficient flexibility to ensure the timely processing of applications, the interim final rule provides OTS with the discretion to consider a late-filed comment. Under the interim final rule, OTS will consider a late-filed comment only if it determines that the comment will assist in the disposition of the application.

3. Related Changes

In connection with the above changes, OTS reviewed the publication and comment procedures contained in the OTS Acquisition of Control Regulations at 12 CFR 574.6(d) and (e). These rules substantially duplicate the general application processing rules at 12 CFR part 516, subparts B and C. Rather than continue to restate these procedures in part 574, OTS is substituting appropriate cross-references to part 516, subparts B and C. This change will eliminate certain requirements regarding publication of notices. OTS believes that these requirements can be eliminated because they are unnecessarily burdensome or include materials that are best set out in OTS handbooks.²³ OTS has made similar revisions to the public notice and comment requirements in the mutual to stock conversion regulation in 12 CFR part 563b.

The interim final rule also clarifies that the procedures currently described in 12 CFR 563.22(e)(1) through (4) apply only to certain Bank Merger Act applications and restates these Bank Merger Act application procedures in plain language. Finally, the interim final rule deletes the public notice, public comment, and meeting procedures from the mutual holding company reorganization procedures at 12 CFR part 575. Instead, the rule clarifies that mutual holding company reorganizations under part 575 are subject to public notice, public comment and meeting requirements under the Bank Merger Act regulations at § 563.22(e)(1) and the Savings and Loan Holding Company Act regulations at § 574.6(d) and (e).

the commenter demonstrates to OTS good cause why the commenter could not submit a timely comment; or (2) OTS concludes that the comment addresses a significant regulatory concern and will assist in the disposition of the application.

²³ *E.g.*, 12 CFR 574.6(d)(1) (An acquiror must publish in the "business section" of a newspaper); 12 CFR 574.6(d)(2) (An acquiror must publish "in a manner that is conspicuous to the average reader"); and 12 CFR 574.6(d)(2) (Acquirors must publish the notice substantially in the form set out in the regulations).

D. Application Processing—Formal and Informal Meetings

OTS rules at 12 CFR part 516, subpart D address informal and formal meetings held in connection with OTS applications. Under these rules, if a commenter requests a meeting, OTS must arrange an informal meeting to discuss issues raised in an application. OTS may conduct this informal meeting in any format, including a telephone conference or a face-to-face meeting. Following the informal meeting, an informal meeting participant may request a formal meeting. OTS must hold a formal meeting if requested.²⁴

One commenter on the EGRPRA notice asserted that some commenters may request informal and formal meetings solely to delay the processing of an application. Moreover, in many situations commenters wish to raise facts and circumstances that are already known to OTS or raise issues that are only marginally related to the applicable approval criteria. To ensure that OTS is not required to conduct unnecessary meetings, the commenters urged OTS to conform its meeting procedures more closely to the procedures used by the other banking agencies. Specifically, the commenters urged OTS to revise its rules to require meetings only where there are material issues of fact.

Based on these considerations, OTS has revised its meeting procedures. The interim final rule eliminates the requirement that OTS must hold formal and informal meetings whenever a commenter makes a request for the meeting. Instead, the rule states that OTS will grant meeting requests only when it finds that written submissions are insufficient to address facts or issues raised by an application, or it otherwise determines that a meeting will benefit its decision-making process. OTS may limit the issues to be considered at the meeting to issues that OTS decides are relevant or material. The interim final rule continues to permit OTS to arrange a meeting on its own initiative.

If OTS decides to conduct a meeting, it will invite the applicant and any commenter that requested a meeting and raised an issue that OTS intends to consider at the meeting. OTS may also invite other interested persons to participate in the meeting. The interim final rule does not specify the procedures governing the conduct of meetings. Rather, to provide OTS with the maximum flexibility, the rule states that OTS may conduct a meeting in any format, such as a telephone conference,

¹⁶ 12 CFR part 516, subpart B (application processing requirements in general) and 12 CFR 574.6(d) (change of control).

¹⁷ 12 CFR 563.22(e)(1).

¹⁸ 12 CFR 516.140.

¹⁹ 12 CFR 574.6(e).

²⁰ 12 U.S.C. 1828(c)(3) states that the notice of the proposed transaction must be published during a period that is at least as long as the period allowed for the Attorney General and other federal banking agencies to furnish reports under 12 U.S.C. 1828(c)(4). This time period is generally 30 days, but can be 10 days if the agency advises the Attorney General and the other banking agencies that an emergency exists requiring expeditious action. The statute does not specify when the 30-day or 10-day time period commences. 12 U.S.C. 1828(c)(3).

²¹ 12 CFR 563b.180.

²² 12 CFR 516.140(b). OTS will consider a late-filed comment if: (1) Within the comment period,

²⁴ 12 CFR 516.170 and 516.180.

face-to-face meeting, or a more formal meeting.

Under the current rules, if OTS decides to conduct a meeting, it must suspend applicable application processing time frames, including the time frames for deeming an application complete and the applicable approval time frames.²⁵ OTS has found that it is not always necessary to suspend applicable time frames when it conducts a meeting. To permit greater flexibility and prevent undue delay in processing applications, the rule provides OTS with discretion to suspend applicable time frames.

