

# Proposed Rules

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

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 584

[Docket No. 2001-69]

RIN 1550-AB52

#### Authority for Certain Savings and Loan Holding Companies To Engage in Financial Activities

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of Thrift Supervision (OTS) is proposing to revise its regulations to clarify what financial activities are authorized for certain savings and loan holding companies (SLHCs) after the Gramm-Leach-Bliley Act (GLBA). Additionally, this proposed rule explains how the conditions the Federal Reserve Board (FRB) imposes on financial holding companies (FHCs) would apply to those SLHCs, outlines the process OTS would use to review activities that are complementary to financial activities, and removes certain obsolete and redundant provisions.

**DATES:** Comments must be received by December 10, 2001.

**ADDRESSES:**

*Mail:* Send comments to Regulations Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 2001-69.

*Delivery:* Hand deliver comments to the 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, Docket No. 2001-69.

*Facsimile:* Send facsimile transmissions to FAX Number (202) 906-6518, Attention: Docket No. 2001-69.

*E-mail:* Send e-mail to [regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov), Attention: Docket No. 2001-69, and include your name and telephone number.

*Availability of comments:* OTS will post comments and the related index on the OTS Internet Site at [www.ots.treas.gov](http://www.ots.treas.gov). In addition, interested persons may inspect comments at the Public Reference Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to [publicinfo@ots.treas.gov](mailto:publicinfo@ots.treas.gov), or send a facsimile transmission to (202) 906-7755. (Please identify the materials you would like to inspect, to assist us in serving you.) We schedule appointments on business days between 10 a.m. until 4 p.m. In most cases, appointments will be available the next business day following the date we receive your request.

**FOR FURTHER INFORMATION CONTACT:**

Donna M. Deale, (202) 906-7488, Manager, Holding Company and Affiliate Policy, Office of Supervision Policy; Kevin A. Corcoran, (202) 906-6962, Assistant Chief Counsel for Business Transactions, Business Transactions Division, Office of Chief Counsel; and Sally Warner Watts, (202) 906-7380, Senior Counsel, Regulations and Legislation Division, Office of Chief Counsel; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. If you want to access any of these telephone numbers by text telephone (TTY), you may call the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Authorizing New Activities as Financial in Nature**

*A. Statutory Background*

Historically, most SLHCs<sup>1</sup> were permitted to engage in a wide range of activities. Before the enactment of GLBA,<sup>2</sup> a unitary SLHC whose subsidiary thrift was a qualified thrift lender generally could operate without activity restrictions. Additionally, a multiple SLHC that acquired all, or all but one, of its subsidiary thrifts as a result of supervisory acquisitions generally could operate without activity restrictions if all of the subsidiary thrifts were qualified thrift lenders. These SLHCs have been referred to as

“exempt.” See 12 CFR 584.2a. Most all SLHCs qualified as exempt.

Under section 10 of the Home Owners' Loan Act (HOLA),<sup>3</sup> all other SLHCs (“nonexempt” SLHCs) were permitted to engage only in those nonbanking activities that were: specified by HOLA;<sup>4</sup> approved by regulation as closely related to banking by FRB;<sup>5</sup> or authorized by regulation on March 5, 1987 for SLHCs to engage in directly.<sup>6</sup>

GLBA expanded the activities authorized for nonexempt SLHCs to include those authorized for FHCs under section 4(k) of the Bank Holding Company Act of 1956 (BHCA).<sup>7</sup> GLBA also curtailed the availability of exempt status to only those that meet all of the following criteria:<sup>8</sup>

- It was an SLHC on May 4, 1999, or becomes an SLHC under an application pending with OTS on or before that date;
- The SLHC meets and continues to meet the requirements for an exempt SLHC; and
- The SLHC continues to control at least one savings association (or successor savings association) that it controlled on May 4, 1999, or that it acquired under an application pending with OTS on or before that date.

