

goals of the corporate reorganization exemption.³⁰

III. Executive Order 12866

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

IV. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603. In issuing the interim rule, OTS concluded, for good cause, that it was not required to publish a notice of proposed rulemaking. Accordingly, the RFA does not require an initial or final regulatory flexibility analysis.

Nonetheless, OTS considered the likely impact of this final rule on small businesses and believes that the rule will not have a significant impact on a substantial number of small entities. OTS has had comprehensive regulations implementing section 11 of the HOLA since 1991. Today's final rule updates these provisions to incorporate Regulation W, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, clarifies the relationship between section 11(a)(1) of the HOLA and Regulation W, and sets out the additional restrictions imposed under section 11(a)(4) of the HOLA. In light of these preexisting rules, OTS does not believe that the final rule will significantly increase the applicable burdens for small or large savings associations. Accordingly, a regulatory flexibility analysis is not required.

V. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act) applies only when an agency is required to issue a notice of proposed rulemaking or issues a final rule for which a notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, OTS determined that a notice of proposed rulemaking was not required for the interim final rule. Accordingly, OTS concluded that the Unfunded Mandates Act does not require an analysis of this final rule.

Nonetheless, OTS has considered the impact of the final rule under the

Unfunded Mandates Act and has concluded that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. OTS has had comprehensive regulations implementing section 11 of the HOLA since 1991. Today's final rule merely updates these provisions to incorporate Regulation W, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, interprets Regulation W to the extent necessary to apply the FRB rule to savings associations, clarifies the relationship between section 11(a)(1) of the HOLA and Regulation W, and sets out the additional restrictions imposed under section 11(a)(4) of the HOLA. In light of these preexisting rules, OTS does not believe that the final rule will significantly increase the applicable burdens for savings associations and will not result in increased expenditures by these institutions. Accordingly, OTS did not prepare a budgetary impact statement or specifically address the regulatory alternatives considered.

VI. Effective Date

Under 12 U.S.C. 4802(b), final rules that impose additional reporting, disclosure, or other new requirements on insured depository institutions must take effect on the first day of a calendar quarter that begins on or after the date of publication. The Administrative Procedure Act (5 U.S.C. 553(d)(APA)) provides that a final rule cannot be made effective less than 30 days after its publication. Together, these two statutes would require OTS to establish a January 1, 2004 effective date for this final rule.

Both statutes, however, permit the OTS to find good cause for establishing an earlier effective date. Today's rule changes generally relieve burdens or recognize exceptions to requirements imposed under the interim final rule. For example, the final rule revises OTS's definition of control, generally narrowing the definition of affiliate; removes repurchase agreements from the scope of the section 11 loan prohibition; and clarifies previously issued guidance on the attribution of activities and the calculation of quantitative limits. While the final rule applies slightly broader presumptions of control for convertible securities and nonvoting equity securities and, thus, expands the definition of affiliate in these areas, OTS believes that this change should have only a marginal impact on the regulatory burdens imposed on savings associations as a

whole. Accordingly, OTS finds good cause not to delay making this rule effective until the calendar quarter beginning January 1, 2004.

On the other hand, institutions will need some time to understand and adapt to the revised final rule. Consistent with the requirements of the APA, OTS believes that it is appropriate to delay the effective date of this rule for at least 30 days from publication. The effective date of this rule will be November 6, 2003.

VII. Paperwork Reduction Act of 1995

The information collection requirements in the OTS rules were previously approved under OMB control number 1550-0078. The final rule incorporates these requirements at § 563.41(c)(3) and (4), and does not make any changes that materially affect the overall burden of compliance.

List of Subjects

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

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

■ Accordingly, the Office of Thrift Supervision adopts as final the interim rule published on December 20, 2002 at 67 FR 77909, amending parts 559, 562, and 563 in Title 12, Chapter V, Code of Federal Regulations, with the following changes:

PART 559—SUBORDINATE ORGANIZATIONS

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

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

■ 2. Amend § 559.3 by revising paragraph (l) to read as follows:

§ 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of Federal savings associations?

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³⁰ OTS is aware that the FRB also defined well capitalized with respect to a "holding company that is not a bank holding company" by reference to the capital requirements at § 225.2. By its own terms, Regulation W applies only to member banks. 67 FR 76560, at 76561. A holding company that is not a bank holding company would include, for example, holding companies of OCC-chartered credit card companies or trust companies.