E. Other Changes

1. Section 528.4—Nondiscriminatory Advertising

Section 528.4 requires savings associations to include facsimiles of the equal housing lender logotype and legend in all advertising "other than for savings." As a result, savings associations must include the logotype and legend in advertising for all types of lending, including lending that is unrelated to housing, such as credit card loans, commercial loans, and educational loans. By contrast, related rules issued by the other banking agencies require the display of the equal housing lender logotype and legend only with respect to advertisements for housing-related loans.²⁶

OTS believes that its current requirement is too broad and imposes an unnecessary burden. Accordingly, OTS is amending § 528.4 to require displays of the equal housing logotype and legend only in advertisements for loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or loans secured by a dwelling.

2. Section 545.74—Securities Brokerage

12 CFR 545.74 addresses securities brokerage activities of service corporations. These requirements, which were originally promulgated in 1989, are largely obsolete, contain provisions that conflict with current law and guidance, and are confusing to the thrift industry. For example, this rule addresses third party brokerage arrangements between service corporations of Federal savings associations and broker-dealers to provide non-deposit investment products to customers. The Securities and Exchange Commission (SEC) requires such service corporations to register with SEC as broker-dealers. As a result, these service corporations are

subject to investor protection and other rules issued by SEC and the National Association of Securities Dealers, which overlap with many provisions in the OTS regulation.²⁷

Accordingly, in this interim rule, OTS is deleting existing § 545.74. OTS, however, is revising its pre-approved list of service corporation activities at § 559.4 to continue to permit service corporations to execute transactions in securities on an agency or riskless principal basis upon the order and for the accounts of customers and to provide investment advice, provided the service corporation registers with SEC or State securities regulators as required by applicable federal and state laws and regulations.²⁸

3. Section 563.181—Reports of Change of Control of Mutual Savings Associations

In 1968, the Federal Home Loan Bank Board adopted a regulation requiring mutual savings associations to report changes in control as required under section 407 of the National Housing Act.²⁹ The regulation, which is currently codified at 12 CFR 563.181, has remained substantially unchanged since 1969. The underlying statute, however, was repealed in 1989.³⁰

OTS does not believe that mutual associations should be required to routinely submit change of control reports. Changes in control of mutual associations are rare and OTS believes that its existing supervisory procedures are sufficient to identify when such a change does occur without requiring a mutual association to submit a report. Accordingly, OTS has deleted § 563.181 as unnecessary.

²⁷ On July 11, 2003, OTS issued CEO Memorandum #178, which indicated that savings associations using a service corporation for networking arrangements should either replace the contract between the service corporation and the broker-dealer with a contract between the savings association and the broker-dealer, or register the service corporation as a broker-dealer.

²⁸ OTS has made an unrelated clarifying change to section 559.4(f)(3). This section specifically lists insurance brokerage or agency for liability, casualty, automobile, life, health, accident, or title insurance as a pre-approved activity for service corporations. Section 559.4(i) already permits service corporations to conduct activities on behalf of a customer on other than "as principal" basis. Since insurance brokerage and agency activities are subsumed within this new category, OTS deleted this duplicative reference. OTS emphasizes that this change does not, in any way, alter the pre-approved insurance activities of service corporations.

²⁹ 12 CFR 563.18-1, 33 FR 15277 (Oct. 15, 1968).

³⁰ Title IV of the National Housing Act, including section 407, was repealed in 1989. Pub. L. 101-73, Title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

4. Section 563.183—Reports of Change in Chief Executive Officer or Director

Existing § 563.183 requires savings associations and savings and loan holding companies to report changes of chief executive officers and directors if the change occurs within 60 days before or 12 months after a change of control. This rule implements a statutory requirement at 12 U.S.C. 1817(j)(12). OTS believes that this statutory provision is outdated and should be eliminated, and will seek the legislative repeal of this requirement.

In the interim, OTS has decided to delete 12 CFR 563.183 and rely solely on the statutory requirement. This action will reduce burden in two ways. First, savings and loan holding companies will not be required to report changes of chief executive officers or directors. The statute requires reports only from savings associations. Second, this action eliminates the regulatory reporting requirement when a change of officer or director occurs within 60 days before a change of control. The statute only addresses changes of officers or directors that occur within 12 months after a change of control.

5. Section 567.13—Obligation of Acquirors of Savings Associations To Maintain Capital

Under 12 CFR 567.13, a person or company that controls a savings association and that is subject to a capital maintenance obligation, must notify OTS before it divests control of the thrift. Upon the receipt of notice, OTS will conduct an examination to determine whether there is a capital deficiency. If there is a deficiency, the person or company may not divest control of the savings association unless it pays or guarantees payment of the deficiency.

OTS has deleted this rule as obsolete. OTS no longer requires acquirors to execute capital maintenance agreements. Sufficient statutory and regulatory protections now exist to ensure that savings associations maintain adequate capital and to enable OTS to address capital deficiencies promptly and thoroughly.³¹

³¹ Under the Prompt Corrective Action provisions of section 38 of FDICIA (12 U.S.C. 1831o(e)(2)(C)) and OTS implementing regulations (12 CFR 565.5), OTS may not approve a capital restoration plan for any "undercapitalized" institution unless each company that controls the institution: (1) Guarantees that the institution will comply with the plan until the institution has been adequately capitalized for four consecutive quarters; and (2) provides appropriate assurances of performance of the plan.

²⁵ 12 CFR 516.190.

²⁶ Compare 12 CFR 338.8 (FDIC).

6. Miscellaneous Technical Revisions

OTS has included miscellaneous technical revisions in this rule. For example, the interim final rule updates cross-references to deleted or revised rules.

III. Regulatory Analysis

A. Administrative Procedure Act

Section 553 of the Administrative Procedure Act exempts rules of agency organization, procedure, and practice from notice and comment procedures. 5 U.S.C. 553. OTS finds that prior notice and public comment are not required to the extent that this rule: (1) Modifies publication requirements, public comment procedures, and meeting procedures that are used in the processing of applications and notices filed with OTS; (2) revises the application and notice requirements for branch and agency offices; and (3) eliminates obsolete reporting requirements.