As a result, GLBA in effect redefined the requirements for an exempt SLHC. As discussed later, this proposal would modify the regulation's definition of an exempt SLHC.

This rule would affect the SLHCs that do not qualify as exempt. These nonexempt SLHCs currently make up less than 15 percent of all SLHCs, so most SLHCs would not be affected by this proposed rule. However, the universe of nonexempt SLHCs will increase as new SLHCs are approved.

This rule recognizes the authority (under section 10(c)(9) of HOLA) for nonexempt SLHCs to engage in the activities that are permissible for FHCs under section 4(k) of BHCA, as well as activities already permitted for nonexempt SLHCs (under section 10(c)(2) of HOLA).

<sup>3</sup> 12 U.S.C. 1467a.

<sup>4</sup> 12 U.S.C. 1467a(c)(2)(A)-(E) & (G).

<sup>5</sup> See 12 CFR 225.86(a), which is applicable to SLHCs under 12 U.S.C. 1467a(c)(2)(F)(i).

<sup>6</sup> 12 CFR 584.2-1, which implements 12 U.S.C. 1467a(c)(2)(F)(ii).

<sup>7</sup> 12 U.S.C. 1843(k).

<sup>8</sup> See 12 U.S.C. 1467a(c)(9)(C).

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

<sup>2</sup> Pub. L. 106-102, 113 Stat. 1338 (1999).

*B. Approved Activities for Financial Holding Companies*

Section 4(k) of BHCA authorizes enumerated activities that are financial in nature. In addition, the statute authorizes FHCs to engage in other activities that FRB and the Department of the Treasury determine to be financial in nature or incidental to a financial activity. The statute also authorizes FHCs to engage in activities that FRB determines to be

complementary to a financial activity and not a substantial safety or soundness risk. Activities permissible for FHCs under section 4(k) are generally broader than the activities permitted for BHCs, which must be "closely related to banking."

FRB has issued regulations governing nonbanking activities that are approved for FHCs under section 4(k) of BHCA. For an activity that is not specifically listed in the statute as financial in nature, these regulations specify

processes for FHCs to obtain a determination that the activity is authorized as financial in nature, including an activity incidental to a financial activity, or an activity complementary to a financial activity. FRB regulations also impose conditions on the conduct of certain activities. The following chart lists the activities authorized for FHCs under section 4(k) of BHCA and the conditions, if any, that FRB imposes.

Type of activity authorized by BHCA	FRB interpretations and conditions on activity
Activities that are financial in nature or incidental to a financial activity. Sec. 4(k)(1)(A).	<p>In addition to the activities that are financial in nature as specified in section 4(k)(4), which are discussed below, FRB has approved the following activity as financial in nature or incidental to a financial activity:</p> <p>Acting as finder in bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate. This activity is subject to various limitations and disclosure requirements. (For example, a finder must distinguish products and services offered by the FHC from those offered by a third party through the finder service). 12 CFR 225.86(d) (65 FR 80740 and 66 FR 19081).</p> <p>FRB has proposed the following activity as financial in nature or incidental to a financial activity:</p> <p>Real estate brokerage and real estate management. (66 FR 307 and 66 FR 12440).</p>
Activities that are complementary to a financial activity and that do not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally. Sec. 4(k)(1)(B).	<p>The FRB rule specifies factors it will consider in approving a notice to engage in a complementary activity. 12 CFR 225.89 (66 FR 418-419).</p> <p>FRB has proposed to identify the following activities as complementary to a financial activity:</p>
Lending, exchanging, transferring, investing for others, or safeguarding money or securities. Sec. 4(k)(4)(A).	<p>Data processing activities such as data storage, general data processing, and electronic information portal services. (65 FR 418)</p> <p>The FRB rule cross-references the statute. 12 CFR 225.86(c) (66 FR 418).</p>
Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability or death, or providing and issuing annuities, and acting as a principal, agent, or broker for the foregoing. Sec. 4(k)(4)(B).	<p>The FRB rule cross-references the statute. 12 CFR 225.86(c) (66 FR 418).</p>
Providing financial, investment, or economic advisory services. Sec. 4(k)(4)(C).	<p>The FRB rule cross-references the statute. 12 CFR 225.86(c) (66 FR 418).</p>
Issuing or selling instruments representing pools of assets permissible for a bank to control directly. Sec. 4(k)(4)(D).	<p>The FRB rule cross-references the statute. 12 CFR 225.86(c) (66 FR 418).</p>
Underwriting, dealing in, or making a market in securities. Sec. 4(k)(4)(E).	<p>The FRB rule cross-references the statute. 12 CFR 225.86(c) (66 FR 418).</p>
Any activities that FRB determined was closely related to banking on or before November 12, 1999, Sec. 4(k)(4)(F).	<p>In addition, an FRB rule states that a bank or thrift or U.S. branch or agency of a foreign bank may make an intra-day extension of credit to a securities affiliate that is engaged in these activities, only at market rates. A foreign bank that is an FHC or is treated as an FHC must comply with sections 23A and 23B of the FRA when a U.S. branch or agency of the foreign bank and such a securities affiliate engage in certain transactions. 12 CFR 225.4(g).</p> <p>Activities that FRB authorized by regulation by November 12, 1999, are listed at 12 CFR 225.28,<sup>9</sup> referenced by 12 CFR 225.86(a)(1) (66 FR 418).</p>
Any activity that FRB determined to be usual in connection with the transaction of banking or other financial operations abroad by November 12, 1999. Sec. 4(k)(4)(C).	<p>Activities that FRB approved by order by November 12, 1999, are listed at 12 CFR 225.86(a)(2) (66 FR 418). These activities include: providing administrative services to mutual funds, owning shares of a securities exchange, acting as a certification authority for digital signatures, providing employment histories to third parties, providing check cashing and wire transmission services, providing notary public services and other specified services in connection with offering banking services, and abstracting real estate titles.</p> <p>Activities that FRB authorized by regulation by November 12, 1999, are listed at 12 CFR 211.5(d) These activities are subject to the terms and conditions in part 211, and FRB interpretations in effect on that date. 12 CFR 225.86(a)(1) (66 FR 418). These activities also include, subject to various conditions, providing management consulting, operating a travel agency, and sponsoring a mutual fund. 12 CFR 225.86(b) (66 FR 418).</p>

Type of activity authorized by BHCA	FRB interpretations and conditions on activity
Merchant banking investment activities conducted by certain types of securities affiliates. Sec. 4(k)(4)(H).	Authorized merchant banking activities are described in FRB and Treasury rules at 12 CFR part 225, subpart J, and part 1500 (66 FR 8466–8493). These rules describe permissible investments, the conditions imposed on investments, limitations on managing or operating a portfolio company, holding periods for merchant banking investments, provisions addressing investments in private equity funds, and risk management and recordkeeping policies. See also 12 CFR 225.86(c) (66 FR 418).
Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities;	The FRB and Treasury interim rules list the activities from the statute and the factors they will consider in approving requests for specific activities. 12 CFR 225.86(e)(1) and 1501.2(a) (66 FR 260–261).
Providing any device or other instrumentality for transferring money or other financial assets;	
Arranging, effecting, or facilitating financial transactions for account of third parties. Sec. 4(k)(5).	

### C. This Rule—Approved Activities for Nonexempt SLHCs

This rule would revise OTS regulations to reflect the authority under GLBA for nonexempt SLHCs to engage in financial activities that are permissible for FHCs. OTS is proposing a number of amendments to current part 584. Specifically, the rule would revise the heading of the part to more accurately reflect its content, redesignate all existing sections as a new subpart A, revise these provisions as described below, and add a new subpart B.