The rule also eliminates obsolete rules that address securities brokerage activities by service corporations and capital maintenance obligations. OTS finds good cause for issuing these rule changes as an interim final rule. The continued inclusion of these provisions in the code of Federal regulations is confusing and likely to mislead the regulated entities. Accordingly, OTS finds that notice and public comment on these rule changes are impractical, unnecessary, and contrary to the public interest.

B. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act of 1999 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 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?

C. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, OTS may not conduct or sponsor, and

a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This interim final rule would continue to incorporate the information collection requirements contained in 12 CFR 543.2 and 552.2-1, currently approved under OMB Control No. 1550-0005, and does not make any material changes that affect the overall burden of compliance.

OTS also gives notice that the proposed revised collections of information—OMB Control Nos. 1550-0006, 1550-0011, 1550-0013, 1550-0014, 1550-0015, 1550-0016, 1550-0018, 1550-0056 and 1550-0072—were submitted to OMB for review and approval. At the end of the comment period, the comments and recommendations received will be analyzed to determine whether any of the information collections 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 OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to mmenchik@omb.eop.gov; 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 publicinfo@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, Regulations and Legislation 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 OTS'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 interim final rule, OTS is soliciting comments concerning the following information collections.

Branch Offices:

Title of Proposal: Branch Offices.

OMB Control No.: 1550-0006.

Form Number: OTS Forms 1450 and 1558.

Regulation Requirement: 12 CFR 545.93 and 545.95.

Affected Public: Savings associations.

Abstract: This interim rule revises, and under certain circumstances eliminates, the application and notice requirements for branch and home offices under 12 CFR 545.93 and 545.95. Revised 12 CFR §§ 545.93(a) and 545.95(a) require Federally-chartered institutions proposing to establish or change the location of a home or branch office to file an application or notice with OTS, unless one of the exceptions under § 545.93(b) applies. OTS analyzes each application or notice to ensure that there are no supervisory objections and that it meets all regulatory requirements. The remaining requirements in this information collection are unaffected by this interim rule, but are included in the overall burden estimate discussed below.

Estimated Number of Respondents: 897.³²

Frequency of Response: Event-generated.

Estimated Burden Hours per Response: Applications—2 hours; branch closing notices—.2 hours; recordkeeping (for policies required under the Interagency Branch Closing Policy Statement)—.25 hour; publication and posting—1 hour.

Estimated Total Burden: 484 hours.

³²The estimate of 897 respondents refers to the number of institutions that will incur a recordkeeping burden for maintaining branch closing policies described in the Interagency Branch Closing Policy Statement. Based on the number of applications and notices received during the period October 21, 2003 through October 20, 2004, OTS estimates that, at most, 28 institutions will file applications or notices under § 545.95.

Agency Office:

Title of Proposal: General Reporting and Recordkeeping by Savings Associations: Agency Office.

OMB Control No.: 1550-0011.

Regulation Requirement: 12 CFR 545.96.

Affected Public: Savings associations.

Abstract: This interim final rule revises 12 CFR 545.96, which sets forth the guidelines for agency offices. This collection of information is part of a larger collection that covers general reporting and recordkeeping.

Estimated Number of Respondents: 20.

Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 1 hour.

Estimated Total Burden: 20 hours.

Securities Brokerage:

Title of Proposal: Request for Service Corporation Activity.

OMB Control No.: 1550-0013.

Form Number: OTS Form 1566.

Regulation Requirement: 12 CFR 559.3 and 559.12.

Affected Public: Savings associations.

Abstract: 12 CFR 545.74 addresses the authority of a service corporation of a Federal savings association to act as a broker or a dealer and to enter into third party brokerage arrangements, and includes various restrictions on these activities. This interim final rule continues to authorize such broker-dealer activities at § 559.4 but eliminates the OTS restrictions on these activities in existing § 545.74, thereby reducing burden in this information collection. The remaining requirements for this information collection are found at 12 CFR 559.12, which governs the issuance of securities. These requirements are otherwise unaffected by this rule, but are included in the overall burden estimates described below. These remaining requirements allow OTS to review service corporation activities and to ensure that they will not adversely affect an institution's safety and soundness.

Estimated Number of Respondents: 24 (preapproved activities); 4 (other activities).

Frequency of Response: Event-generated.

Estimated Burden Hours per Response: .25 hours (preapproved activities); 2 hours (other activities).

Estimated Total Burden: 6 hours (preapproved activities); 8 hours (other activities)—14 hours total burden hours.

Mutual to Stock Conversion:

Title of Proposal: Application for Mutual to Stock Conversion.

OMB Control No.: 1550-0014.

Form Numbers: OTS Forms 1680, 1681, 1682, and 1683.

Regulation Requirement: 12 CFR part 563b.

Affected Public: Savings associations.

Abstract: Sections 5(i) (standard conversions) and 5(p) (supervisory conversions) of the Home Owners' Loan Act (HOLA) authorize mutual to stock conversions. 12 CFR part 563b governs mutual to stock conversions. This interim final rule revises the public notice and comment procedures for conversion applications. The remaining requirements in this information collection are unaffected by this interim rule, but are included in the overall burden estimates described below.

Estimated Number of Respondents: 7.

Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 510 hours.

Estimated Total Burden: 3,570 hours.

Savings Associations Holding Company Application:

Title of Proposal: Savings Associations Holding Company Application.