#### 1. Amendments to Subpart A Permitted Activities (§ 584.2)

Current § 584.2 lists the activities expressly permitted by statute for nonexempt SLHCs. This proposed rule would revise § 584.2 to explicitly recognize the authority of SLHCs to engage in activities permissible for FHCs as financial in nature, incidental to a financial activity, or complementary to a financial activity. (In this preamble, these three types of activities are referenced as “financial activities”). This proposed rule is consistent with a 2001 OTS opinion that states that nonexempt savings and loan holding companies may engage in the activities permissible for financial holding companies under section 4(k) of BHCA.<sup>10</sup>

#### Exempt SLHCs (§ 584.2a)

This proposed rule would revise § 584.2a, which describes the qualifications for “exempt” SLHCs, to incorporate the qualifying conditions contained in section 10(c)(9) of HOLA.

<sup>9</sup> FRB has proposed to revise this regulation listing previously authorized data processing activities to cover more extensive activities, similar to the coverage afforded under § 225.86(d)(1), and to increase the percentage of a company’s revenues that may be derived from data processing. (65 FR 80387–80388).

<sup>10</sup> See Op. Chief Counsel, April 11, 2001, available on OTS’s web site, [www.ots.treas.gov](http://www.ots.treas.gov).

In addition, the rule would remove obsolete regulatory text from this section. Paragraphs (a)(2), (b), (c), and (d) are unnecessary, because they have very limited applicability and merely repeat the statute.

#### 2. New Subpart B

##### Purpose (§ 584.100)

New subpart B would specify the procedures, conditions, and restrictions that apply to nonexempt SLHCs engaging in financial activities permissible for FHCs. This subpart would not apply to exempt SLHCs.

##### FHC Activities Approved for Nonexempt SLHCs (§ 584.110)

This section would state that a nonexempt SLHC may engage in financial activities that FRB permits for FHCs, as implemented by FRB by order or regulation.<sup>11</sup> The proposed rule also would provide that OTS may prescribe limitations on these activities in a policy directive, supervisory directive, order, or regulation. OTS might exercise this authority, for example, if it had significant supervisory concerns about a particular holding company’s conduct of the activity and the potential impact on its subsidiary savings association, or if some aspect of the activity raised significant concerns for the thrift industry in general.

##### Applicability of FRB Conditions and Terminology (§ 584.120)

Generally, the rule would provide that a nonexempt SLHC must comply with the conditions imposed by FRB on an FHC that conducts that activity.<sup>12</sup> FRB

<sup>11</sup> See 12 CFR 225.86. The FRB regulations on permissible activities for FHCs generally are found at 12 CFR part 225, subpart I. Many of the other sections of part 225—such as those dealing with how to qualify as a financial holding company, the consequences of failing to continue to meet requirements for financial holding company status, or the notice regarding new activities—are not applicable to SLHCs.

<sup>12</sup> The rule would provide guidance on how SLHCs would comply with the FRB’s regulations on

permits an FHC to choose to conduct an activity under any applicable authority of section 4 of BHCA. An FHC’s conduct of the activity is subject only to the procedures and limitations imposed under the chosen source of authority.<sup>13</sup> Under this proposed rule, a nonexempt SLHC would similarly be permitted to choose the source of authority under which it will act and would be required to comply with all procedures and limitations imposed on the activity under the chosen source of authority. See proposed § 584.2(d).<sup>14</sup>

For example, a nonexempt SLHC that engages in underwriting, dealing in, or making a market in certain government securities could invoke either section 4(c)(8) or section 4(k)(4)(E) of BHCA as its statutory authority. If the SLHC invoked section 4(c)(8) of BHCA, the SLHC generally would be subject to revenue and other restrictions applicable to the bank holding companies<sup>15</sup> and would be required to file a notice under § 584.2–2. Those restrictions would not apply if the SLHC chose to act under section 4(k)(4)(E) of BHCA to conduct the identical activity, nor does section 4(k)(E) impose any other restrictions.

Most activities authorized under existing §§ 584–2–1 and 584.2–2 are also authorized under section 4(k) of BHCA. OTS expects that most SLHCs will elect to conduct the activities under section 4(k) of BHCA because these activities will be subject to fewer procedural requirements.

merchant banking that limit the aggregate value of certain merchant banking investments to a percentage of the financial holding company’s Tier 1 capital. The rule states that Tier 1 capital means the SLHC’s GAAP consolidated capital less GAAP consolidated intangible assets.

<sup>13</sup> 66 FR 406 (Jan. 3, 2001).

<sup>14</sup> These procedures may, for example, include the notice procedures at 12 CFR 584.2–1(c) (activities permissible as of March 5, 1987) or the application procedures under 12 CFR 584.2–2 (permissible bank holding company activities).

<sup>15</sup> 12 CFR 225.28(b)(8).

This proposed rule would prohibit a nonexempt SLHC from engaging in permissible activities in a way that would deviate from FRB conditions, unless it obtains prior written approval from OTS. Permitting SLHCs to deviate from FRB conditions in limited cases is consistent with OTS's position that the conditions imposed on an activity by FRB under section 4(c)(8) of BHCA do not necessarily apply to SLHCs.<sup>16</sup> An SLHC seeking approval for a deviation from FRB conditions would have to provide sufficient information for OTS to determine that: (1) Any deviation is not material; (2) FRB conditions should not apply to SLHCs generally; or (3) there is good cause not to apply the conditions. We request comment on the procedure for an SLHC to obtain OTS approval of a deviation from FRB conditions and the standards that OTS should apply to review requests for approval.<sup>17</sup>

#### SLHC Notice Requirements (§ 584.130)

Generally, FRB requires an FHC to notify it only after the FHC commences an activity under section 4(k) of BHCA for the first time. That notice is required by statute.<sup>18</sup> There is no similar statutory notice requirement for SLHCs. OTS believes that it generally can obtain sufficient information regarding SLHC activities through existing reports and through the examination process. These reports already provide for notice of new activities in a timely fashion.<sup>19</sup> OTS sees no need to impose an additional type of subsequent notice for

the nonexempt SLHCs affected by this rule. Accordingly, this rule would not generally require an SLHC to notify OTS when it engages in a permissible activity.

In accordance with section 4(j) of BHCA,<sup>20</sup> an FHC is required to notify FRB before the FHC commences activities that are complementary to a financial activity. FRB reviews these notices based on the facts of each case, regardless of whether FRB has approved a similar activity for another FHC. FRB considers the following:

- Whether the activity is complementary to an identified financial activity;
- Whether the proposed activity would pose a substantial risk to the safety or soundness of depository institutions or the financial system generally; and
- Whether the proposal could be expected to produce benefits to the public that outweigh possible adverse effects.<sup>21</sup>

Because section 4(j) requires a case-by-case approach in authorizing complementary activities, OTS proposes to require a nonexempt SLHC to notify OTS before commencing an activity that is complementary to a financial activity. OTS would process these notices under the standard treatment procedures in part 516, subparts A and E. The rule would require an SLHC to submit the same information as that required by FRB.<sup>22</sup> This would enable OTS to review the proposed activity for consistency with FRB approved complementary activities and for supervisory concerns. If OTS determined that the proposed activity is not an FRB-approved complementary activity, it would have the information necessary to assist the SLHC in obtaining FRB approval of the activity.

#### D. Procedural Matters

OTS plans to publish a final rule expeditiously. Accordingly, OTS has prescribed a 30-day comment period.

Section 722 of GLBA requires federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. 12 U.S.C. 4809. New subpart B uses plain language. We invite comment on whether there are additional changes OTS can make so that the provisions added are easier to understand.

## II. Findings and Certifications

### A. Paperwork Reduction Act

OTS invites comment on:

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

(2) Whether the estimate of the burden of the proposed information collection is accurate;

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

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

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

An agency may not conduct or sponsor and respondents are not required to respond to collections of information unless they display a currently valid Office of Management and Budget (OMB) control number.