OMB Control No.: 1550-0015.

Form Number: Form H-(e).

Regulation Requirement: 12 CFR part 574.

Affected Public: Savings associations.

Abstract: Section 10(e) of the Home Owners' Loan Act (Act), as amended, and part 574 of the regulations promulgated thereunder provide that, unless a transaction is exempt under 12 CFR 574.3(c), no company or any director who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting stock of a savings association holding company, may acquire control of a savings association without the prior written approval of OTS. This interim final rule revises certain procedural requirements found at § 574.6. The remaining requirements in this information collection are unaffected by this interim rule, but are included in the overall burden estimates discussed below.

Estimated Number of Respondents: 50.

Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 450 hours.

Estimated Total Burden: 22,500 hours.

Savings Associations—Operations:

Title of Proposal: Merger Applications.

OMB Control No.: 1550-0016.

Regulation Requirement: 12 CFR 563.22(a), 546, and 552.13.

Affected Public: Savings associations.

Abstract: OTS merger regulations are found at 12 CFR 563.22(a), and corporate governance requirements are found at 12 CFR part 546 and 12 CFR 552.13. This interim final rule revises and clarifies the requirements found at § 563.22(e) that apply to applications filed under § 563.22(a). The remaining requirements in this information collection are unaffected by this interim rule, but are included in the overall burden estimates discussed below.

Estimated Number of Respondents: 16.

Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 31 hours.

Estimated Total Burden: 496 hours.

Charter Amendments:

Title of Proposal: Amendment of Savings Association Charter.

OMB Control No.: 1550-0018.

Regulation Requirement: 12 CFR 544.2 and 552.4.

Affected Public: Savings associations.

Abstract: 12 CFR parts 544 and 552 require a federally chartered savings association to obtain agency approval of any changes in its charter that are not preapproved by regulation. This interim rule changes charter provisions addressing home office designations under 12 CFR 544.2(b)(3) and 552.4(b)(2). The remaining charter provisions covered by this information collection requirement are unaffected by this interim rule, but are included in the overall burden estimates discussed below.

Estimated Number of Respondents: 27.

Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 6 hours.

Estimated Total Burden: 162 hours.

Application Processing:

Title of Proposal: Application Filing Requirements.

OMB Control No.: 1550-0056.

Regulation Requirement: 12 CFR part 516.

Affected Public: Savings associations.

Abstract: OTS regulations require that applications, notices, or other filings must be submitted to the appropriate Regional Office of OTS, unless specifically noted otherwise in the procedures for a particular filing. OTS reviews applications for completeness and compliance with legal requirements and for safety and soundness concerns. This submission reflects changes to certain application procedural requirements in an effort to provide more consistency among publication,

public comment, and meeting procedures for various filings. The remaining requirements are unaffected by this interim rule, but are included in the overall burden estimates discussed below.

Estimated Number of Respondents: 2,108.

Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 17 hours.

Estimated Total Burden: 358 hours.

Mutual Holding Company:

Title of Proposal: Mutual Holding Company.

OMB Number: 1550-0072.

Form Numbers: OTS Forms 1522 (MHC-1) and 1523 (MHC-2).

Regulation requirement: 12 CFR part 575.

Description: These information collections are necessary to fulfill statutory and regulatory requirements and to facilitate review of transactions to prevent insider abuse and unsafe and unsound practices by mutual holding companies and their subsidiaries. This interim final rule revises certain procedural requirements found at § 575.13. The remaining requirements covered by this information collection are unaffected by this interim rule, but are included in the overall burden estimate discussed below.

Affected Public: Savings Associations.

Estimated Number of Respondents: 35.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 350 hours.

Estimated Total Burden: 12,250 hours.

D. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule makes various changes to OTS application and reporting requirements that reduce regulatory burdens on all savings associations, including small savings associations. These changes should not have a significant impact on small institutions. Accordingly, OTS has determined that regulatory flexibility analysis is not required.

E. Executive Order 12866

The Director of OTS has determined that this interim final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act) 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. 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. The interim final rule makes various changes that should reduce regulatory burdens on all savings associations. Accordingly, OTS has determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more and that a budgetary impact statement is not required.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 528

Advertising, Aged, Civil rights, Credit, Equal employment opportunity, Fair housing, Home mortgage disclosure, Individuals with disabilities, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination, Signs and symbols.

12 CFR Parts 543 and 544

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Parts 552 and 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 574

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

12 CFR Part 575

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

Authority and Issuance

■ For the reasons outlined in the preamble, the Office of Thrift Supervision amends chapter V of title 12 of the Code of Federal Regulations, as set forth below:

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. Remove the entries for §§ 545.74, 545.92, 545.95, 563.181, and 563.183 in the display chart at § 506.1(b), add a new entry for §§ 545.93 and 545.95 to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control number
* * * * *	* * * * *
545.93 and 545.95	1500-0006
* * * * *	* * * * *

PART 516—APPLICATION PROCESSING PROCEDURES

■ 3. The authority citation for part 516 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 2901 *et seq.*

■ 4. Revise § 516.70 to read as follows:

§ 516.70 Where must I publish the public notice? in the communities indicated in the following chart:

You must publish the notice in a newspaper having a general circulation

If you file . . .	You must publish in the following communities . . .
(a) An application for permission to organize under § 543.2 of this chapter, a Bank Merger Act application under 563.22(a) of this chapter, an application to convert to is a federal charter under § 543.8 or § 552.2–6 of this chapter, or an application for a mutual to stock conversion under part 563b of this chapter . . .	The community in which your home office is located.
(b) An application to establish a branch office under § 545.95 of this chapter . . .	The community to be served by the branch office.
(c) An application for the change of permanent location of a home or branch office under § 545.95 of this chapter . . .	The community in which the existing office is located and the community to be served by the new office.
(d) A holding company application or a change of control notice under part 574 of this chapter . . .	The community in which the home office of the savings association whose stock is to be acquired is located and, if applicable, the community in which the home office of the acquiror's largest subsidiary savings association is located.

■ 5. Revise § 516.120(b) to read as follows:

§ 516.120 What information should a comment include?

* * * * *

(b) A commenter must include any request for a meeting under § 516.170 in its comment. The commenter must describe the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues.

■ 6. Revise § 516.140 to read as follows:

§ 516.140 How long is the comment period?

(a) *General.* Except as provided in paragraph (b) of this section, a commenter must file a written comment with OTS within 30 calendar days after the date of publication of the initial public notice.

(b) *Late-filed comments.* OTS may consider late-filed comments if OTS determines that the comment will assist in the disposition of the application.

■ 7. Remove § 516.150.

■ 8. Revise subpart D of part 516 to read as follows:

Subpart D—Meeting Procedures

§ 516.160 What does this subpart do?

This subpart contains meeting procedures. It applies whenever a regulation incorporates the procedures in this subpart, or when otherwise required by OTS.

§ 516.170 When will OTS conduct a meeting on an application?

(a) OTS will grant a meeting request or conduct a meeting on its own initiative, if it finds that written submissions are insufficient to address facts or issues raised in an application, or otherwise determines that a meeting

will benefit the decision-making process. OTS may limit the issues considered at the meeting to issues that OTS decides are relevant or material.

(b) OTS will inform the applicant and all commenters requesting a meeting of its decision to grant or deny a meeting request, or of its decision to conduct a meeting on its own initiative.

(c) If OTS decides to conduct a meeting, OTS will invite the applicant and any commenters requesting a meeting and raising an issue that OTS intends to consider at the meeting. OTS may also invite other interested persons to attend. OTS will inform the participants of the date, time, location, issues to be considered, and format for the meeting a reasonable time before the meeting.

§ 516.180 What procedures govern the conduct of the meeting?

(a) OTS may conduct meetings in any format including, but not limited to, a telephone conference, a face-to-face meeting, or a more formal meeting.

(b) The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. Appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*) and the OTS Rules of Practice and Procedure in Adjudicatory Proceedings (12 CFR part 509) do not apply to meetings under this section.

§ 516.185 Will OTS approve or disapprove an application at a meeting?

OTS will not approve or deny an application at a meeting under this subpart.

§ 516.190 Will a meeting affect application processing time frames?

If OTS decides to conduct a meeting, it may suspend applicable application processing time frames, including the time frames for deeming an application

complete and the applicable approval time frames in subpart E of this part. If OTS suspends applicable application processing time frames, the time period will resume when OTS determines that a record has been developed that sufficiently supports a determination on the issues considered at the meeting.

PART 528—NONDISCRIMINATION REQUIREMENTS

■ 9. The authority citation for part 528 continues to read as follows:

Authority: 12 U.S.C. 1464, 2810 *et seq.*, 2901 *et seq.*, 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

■ 10. Revise the introductory text to § 528.4 to read as follows:

§ 528.4 Nondiscriminatory advertising.

No savings association may directly or indirectly engage in any form of advertising that implies or suggests a policy of discrimination or exclusion in violation of title VIII of the Civil Rights Acts of 1968, the Equal Credit Opportunity Act, or this part 528. Advertisements for any loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall include a facsimile of the following logotype and legend:

* * * * *

PART 543—FEDERAL MUTUAL SAVINGS ASSOCIATIONS—INCORPORATION, ORGANIZATION, AND CONVERSION

■ 11. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

■ 12. Revise § 543.2(f) to read as follows:

§ 543.2 Application for permission to organize.

* * * * *

(f) *Meetings.* OTS may arrange a meeting in accordance with the procedures in subpart D of part 516 of this chapter.

* * * * *

PART 544—FEDERAL MUTUAL SAVINGS ASSOCIATIONS—CHARTER AND BY LAWS

■ 13. The authority citation for part 544 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

■ 14. Revise § 544.2(b)(3) to read as follows:

§ 544.2 Charter amendments.

* * * * *

(b) * * *

(3) *Home office.* A Federal mutual savings association may amend its charter by substituting a new home office in section 2, if it has complied with applicable requirements of § 545.95 of this chapter.

* * * * *

PART 545—FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS

■ 15. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

■ 16. Remove § 545.74.

■ 17. Revise § 545.91 to read as follows:

§ 545.91 Home office.

(a) All operations of a Federal savings association (“you”) are subject to direction from the home office.

(b) You must notify the appropriate OTS Regional Office if the permanent address of your home office changes, unless you have submitted an application or notice regarding the change under §§ 545.93 and 545.95 of this chapter.

■ 18. Revise § 545.92 to read as follows:

§ 545.92 Branch offices.

(a) *Definition.* A branch office of a Federal savings association (“you”) is any office other than your home office, agency office, administrative office, data processing office, or an electronic means or facility under part 555 of this chapter.

(b) *Branching.* Subject to the application and notice requirements at §§ 545.93 and 545.95 of this chapter, you may branch in any State or States of the United States and its territories unless the location would violate:

(1) Section 5(r) of the HOLA (12 U.S.C. 1464(r));

(2) Section 10(e)(3) of the HOLA (12 U.S.C. 1467a(e)(3)); or

(3) Section 13(k)(4) of the FDIA (12 U.S.C. 1823(k)(4)).