The information collections requirements contained in this proposed rule have been submitted to OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). OTS will use any comments received to develop new burden estimates. Send comments on these information collections, referring to OTS Docket No. 2001- , OMB No. 1550-0063, to OTS and OMB at these addresses: by mail to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552, or by e-mail to [infocollection.comments@ots.treas.gov](mailto:infocollection.comments@ots.treas.gov); by mail to Alexander Hunt, Attention: 1550-0063, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington DC 20503, or by e-mail to [ahunt@omb.eop.gov](mailto:ahunt@omb.eop.gov).

OTS needs the information required under § 584.120 to decide whether to grant a request from an SLHC for approval to deviate from FRB conditions. OTS needs information required under § 584.130 to make a determination whether an SLHC's proposed complementary activities are consistent with FRB approvals of complementary activities. The likely respondents are savings and loan holding companies that are not exempt SLHCs under § 584.2a that want to engage in financial activities authorized under section 4(k) of HOLA. There are existing information collections associated with §§ 584.2-1, 584.2-2,

<sup>16</sup> See Op. Chief Counsel, March 14, 1990 (in considering an SLHC's application to engage in underwriting of government obligations and municipal revenue bonds and commercial paper, OTS would not be bound by the FRB's conditions but would likely consider the FRB's underlying concerns); Op. Chief Counsel, December 3, 1990 (in considering an SLHC's application to engage in asset allocation services, OTS determined that the FRB's concerns could be met without FRB conditions).

<sup>17</sup> In addition to FRB conditions, a nonexempt multiple SLHC must comply with statutory restrictions on ownership of voting shares in a company engaged in activities other than the activities specified in section 10(c)(2) of HOLA. Specifically, section 10(e)(1)(A)(iii) of HOLA provides that a multiple SLHC may not acquire more than 5 percent of the voting stock of a company, other than a subsidiary, that engages in activities other than those listed in 12 U.S.C. 1467a(c)(2). 12 U.S.C. 1467a(e)(1)(A)(iii). See 12 CFR 584.4. OTS concludes that this restriction applies to activities described under section 4(k) of BHCA if the activities are not also described in section 10(c)(2) of HOLA.

<sup>18</sup> 12 U.S.C. 1843(k)(6) and 66 FR 418-19 (Jan. 3, 2001) (to be codified at 12 CFR 225.87).

<sup>19</sup> Under authority of 12 CFR 584.1(e), each SLHC files an Annual/Current Report (H-(b)(11)) within 45 days after the end of each quarter to identify any changes, including new business activities, that have occurred since filing of its annual report at the close of its fiscal year.

<sup>20</sup> 12 U.S.C. 1843(j).

<sup>21</sup> See 12 CFR 225.89.

<sup>22</sup> *Id.*

and 584.9. Since this rule increases the number of nonexempt SLHCs, OTS is increasing the burden estimate slightly

for the existing collections. OTS estimates the total burden for the five

sections as 97 hours, as described below:

Rule section	Subject	Number of respondents	Number of responses per respondent	Average annual burden hours per response	Annual disclosure and recordkeeping burden
584.2-1, 584.2-2 .....	Filings for pre-1987 approved and bank holding co. activities.	10	1	2	20
584.9 .....	Application for approval of convicted person's participation.	1	1	2	2
584.120 .....	Applicability of conditions .....	10	1	5	50
584.130 .....	Notice of complementary activity .....	5	1	5	25

**B. Executive Order 12866**

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

**C. Regulatory Flexibility Act**

In accordance with section 605(b) of the Regulatory Flexibility Act (RFA), the Director of OTS has certified that this proposed rule will not have a significant impact on a substantial number of small entities within the meaning of the RFA. 5 U.S.C. 603.