(c) *Preemption.* This exercise of OTS authority is preemptive of any State law purporting to address the subject of branching by a Federal savings association.

■ 19. Revise § 545.93 to read as follows:

§ 545.93 Application and notice requirements for branch and home offices.

(a) *Application and notice requirements.* A Federal savings association (“you”) must file an application or notice and receive OTS approval or non-objection under § 545.95 before you change the permanent location of, or establish a new, home or branch office, except as provided in this section.

(b) *Exceptions.* You are not required to submit an application or notice and receive OTS approval or non-objection under § 545.95 under the following circumstances:

(1) *Drive-in or pedestrian offices.* You may establish a drive-in or pedestrian office that is located within 500 feet of a public entrance to your existing home or branch office, provided the functions performed at the office are limited to functions that are ordinarily performed at a teller window.

(2) *Short-distance relocation.* You may change the permanent location of an existing home or branch office to a site that is within the market area and short-distance location area of the existing home or branch office. The short-distance relocation area of an existing office is the area that is within:

(i) A 1000-foot radius of an existing office that is within a Principal City in a Metropolitan Statistical Area (MSA) designated by the U.S. Department of Commerce;

(ii) A one-mile radius of an existing office that is within an MSA, but is not within a Principal City; or

(iii) A two-mile radius of an existing office that is not in an MSA.

(3) *Highly-rated Federal savings associations.* You may change the permanent location of, or establish a new, branch or home office if you meet all of the following requirements:

(i) You are eligible for expedited treatment under § 516.5 of this chapter. For the purposes of that section, you must meet the capital requirements under part 567 of this chapter before and immediately after you change the location of your home or branch office or establish a new branch office.

(ii) You published a notice of your intent to change the location of your home or branch office or establish a new branch office. To satisfy this publication requirement, you must follow the procedures in subpart B of part 516 of this chapter except that:

(A) Under § 516.55(d) and (e) of this chapter, your public notice must state that the public may submit comments to you and to the appropriate OTS office(s), and must provide addresses for you and for the appropriate OTS office(s) where the public may submit comments;

(B) Section 516.55(g) of this chapter, which addresses public inspections of filings with OTS, does not apply; and

(C) Under § 516.60 of this chapter, you must publish the public notice at least 35 days before you take the proposed action. If you publish a public notice more than 12 months before you take the proposed action, the publication is invalid.

(iii)(A) No person files a comment opposing the proposed action within 30 days after the date of the publication of the proposed notice, or (B) A person files a comment opposing the proposed action and OTS determines that the comment raises issues that are not relevant to the approval standards in § 545.95(b) of this chapter or that OTS action in response to the comment is not required.

(4) *Re-designations of home and branch offices.* You may re-designate an existing branch office as a home office at the same time that you re-designate your existing home office as a branch office.

(c) *Section 5(m) of the HOLA.* If you are incorporated under the laws of, organized in, or do business in the District of Columbia and you satisfy the requirements of paragraph (b) of this section, the Director of OTS has approved your home or branch office changes under section 5(m) of the HOLA.

(d) *Maintenance of branch and home office following conversion, consolidation, purchase of bulk assets, merger, or purchase from receiver.* An existing savings association that converts to a federal savings association may maintain an existing office and a federal savings association may maintain any office acquired through consolidation, purchase of bulk assets, merger or purchase from the receiver of an association, except to the extent that the approval of the conversion, consolidation, merger, or purchase specifies otherwise.

(e) *Prohibition.* You may not file an application or notice (or utilize any exception described in paragraph (b) of

this section) to establish a branch office, if you filed an application to merge or otherwise surrender your charter and the application has been pending for less than six months.

■ 20. Revise § 545.95 to read as follows:

§ 545.95 What processing procedures apply to my home or branch office application and notices?

(a) *Processing procedures.* Applications and notices under § 545.93 are subject to expedited or standard treatment under the application processing procedures at part 516 of this chapter.

(1) *Publication and posting requirements.* (i) You must publish a public notice of your application or notice in accordance with the procedures in subpart B of part 516 of this chapter. Promptly after publication, you must transmit copies of the public notice and the publisher's affidavit to OTS.

(ii) If you propose to change the location of an existing office, you must also post a notice of the application in a prominent location in the office to be relocated. You must post the notice for 30 days from the date of publication of the initial public notice.

(2) *Comment procedures.* Commenters may submit comments on your application or notice in accordance with the procedures in subpart C of part 516 of this chapter.

(3) *Meeting procedures.* OTS may arrange a meeting in accordance with the procedures in subpart D of part 516 of this chapter.

(4) *OTS Review.* OTS will process your application or notice in accordance with the procedures in subpart E of part 516 of this chapter. The applicable review period for applications filed under standard treatment is 30 days rather than the time period specified at § 516.270(a) of this chapter.

(b) *Approval standards.* (1) OTS will approve an application (or not object to a notice), if your overall policies, condition, and operations afford no basis for supervisory objection.

(i) You should meet or exceed minimum capital requirements under part 567 of this chapter and should be at least adequately capitalized as described in § 565.4(b)(2) of this chapter, before and immediately after the proposed action. If you are undercapitalized as described in § 565.4(b)(3), OTS will deny your application (or disapprove your notice), unless the proposed action is otherwise permitted under section 38(e)(4) of the FDIA.

(ii) OTS will evaluate your record of helping to meet the credit needs of your

entire community, including low- and moderate-income neighborhoods, under part 563e of this chapter. OTS may:

(A) Deny your application or disapprove your notice based upon this evaluation; or

(B) Impose a condition to the approval of your application (or non-objection to your notice) requiring you to improve specific practices and/or aspects of your performance under part 563e of this chapter. In most cases, a commitment to improve will not be sufficient to overcome a seriously deficient record.

(2) In reviewing your application and notice, OTS may consider information available from any source, including any comments submitted by interested parties or views expressed by interested parties at meetings with OTS.

(3) OTS may approve an amendment to your charter in connection with a home office relocation under this section.

(c) *Expiration of OTS approval.*

(1) You must open or relocate your office within twelve months of OTS approval of your application (or the date of OTS non-objection to your notice), unless OTS prescribes another time period. OTS may extend the time period if it determines that you are making a good-faith effort to promptly open or relocate the proposed office.

(2) If you do not open or relocate the proposed office within this time period, you must comply with the application and notice requirements of this section before you may open or relocate the proposed office.

■ 21. Revise § 545.96 to read as follows:

§ 545.96 Agency office

(a) *General.* A Federal savings association may establish or maintain an agency office to engage in one or more of the following activities: (1) Servicing, originating, or approving loans and contracts; (2) managing or selling real estate owned by the Federal savings association; and (3) conducting fiduciary activities or activities ancillary to the association's fiduciary business in compliance with subpart A of part 550 of this chapter.

(b) *Additional services.* A Federal savings association may request, and OTS may approve, any service not listed in paragraph (a) of this section, except for payment on savings accounts.

(c) *Records.* A Federal savings association must maintain records of all business it transacts at an agency office. It must maintain these records at the agency office, and must transmit copies to a home or branch office.

PART 552—FEDERAL STOCK ASSOCIATIONS—INCORPORATION, ORGANIZATION, AND CONVERSION

■ 22. The authority citation for part 552 continues to read as follows:

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

■ 23. Revise § 552.2–1(a)(4) to read as follows:

§ 552.2–1 Procedure for organization of Federal stock association.

(a) * * *

(4) *Meetings.* OTS may arrange a meeting in accordance with the procedures in subpart D of part 516 of this chapter.

* * * * *

■ 24. Revise 552.4(b)(2) to read as follows:

§ 552.4 Charter amendments.

* * * * *

(b) * * *

(2) *Home office.* A Federal savings association may amend its charter by substituting a new home office in section 2, if it has complied with applicable requirements of § 545.95 of this chapter.

* * * * *

PART 559—SUBORDINATE ORGANIZATIONS

■ 25. The authority citation for part 559 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

■ 26. Revise § 559.4(f) to read as follows:

§ 559.4 What activities are preapproved for service corporations?

* * * * *

(f) Securities activities, liquidity management, and coins.

(1) Execution of transactions in securities on an agency or riskless principal basis solely upon the order and for the account of customers or the provision of investment advice. The service corporation must register with the Securities and Exchange Commission and State securities regulators, as required by applicable Federal and State law and regulations.

(2) Liquidity management;

(3) Issuing notes, bonds, debentures, or other obligations or securities;

(4) Purchase or sale of coins issued by the U.S. Treasury.

* * * * *

■ 27. Revise § 559.12 by removing paragraph (d).

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 28. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

■ 29. Revise § 563.22(e) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(e)(1) The following procedures apply to applications described in paragraph (a) of this section, unless OTS finds that it must act immediately to prevent the probable default of one of the depository institutions involved:

(i) The applicant must publish a public notice of the application in accordance with the procedures in subpart B of part 516 of this chapter. In addition to the initial publication, the applicant must also publish on a weekly basis during the public comment period.

(ii) Commenters may submit comments on an application in accordance with the procedures in subpart C of part 516 of this chapter. The public comment period is 30 calendar days after the date of publication of the initial public notice. However, if OTS has advised the Attorney General that an emergency exists requiring expeditious action, the public comment period is 10 calendar days after the date of publication of the initial public notice.

(iii) OTS may arrange a meeting in accordance with the procedures in subpart D of part 516 of this chapter.

(iv) OTS will request the Attorney General, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation to provide reports on the competitive impacts involved in the transaction.

(v) OTS will immediately notify the Attorney General of the approval of the transaction. The applicant may not consummate the transaction before the date established under 12 U.S.C. 1828(c)(6).

(2) For applications described in § 563.22, certain savings associations described below must provide affected accountholders with a notice of a proposed account transfer and an option of retaining the account in the transferring savings association. The notice must allow affected accountholders at least 30 days to consider whether to retain their accounts in the transferring savings

association. The following savings associations must provide the notices:

(i) A savings association transferring account liabilities to an institution the accounts of which are not insured by the Savings Association Insurance Fund, the Bank Insurance Fund, or the National Credit Union Share Insurance Fund; and

(ii) Any mutual savings association transferring account liabilities to a stock form depository institution.

* * * * *

- 30. Delete § 563.181.
- 31. Delete § 563.183

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

■ 32. The authority citation for part 563b continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901; 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

■ 33. Revise § 563b.180 to read as follows:

§ 563b.180 How do I notify the public that I filed an application for conversion?

(a) You must publish a public notice of the application in accordance with the procedures in subpart B of part 516 of this chapter. You must simultaneously prominently post the notice in your home office and all branch offices.

(b) Promptly after publication, you must file four copies of any public notice and an affidavit of publication from each publisher. You must file the original and one copy with the Applications Filing Room in Washington, and two copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

(c) If OTS does not accept your application for conversion under § 563b.200 and requires you to file a new application, you must publish and post a new notice and allow an additional 30 days for comment.