In overseeing SLHCs that engage in activities that are permitted for FHCs under section 4(k) of BHCA, OTS proposes to impose only minimal notice and approval requirements. These requirements assure that if a nonexempt SLHC of any size chooses to engage in newly authorized activities, it would comply with statutory requirements. These requirements apply only when an SLHC plans to engage in complementary activities or plans to deviate from conditions FRB imposes on a particular section 4(k) activity. These procedural requirements are minor, are comparable to FRB requirements applicable to financial holding companies, and should not be burdensome for small SLHCs.

**D. Unfunded Mandates Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMA) requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. 2 U.S.C. 1532. OTS has determined that this proposed rule would not have such an impact. Rather, the rule would clarify that nonexempt SLHCs have broader authority to engage in nonbanking activities than are specified under current regulations.

Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

**List of Subjects in 12 CFR Part 584**

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

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

**PART 584—SAVINGS AND LOAN HOLDING COMPANIES**

1. Revise the heading of part 584 to read as shown above.
2. The authority citation for part 584 continues to read as follows:  
**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.
3. Add a heading for subpart A before § 584.1 to read as follows:

**Subpart A—General**

4. In § 584.2, revise the heading of the section, redesignate paragraph (c) as paragraph (e), and add new paragraphs (c) and (d) to read as follows:

**§ 584.2 Activities.**

\* \* \* \* \*

(c) *Financial holding company activities.* In addition to the activities permitted under paragraph (b) of this section, a savings and loan holding company may engage in activities that are permissible for financial holding companies as financial in nature, incidental to a financial activity, or complementary to a financial activity. Subpart B of this part describes the procedures, conditions, and restrictions that apply to these activities.

(d) *Election.* If a savings and loan holding company may conduct an activity under more than one authority described in this part, it must comply only with the procedures and

limitations imposed under the authority it elects to use.

\* \* \* \* \*

5. Revise § 584.2a to read as follows:

**§ 584.2a Exempt savings and loan holding companies.**

(a) *General requirements.* A savings and loan holding company is exempt from the activity limitations at § 584.2(b) of this part if it satisfies all of the following requirements:

- (1) It was a savings and loan holding company on May 4, 1999, or became a savings and loan holding company after that date under an application pending with OTS on or before that date;
- (2) It meets and continues to meet the following requirements:
  - (i) The savings and loan holding company (or its subsidiary) controls only one savings association and that savings association is a qualified thrift lender; or
  - (ii) The savings and loan holding company (or its subsidiary) controls more than one savings association; all (or all but one) of the savings associations were acquired in an acquisition under section 13(c) or 13(k) of the FDIA or section 408(m) of the National Housing Act, as in effect immediately before August 9, 1989; and all of the savings associations are qualified thrift lenders; and
- (3) It continues to control at least one savings association (or a successor) that it controlled on May 4, 1999 or acquired under an application pending with OTS on or before that date.

(b) *Failure to satisfy QTL requirements.* Any company that controls a savings association that should have become or ceases to be a qualified thrift lender, except a savings association that requalified as a qualified thrift lender pursuant to section 10(m)(3)(D) of the Home Owners' Loan Act, must register as and be deemed to be a bank holding company within one year after the date on which the savings association fails to qualify as a qualified thrift lender. In

such a case, the company is subject to the Bank Holding Company Act, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act.

6. Add a new subpart B after § 584.9 to read as follows:

**Subpart B—Activities That are Financial in Nature**

Sec.

584.100 What does this subpart do?

584.110 May I engage in activities permissible for financial holding companies?

584.120 Is my ability to engage in permissible activities subject to any conditions or restrictions?

584.130 Must I notify OTS when I engage in permissible activities?

**§ 584.100 What does this subpart do?**

This subpart addresses how savings and loan holding companies (SLHCs) (“you”) may engage in activities that are permissible for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956 (BHCA) (12 U.S.C. 1843(k)). SLHCs that are exempt under § 584.2a are not subject to this subpart.