■ 34. Revise § 563b.185 to read as follows:

§ 563b.185 How may a person comment on my application for conversion?

Commenters may submit comments on your application in accordance with the procedures in subpart C of part 516 of this chapter. A commenter must file the original and one copy of any comments with the Applications Filing Room in Washington and two copies with the appropriate Regional Office at the addresses in § 516.40 of this chapter.

PART 567—CAPITAL

■ 35. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

■ 36. Remove § 567.13.

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

■ 37. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

■ 38. Revise § 574.6(c)(2)(iii), (d) and (e) to read as follows:

§ 574.6 Procedural requirements.

* * * * *

(c) * * *

(2) * * *

(iii) Is materially deficient and will not be processed. The Office shall also notify an acquiror in writing within 15 calendar days after proper filing of any additional information furnished in response to a specific request by the Office as to whether the application or notice is thereby deemed to be sufficient. If the Office fails to so notify an acquiror within such time, the application or notice shall be deemed to be sufficient as of the expiration of the applicable period.

* * * * *

(d) *Public notice.* (1) The acquiror must publish a public notice of an application under § 574.3(a) or § 574.8 of this chapter or a notice under § 574.3(b) of this chapter, in accordance with the procedures in subpart B of part 516 of this chapter. Promptly after publication, the acquiror must transmit copies of the public notice and the publisher's affidavit to OTS.

(2) The acquiror must provide a copy of the public notice to the savings association whose stock is sought to be acquired, and may provide a copy of the public notice to any other person who may have an interest in the application.

(3) OTS will notify the appropriate state supervisor and will notify persons whose requests for announcements, as described in 12 CFR part 563e, Appendix B, have been received in time for the notification. OTS may also notify any other persons who may have an interest in the application or notice.

(e) *Submission of comments.* Commenters may submit comments on the application or notice in accordance with the procedures in subpart C of part 516 of this chapter.

* * * * *

PART 575—MUTUAL HOLDING COMPANIES

■ 39. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

■ 40. In § 575.13, revise paragraphs (c)(3) and (f), and delete paragraphs (c)(4) and (g) to read as follows:

§ 575.13 Procedural requirements.

* * * * *

(c) * * *

(3) *Public notice, public comment, and meetings.* This part imposes no requirements regarding public notice, public comment, or meetings for mutual holding company reorganizations. However, mutual holding company reorganizations under this part are subject to applicable public notice, public comment, and meeting requirements under the Bank Merger Act regulations at § 563.22(e)(1) of this chapter and the Savings and Loan Holding Company Act regulations at § 574.6(d) and (e) of this chapter.

* * * * *

(f) *Disclosure.* The rules governing disclosure of any notice or application submitted pursuant to this part, or any public comment submitted pursuant to paragraph (c) of this section, shall be the same as set forth in § 574.6(f) of this chapter for notices, applications, and public comments filed under part 574 of this chapter.

* * * * *

Dated: November 18, 2004.
By the Office of Thrift Supervision.

James E. Gilleran,
Director.

[FR Doc. 04-26010 Filed 11-23-04; 8:45 am]
BILLING CODE 6720-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-NE-51-AD; Amendment 39-13881; AD 2004-24-05]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co KG (formerly Rolls-Royce plc), Models Spey 555-15, 555-15H, 555-15N, and 555-15P Turbojet Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd. & Co KG (RRD) (formerly Rolls-Royce plc), models Spey 555-15, 555-15H, 555-15N, and 555-15P turbojet engines, with magnesium

split low pressure (LP) compressor case, part number (P/N) EU.73418A installed. This AD requires replacement of the magnesium split LP compressor case with a serviceable compressor case that is a combination of a steel front LP compressor case and a shortened split compressor case. This AD results from several reports of bird ingestion and LP compressor stage 1 rotor blade failures that have resulted in penetration of the magnesium LP compressor case, and damage to the airplane.

DATES: This AD becomes effective December 29, 2004.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D-15827 Dahlewitz, Germany, telephone +49 (0) 33-7086-1768; fax +49 (0) 33-7086-3356.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7747; fax (781) 238-7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to RRD models Spey 555-15, 555-15H, 555-15N, and 555-15P turbojet engines, with magnesium split LP compressor case, P/N EU.73418A installed. We published the proposed AD in the **Federal Register** on February 20, 2003 (68 FR 8157). That action proposed to require replacement of the magnesium split LP compressor case with a serviceable LP compressor case that is a combination of a steel front LP compressor case and a shortened split LP compressor case.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment received.

One commenter requests that special flight permits be added to the final rule. We do not agree. On July 22, 2002, the FAA revised 14 CFR part 39 by adding the Special Flight Permit provision. Doing this allowed us to omit that

provision from ADs, to help place the focus of ADs on the unsafe condition that created the need for each directive. ADs that allow Special Flight Permits with conditions, or that prohibit Special Flight Permits, will state those conditions in the compliance section. ADs that do not specify special flight conditions or do not prohibit special flight permits will not reference Special Flight Permits. If operators want to request Special Flight Permits, they must request them by following the procedure in 14 CFR part 39, § 39.25. Also, because this final rule requires that the actions be done within 60 months after the effective date of the AD, we anticipate no requests for a Special Flight Permit due to the amount of lead time available to comply with the AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 184 RRD models Spey 555-15, 555-15H, 555-15N, and 555-15P turbojet engines of the affected design in the worldwide fleet. We estimate that 34 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it will take about 6 work hours per engine to perform the actions, and that the average labor rate is \$65 per work hour. Required parts will cost about \$37,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$1,271,260.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in