**§ 584.110 May I engage in activities permissible for financial holding companies?**

You may engage in activities that are permissible for financial holding companies as financial in nature, incidental to a financial activity, or complementary to a financial activity. The Federal Reserve Board (FRB) specifies these activities in regulations and orders. See 12 CFR 225.86. Collectively, this subpart refers to these activities as “permissible activities.” OTS may limit permissible activities by policy directive, supervisory directive, order, or regulation.

**§ 584.120 Is my ability to engage in permissible activities subject to any conditions or restrictions?**

(a) *General.* If you engage in a permissible activity, you must comply with the conditions that FRB imposes by regulation or order on a financial holding company’s exercise of the activity, except as provided in paragraph (c) of this section.

(b) *FRB terminology.* In applying capital limitations in FRB regulations and orders, the term “Tier 1 capital of the financial holding company” means your GAAP consolidated capital less your GAAP consolidated intangible assets.

(c) *Deviation from FRB conditions.* You must not engage in a permissible activity in a way that would deviate from FRB conditions unless you obtain prior written approval from OTS. To obtain such approval, you must submit information to OTS under the standard treatment processing procedures of subparts A and E of part 516 of this chapter. This information must be sufficient to demonstrate that:

- (1) Any deviation from FRB conditions is not material;
- (2) The conditions do not apply to SLHCs generally; or
- (3) There is good cause not to apply the conditions in your case.

**§ 584.130 Must I notify OTS when I engage in permissible activities?**

(a) *Type of activity requiring notice.* You are not required to notify OTS (except as specified in § 584.120(c)) when you engage in a permissible activity other than an activity that is complementary to a financial activity.

(b) *When notice is required.* You must notify OTS in writing before you commence an activity, either directly or indirectly, that is complementary to a financial activity. You must file this notice under the standard treatment procedures of subparts A and E of part 516 of this chapter.

(c) *Contents of notice.* Your notice must:

(1) Identify and define the proposed complementary activity, specifically describing what the activity would involve and how you would conduct the activity;

(2) Describe the FRB approval of a complementary activity under which this activity would be permissible;

(3) Identify the financial activity that the proposed activity would complement, and provide detailed information sufficient to support a finding that the proposed activity is complementary to the identified financial activity;

(4) Describe the scope and relative size of the proposed activity, as measured by the percentage of the projected revenues that you will derive from the activity and the size of assets associated with the activity;

(5) Discuss the risks that the activity may pose to the safety and soundness of your subsidiary savings associations and to the financial system generally;

(6) Describe the potential adverse effects, including potential conflicts of interest, decreased or unfair competition, or other risks, that the activity could raise, and explain the measures you propose to take to address those potential effects;

(7) Describe the potential benefits to the public, such as greater convenience,

increased competition, or gains in efficiency, that you expect the proposal to produce; and

(8) Provide any information about your financial and managerial resources and any other information that OTS requests.

(d) *Factors OTS will consider.* (1) Whether the proposed activity is consistent with an activity that FRB has approved as complementary; and (2) Whether there are supervisory reasons not to permit you to engage in the proposed activity.

Dated: October 31, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2001–NE–31–AD]

RIN 2120–AA64

**Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) 250–C28 Series Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to certain Rolls-Royce Corporation (formerly Allison Engine Company) 250–C28 series engines. This proposal would require removal of third stage turbine wheels, part number (P/N) 6899383, with certain serial numbers (SN’s), from service before exceeding new, reduced life limits. This proposal would also establish a drawdown program to require the removal of those turbine wheels that exceed the new lower limit. This proposal is prompted by five reports of uncommanded shutdown caused by third stage turbine blade tip fractures, and turbine shroud fractures. The actions specified by the proposed AD are intended to prevent uncommanded shutdown of the engine due to fractures of third stage turbine blade tips and third stage turbine shrouds.

**DATES:** Comments must be received by January 7, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation