described in Section 1 above. The other two amounts, the deposit cutoff level and the reduced reporting limit, are also adjusted annually, by an amount equal to 80 percent of the increase, if any, in total deposits at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total deposits at all depository institutions increased by 9.3 percent (from $5,959.5 billion to $6,513.9 billion) between June 30, 2002 and June 30, 2003. Accordingly, the Board is adjusting the deposit cutoff level upward by $11.2 million, from its current level of $150.0 million in 2003 to $161.2 million in 2004. The Board is also adjusting the reduced reporting limit upward by $74 million, from its current level of $1.0 billion in 2003 to $1.074 billion in 2004.[2]

Beginning in September 2004, the boundaries of the four deposit reporting categories will be defined as follows. Those depository institutions with net transaction accounts over $6.6 million (the reserve requirement exemption amount) or total deposits greater than or equal to $1.074 billion (the reduced reporting limit) are subject to detailed reporting, and must file an FR 2900 report either weekly or quarterly. Of this group, those with total deposits greater than or equal to $161.2 million (the deposit cutoff level) are required to file the FR 2900 report each week, while those with total deposits less than $161.2 million are required to file the FR 2900 report each quarter. Those depository institutions with net transaction accounts less than or equal to $6.6 million (the reserve requirement exemption amount) and with total deposits less than $1.074 billion (the reduced reporting limit) are eligible for reduced reporting, and must either file a deposit report annually or not at all. Of this group, those with total deposits greater than $6.6 million (but less than $1.074 billion) are required to file the FR 2910a report annually, while those with total deposits less than or equal to $6.6 million are not required to file a deposit report. A depository institution that manipulates its reporting, however, in an attempt to qualify for less frequent reporting or to reduce its reserve requirement may be required to report the FR 2900 on a weekly basis and maintain appropriate reserve balances with its Reserve Bank, regardless of its most recent panel assignment.

[2]Consistent with Board practice, the deposit cutoff level has been rounded to the nearest $0.1 million, while the reduced reporting limit has been rounded to the nearest $1 million.

Notice and Regulatory Flexibility Act. The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The increases in the reserve requirement exemption amount, the low reserve tranche, the deposit cutoff level, and the reduced reporting limit serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary. Consequently, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to these amendments.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

The following reserve requirement ratios are prescribed for all depository institutions, banking Edge and agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts:	
$0 to $6.6 million ...	0 percent of amount.
Over $6.6 million and up to $45.4 million.	3 percent of amount.
Over $45.4 million	$1,164,000 plus 10 percent of amount over $45.4 million.
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

By order of the Board of Governors of the Federal Reserve System, October 1, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–25318 Filed 10–6–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 559, 562, and 563

[No. 2003–50]

RIN 1550–AB55

Savings Associations—Transactions With Affiliates

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: In December 2002, the Board of Governors of the Federal Reserve System (FRB) issued a final rule implementing sections 23A and 23B of the Federal Reserve Act (FRA). FRB's rule (Regulation W) combines statutory restrictions on transactions with affiliates with new and existing interpretations and exemptions. In today's final rule, the Office of Thrift Supervision (OTS) conforms its regulations on transactions with affiliates to Regulation W and implements additional restrictions imposed on savings associations under section 11(a) of the Home Owners' Loan Act (HOLA).

DATES: This final rule is effective November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Karen A. Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, or Donna Deale, Manager, (202) 906–7488, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 11(a)(1) of the HOLA (12 U.S.C. 1468(a)(1)) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c–1) to every savings association ''in the same manner and to the same extent'' as if the savings association were a member bank of the Federal Reserve System.

Section 23A of the FRA imposes three major limitations on a member bank's (and its subsidiaries') transactions with affiliates. First, section 23A limits the amount of ''covered transactions'' with any single affiliate to no more than 10 percent of the member bank's capital stock and surplus. Covered transactions with all affiliates are limited to no more than 20 percent of the member bank's capital stock and surplus. A covered transaction includes a loan or extension of credit to an affiliate, a purchase of or investment in securities issued by an affiliate, a purchase of assets from an

affiliate, the acceptance of securities issued by an affiliate as collateral security for a loan or extension of credit to any person or company, and the issuance of a guarantee, acceptance, or letter of credit on behalf of an affiliate.

Second, section 23A requires that all covered transactions between a member bank and its affiliates be on terms and conditions that are consistent with safe and sound banking practices and prohibits a member bank from purchasing low-quality assets from an affiliate. Finally, section 23A requires that a member bank's extensions of credit to affiliates and guarantees on behalf of affiliates be appropriately secured by a statutorily defined amount of collateral.

Section 23B of the FRA protects member banks by requiring that transactions between the bank (and its subsidiaries) and its affiliates occur on market terms—on terms and under circumstances that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with unaffiliated companies. Section 23B applies to covered transactions under section 23A, as well as other transactions, such as the sale of securities or other assets to an affiliate and the payment of money or the furnishing of services to an affiliate. Section 23B also prohibits certain purchases and acquisitions of securities by a member bank or its subsidiary subject to certain conditions, and prohibits certain advertisements or agreements that state or suggest that the member bank is responsible for the obligations of its affiliates.

In addition to the section 23A and 23B restrictions, section 11(a)(1) of the HOLA imposes two prohibitions on savings associations. First, a savings association may not make a loan or other extension of credit to any affiliate unless that affiliate is engaged only in activities that a bank holding company may conduct. In addition, no savings association may purchase or invest in securities issued by an affiliate, other than with respect to shares of a subsidiary. Section 11(a)(4) of the HOLA authorizes OTS to impose such additional restrictions on any transaction between a savings association and any affiliate as it determines to be necessary to protect the safety and soundness of the association.

OTS issued comprehensive rules implementing section 11(a) of the HOLA in 1991.[1] These rules, which were codified at 12 CFR 563.41 and 563.42 (2002), defined and clarified the application of sections 23A and 23B to savings associations and their subsidiaries, implemented the two prohibitions imposed under section 11(a) of the HOLA, and imposed additional restrictions and safeguards, as authorized by section 11(a)(4) of the HOLA.

FRB has statutory authority to issue regulations to administer and carry out the purposes of sections 23A and 23B of the FRA.[2] Until recently, FRB had not promulgated comprehensive regulations on this subject. Instead, FRB relied on a series of regulatory interpretations and informal staff guidance.[3] On December 12, 2002, FRB issued Regulation W, a comprehensive final rule implementing sections 23A and 23B of the FRA.[4] Regulation W incorporated many existing FRB interpretations, superseded certain outdated interpretations, exempted specific types of transactions, and implemented revisions to sections 23A and 23B contained in the Gramm-Leach-Bliley Act (GLBA).[5]

Regulation W does not, by its terms, apply to savings associations. However, because sections 23A and 23B apply to every savings association in the same manner and to the same extent as if the savings association were a member bank, OTS issued an interim final rule revising its regulations on transactions with affiliates to reflect Regulation W. 67 FR 77909 (Dec. 20, 2002). The OTS interim final rule had three goals:

- To incorporate all applicable provisions and exceptions prescribed by FRB in Regulation W;
- To provide guidance concerning the relationship between the additional prohibitions under section 11(a)(1) of the HOLA and Regulation W; and
- To set out the additional restrictions OTS imposes under section 11(a)(4) of the HOLA.

The interim rule cross referenced the substantive provisions contained in Regulation W; interpreted Regulation W to the extent necessary to apply these restrictions to savings associations; incorporated the prohibitions in section 11(a)(1) of the HOLA; and imposed various additional restrictions on savings associations under section 11(a)(4) of the HOLA.[6] The interim rule became effective April 1, 2003.

The comment period on the interim rule closed on February 18, 2003. OTS received comments from a savings association and from a representative of a savings association. Both commenters generally supported the interim rule.

II. Discussion of Comments

A. Affiliates

Regulation W defines the term ''affiliate'' to include parent companies (any company that controls the member bank); companies under common control with the member bank; companies under other types of common control; companies with interlocking directors, trustees or general partners; companies that are sponsored and advised on a contractual basis by the member bank or an affiliate; investment companies for which a member bank or any affiliate is an investment advisor; depository institution subsidiaries of a member bank; financial subsidiaries; companies held under merchant banking or insurance company investment authority; partnerships for which the member bank or an affiliate serves as general partner; subsidiaries of affiliates, and other companies that FRB deems to be an affiliate of the member bank. 12 CFR 223.2(a). This definition specifically excludes certain companies, including most subsidiaries of member banks. 12 CFR 223.2(b).

Commenters raised various issues regarding the scope of the definition of affiliate. These matters are discussed below.

1. Control

One of the fundamental concepts underlying the definition of affiliate is the concept of control. Regulation W states that control by a company or shareholder over another company means that:

- The company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other company.
- The company or shareholder controls in any manner the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the other company.
- The Board determines, after notice and opportunity for hearing, that the company or shareholder, directly or

[1] 56 FR 34005 (July 25, 1991).

[2] 12 U.S.C. 371c(f), 371c-1(e).

[3] FRB codified some of these interpretations at 12 CFR 250.240 through 250.250 (2002).

[4] 67 FR 76560 (Dec. 12, 2002), codified at 12 CFR part 223 (2003).

[5] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[6] The interim final rule implemented only section 11(a) of the HOLA. It did not contain every statutory or regulatory restriction on transactions between savings associations and their affiliates. For example, the rule did not address additional restrictions on transactions with affiliates that OTS may require as prompt corrective action under section 38(f)(2)(B) of the Federal Deposit Insurance Act (FDIA). 12 U.S.C. 1831o(f)(2)(B).

indirectly, exercises a controlling influence over the management or policies of the other company. 12 CFR 223.3(g)(1).

Regulation W also includes specific provisions addressing ownership or control of shares as a fiduciary, securities by a subsidiary, convertible instruments, and nonvoting equity securities. *See* 12 CFR 223.3(g)(2)–(5).

Until today, OTS's transactions with affiliates regulation included a more expansive concept of control than prescribed by the FRB in final Regulation W. Specifically, OTS's prior rule stated that a company or shareholder has control over another company if the company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other company or if the company or shareholder would be deemed to control another company under § 574.4(a) or presumed to control the company under § 574.4(b). *See* 12 CFR 563.41(b)(3) (2002). OTS also applied its own concepts of control to define a subsidiary of a savings association. 12 CFR 563.41(b)(4)(2002). This definition stated that a subsidiary of a savings association is a company that is controlled by a savings association within the meaning of part 574.

The major substantive difference between the control definitions in the prior OTS rule and final Regulation W involved the application of certain OTS rebuttable presumptions of control from part 574. For example under these control presumptions, a company will control another if it owns between 10 percent and 25 percent of any class of a company's voting stock and one or more control factors is present.[7] Regulation W does not have similar provisions.[8]

The interim final rule continued to incorporate OTS concepts of control, but requested comment on whether the OTS definition of control was appropriate. One commenter addressed this issue and urged OTS to conform its rule more closely to Regulation W.

When OTS originally promulgated its transactions with affiliates rule in 1991, FRB had promulgated no rules interpreting the meaning of control under sections 23A and 23B. In the absence of such guidance, OTS defined control for transactions with affiliates consistently with other OTS rules addressing similar concepts. At the time, part 574 represented OTS's most current and comprehensive analysis of control issues. Most savings associations had some familiarity with the control concepts in part 574.

Now that FRB has issued final rules interpreting the definition of control for sections 23A and 23B it is difficult to articulate any regulatory purpose that would be furthered by continuing to prescribe a different definition. Applying part 574 control concepts to transactions with affiliates restricts savings associations in two ways. First, it broadens the application of the section 23A and 23B restrictions for thrifts in comparison to similarly situated member banks. OTS does not believe that savings association transactions with the additional ''affiliates'' reached by the OTS control definitions raise safety and soundness concerns that necessitate treating them differently from similarly situated member banks. Indeed, the application of the OTS definition of control leads to anomalous results because a company with identical relationships to a bank and a savings association in the same bank holding company structure could have been an affiliate of the savings association under the OTS interim rule, but not an affiliate of the member bank under Regulation W.

Second, the application of the part 574 control concepts also expands the scope of the additional prohibitions imposed under section 11 of the HOLA. These prohibitions apply only to savings associations and were imposed to reflect the fact that affiliates of savings associations engage in a greater range of activities than affiliates of banks, which may expose the savings association to greater risk.[9] There is no indication that Congress was concerned about the risks posed by relationships with companies that do not meet the definition of affiliate in section 23A. Indeed, the statute appears to contemplate that OTS would use the same definitions of ''control'' and ''affiliate'' as set forth in section 23A and Regulation W.[10] Accordingly, to promote consistency and equal treatment of insured depository institutions to the maximum extent possible, OTS has revised the final rule to use Regulation W control concepts.

Certain companies will no longer be considered to be savings association affiliates under the revised definitions in the final rule. OTS may, nonetheless, continue to treat such a company as an affiliate if it has a relationship with a savings association or any affiliate of the savings association such that covered transactions by the savings association with the company may be affected by the relationship to the detriment of the savings association, or where the company presents a risk to the safety and soundness of the savings association.[11]

While certain companies will no longer be subject to the full range of restrictions and prohibitions under section 11 of the HOLA, some restrictions will continue to apply. For example, transactions between a savings association and a non-affiliate are subject to the ''market terms'' standards under section 23B, if an affiliate of the savings association has a financial interest in the non-affiliate. Thus, the market terms requirements will continue to apply to these entities.

As a related matter, OTS has identified an area where the OTS control rules may not have been as rigorous as final Regulation W. The definition of control in final Regulation W includes two provisions, not specifically addressed in section 23A, which discuss the treatment of convertible securities and nonvoting equity securities.[12] While the OTS control rules address similar concepts, the two rules are not identical.[13] As a

[7] 12 CFR 574.4(b)(1)(i). The eight control factors are described at 12 CFR 574.4(c) and include situations where an acquiror would: (1) be one of the two largest holders of any class of voting stock; (2) hold more than 25 percent of the total stockholders' equity; or (3) hold more than 35 percent of the combined debt securities and stockholders' equity.

[8] OTS's rule is more expansive in other ways. For example, under 12 CFR 574.4(b)(1)(ii) an acquiror has rebuttable control of a company if it directly or indirectly owns more than 25 percent of any class of stock and is subject to a control factor listed at 12 CFR 574.4(c). FRB does not have a similar provision.

[9] H.R. Rep. No. 101–122, at 408 (1989).

[10] Section 11(a)(3) states: Any company that would be an affiliate (as defined in sections 23A and 23B of the Federal Reserve Act [12 U.S.C. 371c and 371c-1]) of any savings association if such savings association were a member bank (as such term is defined in such Act) shall be deemed to be an affiliate of such savings association for purposes of [section 11(a)(1) of the HOLA].

[11] Final rule at paragraph (b)(3), which incorporates 12 CFR 223.2(a)(12).

[12] 12 CFR 223.3(g)(4) and (5).

[13] Specifically, Regulation W creates a rebuttable presumption that states ''[a] company or shareholder that owns or controls instruments (including options or warrants) that are convertible or exercisable, at the option of the holder or owner, into securities'' will be deemed to control the securities. 12 CFR 223.3(g)(4). Options or warrants are subject to the rebuttable presumption even though the holder may not exercise the option or warrant immediately. 67 FR 76560, at 76568. OTS's comparable provision at 12 CFR 574.2(u)(3) includes convertible securities as voting stock where the holder has ''the preponderant economic risk in the underlying voting stock.''

In addition, final Regulation W establishes a rebuttable presumption that control includes ownership or control of 25 percent or more of a company's ''equity'' capital. 12 CFR 223.3(g)(5). The comparable references to ownership of equity capital in OTS's rules either: (1) Refer to the contribution of more than 25 percent of the capital

result, certain entities could have been affiliates under Regulation W, but not affiliates under the OTS interim final rules. By adopting the FRB's definition of control, the OTS will conform its rules regarding the treatment of these securities.

Several regulations cross-reference the definition of ''affiliate'' at § 563.41. These rules include: 12 CFR 560.93(a) (loans to one borrower restrictions); 562.4 (regulatory reporting standards); and 563.142 (capital distributions). As a result of changes in this final rule, the coverage of these other rules also will change.[14]

2. Financial Subsidiaries

Regulation W defines affiliate to include a financial subsidiary of a member bank. 12 CFR 223.2(a)(8). A financial subsidiary generally is any subsidiary of a member bank that ''engages, directly or indirectly, in any activity that national banks are not permitted to engage in directly or that is conducted on terms and conditions that differ from those that govern the conduct of such activity by national banks.'' [15]

In the preamble to the interim rule, OTS addressed whether a savings association subsidiary would be considered to be financial subsidiary and, thus, an affiliate under section 23A of the FRA. OTS concluded that there is no statutory or supervisory basis for applying affiliate restrictions to savings association subsidiaries by classifying them as financial subsidiaries. The one commenter who addressed this issue agreed with OTS's conclusion regarding financial subsidiaries.

For the reasons stated in the preamble to the interim rule, the final rule at § 563.41(b) continues to state that savings association subsidiaries do not meet the statutory definition of financial subsidiary. As a result, Regulation W references to financial subsidiaries do not apply.

B. Prohibition of Loans and Extensions of Credit to Affiliates Engaged in Non-Bank Holding Company Activities

As noted above, section 11 of the HOLA applies two prohibitions to a savings association's transactions with its affiliates in addition to the section 23A and 23B limitations. Commenters raised several issues regarding OTS's implementation of section 11(a)(1)(A) of the HOLA, which prohibits a savings association from making a loan or other extension of credit to an affiliate unless the affiliate is engaged only in activities that a bank holding company may conduct.

1. Reverse Repurchase Agreements

The interim rule retained a provision on repurchase agreements that was adopted in a final rule published August 13, 1998 (63 FR 43292). Specifically, the interim rule states that a purchase of assets that is subject to the affiliate's agreement to repurchase (reverse repurchase agreement) [16] is a loan or extension of credit for the purposes of the section 11 loan prohibition. As a result, a savings association may not generally enter into reverse repurchase agreements with an affiliate that engages in non-bank holding company activities. The interim rule exempted certain agreements that involve United States Treasury securities and that meet other specified requirements. OTS specifically requested comment whether it should retain the repurchase agreement provisions.

Both commenters responded to this request. One urged OTS to delete the repurchase agreement prohibition. The commenter asserted that ''loan or extension of credit,'' as used in section 11 of the HOLA, does not encompass reverse repurchase agreements. At a minimum, both commenters urged OTS to retain the current exemption for transactions in United States Treasury securities.

Upon further review, OTS has decided to delete the repurchase agreement prohibition. In the preamble to the 1998 rule, OTS noted that section 11 of the HOLA does not define ''loan or other extension of credit,'' and does not compel a legal conclusion that purchases of assets that are subject to an affiliate's agreement to repurchase are, or are not, prohibited by statute.

While the text of section 11 does not ''compel'' either legal conclusion, upon further review, OTS now believes that other factors strongly suggest that Congress did not intend for such transactions to be included as loans or extensions of credit under this section. OTS has two bases for this conclusion.

First, the definition of ''covered transaction'' in section 23A of the FRA treats repurchase agreements as asset purchases, rather than as loans or extensions of credit. Specifically, section 23A(b)(7)(C) of the FRA defines purchases of assets to include ''assets subject to an agreement to repurchase'' rather than a loan or extension of credit under section 23A(b)(7)(A). Based upon the language of the statute, FRB staff has informally indicated that it considers reverse repurchase agreements to be purchases of assets and not extensions of credit.[17]

Second, the legislative history of the statutes governing thrift transactions with affiliates reinforces the conclusion that reverse repurchase agreements should not be treated as loans or extensions of credit under section 11(a)(1)(A). Before the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73 (FIRREA), a savings association's transactions with affiliates were governed by section 408 of the National Housing Act (NHA). 12 U.S.C. 1730a. Under section 408(p) of the NHA, thrift transactions with affiliates engaged only in bank holding company activities were subject to sections 23A and 23B of the FRA. Section 408(d) of the NHA addressed transactions with affiliates engaged in non-bank holding company activities. This section specifically prohibited six types of transactions and, like current section 23A, listed loans and extensions of credit separately from the ''purchase [of] securities or other assets or obligations under repurchase agreement from any affiliate.'' Compare section 408(d)(3) with (d)(4). The successor statute addressing transactions with affiliates engaged in non-bank holding company activities at section 11(a)(1)(A) of the HOLA, however, specifically prohibits only transactions within one of the original six categories—loans and extensions of credit. This suggests that Congress did not intend to prohibit transactions with affiliates that engage in non-bank holding companies activities to the extent that the transactions fell within one of the other five categories.

The 1998 rule on repurchase agreements treated reverse repurchase

of the company and, thus, address only direct purchases from an issuer rather than secondary market purchases (12 CFR 574.4(a)(2)(vi)); or (2) require the controlling person to also hold at least 10 percent of any class of voting stock or 25 percent any class of stock (12 CFR 574.4(b)(1)(i) and (ii), and 574.4(c)(2)).

[14] The definition of ''subsidiary'' in OTS's loans to insider rule at 12 CFR 563.43(d) includes cross-references to the definitions of ''control'' and ''subsidiary' in 12 CFR 563.41. OTS is examining whether it should revise § 563.43(d) to more closely follow the FRB's loan's to insiders rule at 12 CFR part 215, and may undertake a separate rulemaking proposing changes. To avoid confusion to the industry in the interim, OTS has not revised the substance of this definition.

[15] 12 CFR 223.3(p). FRB has provided several exceptions to this definition.

[16] A sale of assets subject to an agreement to repurchase is known as a ''reverse repurchase agreement'' when a bank or thrift is the purchaser of the assets. *See* M. Stigum, The Repo and Reverse Markets 4 (1989).

[17] As a general rule, the interim rule applies all Regulation W definitions to the additional section 11 prohibitions. The treatment of repurchase agreements was an exception to this general rule.

agreements as loans because these transactions bear some of the economic characteristics of a loan.[18] However, the typical reverse repurchase agreement structured in conformity with general market practices has economic attributes that distinguish it from other loans and extensions of credit. For example, such agreements typically involve an institution's purchase of a security, subject to an agreement by the counterparty to repurchase the same or a similar security at a fixed price at a later date. In these transactions, the ''purchaser'' of the securities takes title to the securities and can trade, sell or pledge the security during the term of the contract. The reverse repurchase agreement merely imposes a contractual obligation to deliver identical securities on the settlement date set by the contract. This unique feature makes it far more flexible than a standard collateralized loan, where the lender cannot obtain access to the collateral in the absence of a default.[19]

OTS may, of course, impose additional restrictions on transactions with affiliates under section 11(a)(4) of the HOLA if it determines that the restriction is necessary to protect the safety and soundness of savings associations. OTS believes that the quantitative limits, safety and soundness requirements, and low-quality asset prohibitions contained in section 23A, and the arms-length requirements in section 23B sufficiently address the safety and soundness concerns raised by repurchase agreements. To the extent that a particular savings association may attempt to evade the lending prohibition through artful restructuring of a prohibited loan as a reverse repurchase agreement, § 563.41(c)(1) (discussed below) provides OTS with sufficient authority to address the circumvention. Accordingly, the final rule treats reverse repurchase agreements as purchases of assets, and not as extensions of credit.

2. Attribution of Transactions and Activities

a. Third-party Attribution Rule

Sections 23A(a)(2) and 23B(a)(3) of the FRA require a member bank (and, thus, a savings association) to treat a transaction with any person as a transaction with an affiliate to the extent that the proceeds are used for the benefit of, or transferred to, an affiliate.[20] The text of section 11(a)(1)(A) of the HOLA does not specify a similar third party attribution requirement for the loan prohibition, and OTS has declined to infer such a requirement. To clarify this matter, the interim rule specifically stated that a loan or extension of credit to a third party is not prohibited under section 11(a)(1)(A) of the HOLA ''merely because proceeds of the transaction are used for the benefit of, or transferred to, an affiliate.'' Interim rule at § 563.41(c)(1).

The preamble to the interim rule noted that OTS may, nonetheless, attribute a loan to a third party to an affiliate, for example, where a savings association attempts to circumvent the loan prohibition through sham transactions.[21] OTS requested comment whether it should include this additional guidance in the final rule. One commenter responded asserting that further guidance was not needed.

The final regulation continues to state that a loan or extension of credit to a third party is not prohibited under section 11(a)(1)(A) merely because proceeds of the transaction are used for the benefit of, or transferred to, an affiliate. However, OTS is concerned that savings associations and their affiliates may misinterpret this provision and incorrectly conclude that the third party attribution rule will not apply to the loan prohibition under any circumstances. Accordingly, OTS clarified the final rule to state that OTS may inform the savings association that a particular transaction is prohibited if OTS determines that the transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in non-bank holding company activities, or OTS has other supervisory concerns concerning the transaction. OTS will make such a determination, for example, if a loan is a prearranged step in a series of transactions designed to channel funds to an affiliate engaged in non-bank holding company activities, or is otherwise designed to circumvent the loan prohibition. If OTS determines that a particular transaction is prohibited it may direct the savings association to divest the loan, unwind the transaction, or take other appropriate action.

b. Attribution of Activities Among Affiliates

When OTS originally issued its transactions with affiliates rule in 1991, it considered whether a savings association would be barred from extending credit to an affiliate that directly engaged only in activities permissible for a bank holding company, but the affiliate owned or controlled subsidiaries engaged in impermissible activities. OTS determined that activities must be attributed from a subsidiary to a parent affiliate in a vertical ownership chain up to, but not including, a controlling holding company in the corporate structure.[22] The preamble to the 1991 rule suggests that this attribution determination was intended to prevent savings associations from evading the section 11 loan prohibition by structuring transactions through ''strawmen'' affiliates.[23]

OTS specifically requested comment whether this interpretation should be included in the final rule. One commenter urged OTS to withdraw the guidance.

Upon reconsideration, OTS has decided to withdraw its 1991 guidance. Section 11 does not specifically require the attribution of activities from affiliated subsidiaries to their parent companies and, in the absence of information suggesting that this interpretation is necessary to protect the safety and soundness of savings associations, OTS is disinclined to interpret section 11 in a way that imposes additional burdens on savings associations. Rather than unduly restrict all savings associations, OTS believes that it can best address attempts at circumvention on a case-by-case basis. As noted above, the final rule states that OTS may prohibit a transaction if it determines that the transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in non-bank holding company activities or OTS has other supervisory concerns concerning the transaction. Under this provision, OTS will prohibit a loan, for example, if it is a prearranged step in a

[18] The savings association transfers funds to the affiliate, expecting to be repaid when the company repurchases the assets. The purchased assets essentially amount to collateral because the savings association is required to return the assets at the time of repurchase. The savings association earns a pre-determined amount under the agreement. The principal risk to the savings association and the deposit insurance fund is credit risk—the possibility that the affiliate will default on its obligation to make the repurchase. These types of agreements are generally considered to be the functional equivalent of a loan. *See* amendments to Federal Financial Institution Examination Counsel Policy Statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others (FFIEC Policy Statement), 63 FR 6935 (Feb. 11, 1998).

[19] In addition, the bankruptcy code permits the purchaser under the agreement to liquidate securities without being subject to an automatic stay or similar delay. 11 U.S.C. 362(b)(7).

[20] Regulation W addresses the ''third party attribution rule'' at 12 CFR 223.16 and 223.52(b).

[21] 67 FR 77909, at 77914. Op. OTS Chief Counsel (Dec. 22, 1991) and Op. OTS Chief Counsel (Mar. 13, 1992).

[22] 56 FR 34005, at 34009. *See* also, Op. OTS Chief Counsel (Nov. 13, 1990). Activities of a parent were not, however, attributed downward to its subsidiaries.

[23] *See* 56 FR 34005, at 34008. (Discussion of attribution of transactions).

series of transactions designed to channel funds to an affiliate engaged in non-bank holding company activities, or is otherwise designed to circumvent the loan prohibition.

C. Other Matters

OTS also wishes to clarify other guidance contained in its 1991 rulemaking. In the preamble to the 1991 final rule, OTS considered whether, for the purposes of calculating a savings association's aggregate amount of covered transactions with a particular affiliate, the savings association must include covered transactions with subsidiaries of the affiliate. To prevent savings associations from circumventing the 10 percent limit imposed under section 23A, OTS concluded that attribution of transactions was appropriate and necessary. Accordingly, OTS stated that, when computing the aggregate amount of transactions with a particular affiliate, a savings association must aggregate the amount of its covered transactions with all subsidiaries directly or indirectly controlled by the affiliate. OTS did not, however, require a savings association to attribute transactions to any holding company that controls the savings association or to attribute transactions by a parent downward to any subsidiary.[24]

FRB has not issued similar guidance regarding the attribution of transactions. To the contrary, the preamble to final Regulation W states that the 10 percent limit would prohibit a bank from engaging in a covered transaction with an affiliate only when the aggregate amount of covered transactions between the bank and that affiliate would exceed 10 percent of the bank's capital. 67 FR 76560, at 76572. Nothing in section 11 of the HOLA requires the attribution of transactions among affiliates.[25] OTS may impose additional restrictions on savings associations if it determines that a restriction is necessary to protect the safety and soundness of savings associations. However, there is no reason to impose additional burdens on savings associations, particularly in light of other safeguards in sections 23A and 23B, including the overall 20 percent quantitative limits, qualitative restrictions, and other supervisory tools available to OTS.[26]

Finally, in addition to the changes discussed above, OTS has made technical and clarifying changes to the interim rule. For example, the final rule clarifies that a savings association must comply with sections 23A and 23B of the FRA and Regulation W ''as if it were a member bank,'' and indicates that most references to the FRB or appropriate bank federal banking agency in Regulation W should be read to refer only to OTS.[27] The latter change clarifies that OTS, rather than the FRB, has the responsibility for administering and enforcing transaction with affiliates restrictions with respect to savings associations. *See* 12 U.S.C. 1468(c).

The final rule also clarifies Regulation W's definition of ''well capitalized.'' The sole use of this definition is in 12 CFR 223.41(d)(7), which states that a holding company and all of its subsidiary depository institutions must be ''well capitalized'' in order for a member bank to qualify for the internal corporate reorganization transaction exception. Section 223.3(kk) states that well capitalized has the same meaning as in 12 CFR 225.2, which prescribes various capital ratios and other capital-related requirements for bank holding companies, insured depository institutions, and uninsured depository institutions.

This requirement is not meaningful for many savings and loan holding companies. Although the activities of holding companies regulated by the FRB have expanded since GLBA, some savings and loan holding companies currently engage in a much broader range of activities. Because the universe of thrift holding companies is so diverse, the adequacy of holding company capital cannot be determined on the basis of a one-size-fits-all numeric formula or standard. Instead, OTS has found that specified capital ratios can be simultaneously too lax to support the activities of some holding companies and too restrictive for others. To recognize the diversity of the holding company universe, OTS does not impose a single consolidated or unconsolidated numerical capital requirement or ratio applicable to all holding companies. Rather, its analysis of the capital adequacy of savings and loan holding companies is a case-by-case process that reflects the overall risk profile of the organization.

To require savings associations and their holding companies to engage in a burdensome exercise merely to comply with specifications designed to address a more homogenous universe of holding companies, would serve no purpose. Rather, such a requirement would unduly obstruct some savings associations' ability to take advantage of the corporate reorganization exception, contrary to the stated intent of the FRB.[28] In addition, other savings and loan holding companies associations might attempt to claim the exception, even though their capital would be less than the amount OTS believed necessary to support their higher risk. Accordingly, to apply the internal corporate reorganization exception to savings associations in the same manner and to the same extent as to member banks OTS has clarified the ''well capitalized'' definition in light of the purposes of the exemption.

The stated purpose of the well capitalized requirement is to ''prevent banking companies from abusing their banking units in reorganization transactions'' [29] by ensuring that holding companies engaging in such transactions are appropriately capitalized and remain appropriately capitalized following the transaction. In light of the diverse activities engaged in by savings and loan holding companies, OTS believes that its case-by-case capital analysis best serves this goal. Accordingly, the final rule clarifies that for a savings and loan holding company, well-capitalized means that a holding company significantly exceeds OTS expectations for the amount of capital needed to adequately support the holding company's risk profile, as determined by OTS on a case-by-case basis. OTS emphasizes that this clarification does not substitute a relaxed standard for savings associations that avail themselves of the corporate reorganization exception. Rather, the clarification is intended to apply Regulation W meaningfully to savings associations while simultaneously recognizing the differences between bank and savings and loan holding companies and the

[24] 56 FR 34005, at 34008.

[25] For purposes of determining whether an institution has reached the 10 and 20 percent quantitative limits on covered transactions, however, the covered transactions of a depository institution and its non-affiliate subsidiaries are combined.

[26] OTS has received a few inquiries concerning the continuing validity of previously issued opinion letters on transactions with affiliates. The inquirers observed that some of this guidance may be invalid based on the interpretations announced in final Regulation W. OTS will continue to handle these inquiries on a case-by-case basis and will examine whether other appropriate action is necessary. In the interim, savings associations that continue to rely on these prior opinions should carefully review whether the opinions have been affected by Regulation W or this final rule, and should consult with OTS if they have any questions.

[27] The references to the FRB at 12 CFR 223.2(a)(9)(iv), 223.3(h), 223.14(c)(4), 223.43, and 223.55 are unchanged.

[28] 67 FR 76560, at 76562 fn. 13 (''An insured savings association * * * may take advantage of Regulation W's exemptions as if it were a member bank.'')

[29] 67 FR 76560, at 76590.

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?

* * * * *

[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.

	Operating subsidiary	Service corporation
* * * *	* * *	* * *
(l) How do the transactions with affiliates (TWA) regulations (§ 563.41 of this chapter) apply?	(1) Section 563.41 of this chapter explains how TWA applies. Generally, an operating subsidiary is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. A non-affiliate operating subsidiary is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association.	(2) Section 563.41 of this chapter explains how TWA applies. Generally, a service corporation is not an affiliate, unless it is a depository institution; is directly controlled by another affiliate of the savings association or by shareholders that control the savings association; or is an employee stock option plan, trust, or similar organization that exists for the benefit of shareholders, partners, members, or employees of the savings association or an affiliate. If a savings association directly or indirectly controls a service corporation and the service corporation is not otherwise an affiliate under § 563.41 of this chapter, the service corporation is treated as a part of the savings association and its transactions with affiliates of the savings association are aggregated with those of the savings association.
* * * *	* * *	* * *

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 3. 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; 42 U.S.C. 4106.

■ 4. Revise § 563.41 to read as follows:

§ 563.41 Transactions with affiliates.

(a) *Scope.* (1) This section implements section 11(a) of the Home Owners' Loan Act (12 U.S.C. 1468(a)). Section 11(a) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c1) to every savings association in the same manner and to the same extent as if the association were a member bank; prohibits certain types of transactions with affiliates; and authorizes OTS to impose additional restrictions on a savings association's transactions with affiliates.

(2) For the purposes of this section, ''savings association'' is defined at section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and also includes any savings bank or any cooperative bank that is a savings association under 12 U.S.C. 1467a(l). A non-affiliate subsidiary of a savings association as described in paragraph (b)(11) of this section is treated as part of the savings association.

(b) *Sections 23A and 23B of the FRA/Regulation W.* A savings association must comply with sections 23A and 23B of the Federal Reserve Act and the implementing regulations at 12 CFR part 223 (Regulation W) as if it were a member bank, except as described in the following chart. In addition, a savings association should read all references to ''the Board'' or ''appropriate federal banking agency'' to refer only to ''OTS,'' except for references at 12 CFR 223.2(a)(9)(iv), 223.3(h), 223.14(c)(4), 223.43, and 223.55.

Provision of Regulation W	Application
(1) 12 CFR 223.1—Authority, purpose, and scope	Does not apply. Section 563.41(a) addresses these matters.
(2) 12 CFR 223.2(a)(8)—''Affiliate'' includes a financial subsidiary	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(3) 12 CFR 223.2(a)(12)—Determination that ''affiliate'' includes other types of companies.	Read to include the following statement: ''Affiliate also includes any company that OTS determines, by order or regulation, to present a risk to the safety and soundness of the savings association.''
(4) 12 CFR 223.2(b)(1)(ii)—''Affiliate'' includes a subsidiary that is a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(5) 12 CFR 223.3(d)—Definition of ''capital stock and surplus.''	Does not apply. Capital stock and surplus means ''unimpaired capital and unimpaired surplus,'' as defined in 12 CFR 560.93(b)(11).
(6) 12 CFR 223.3(h)(1)—Section 23A covered transactions include an extension of credit to the affiliate.	Read to incorporate § 563.41(c)(1), which prohibits loans or extensions of credit to an affiliate, unless the affiliate is engaged only in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter.
(7) 12 CFR 223.3(h)(2)—Section 23A covered transactions include a purchase of or investment in securities issued by an affiliate.	Read to incorporate § 563.41(c)(2), which prohibits purchases and investments in securities issued by an affiliate, other than with respect to shares of a subsidiary.
(8) 12 CFR 223.3(k)—Definition of ''depository institution.''	Read to include the following statement: ''For the purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the depository institution.''
(9) 12 CFR 223.3(p)—Definition of ''financial subsidiary.''	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(10) 12 CFR 223.3(w)—Definition of ''member bank.''	Read to include the following statement: ''Member bank also includes a savings association. For purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the savings association.''

Provision of Regulation W	Application
(11) 12 CFR 223.3(aa)—Definition of ''operating subsidiary.''	Does not apply. Other OTS regulations include a conflicting definition of this same term. Instead, OTS uses the phrase ''non-affiliate subsidiary.'' A non-affiliate subsidiary is a subsidiary of a savings association other than a subsidiary described at 12 CFR 223.2(b)(1)(i), (iii) through (v).
(12) 12 CFR 223.3(ii)—Definition of ''subsidiary.''	Read to include the following statement: ''A subsidiary of a savings association means a company that is controlled by the savings association.''
(13) 12 CFR 223.3(kk)—Definition of ''well capitalized.''	Read to include the following statement: ''For a savings and loan holding company, however, well-capitalized means that the holding company significantly exceeds OTS expectations for the amount of capital needed to adequately support the holding company's risk profile, as determined by OTS on a case-by-case basis.''
(14) 12 CFR 223.31—Application of section 23A to an acquisition of an affiliate that becomes an operating subsidiary.	Read to refer to ''a non-affiliate subsidiary'' instead of ''operating subsidiary.''
(15) 12 CFR 223.32—Rules that apply to financial subsidiaries of a bank.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(16) 12 CFR 223.42(f)(2)—Exemption for purchasing certain marketable securities.	Read to refer to ''Thrift Financial Report'' instead of ''Call Report.'' References to ''state member bank'' are unchanged.
(17) 12 CFR 223.42(g)(2)—Exemption for purchasing municipal securities.	Read to refer to ''Thrift Financial Report'' instead of ''Call Report.'' References to ''state member bank'' are unchanged.
(18) 12 CFR 223.61—Application of sections 23A and 23B to U.S. branches and agencies of foreign banks.	Does not apply to savings associations or their subsidiaries.

(c) *Additional prohibitions and restrictions.* A savings association must comply with the additional prohibitions and restrictions in this paragraph. Except as described in paragraph (b) of this section, the definitions in 12 CFR part 223 apply to these additional prohibitions and restrictions.

(1) *Loans and extensions of credit.* (i) A savings association may not make a loan or other extension of credit to an affiliate, unless the affiliate is solely engaged in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter. A loan or extension of credit to a third party is not prohibited merely because proceeds of the transaction are used for the benefit of, or are transferred to, an affiliate.

(ii) If OTS determines that a particular transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in activities other than those described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 584.2–2 of this chapter, or OTS has other supervisory concerns concerning the transaction, OTS may inform the savings association that the transaction is prohibited under this paragraph (c)(1), and require the savings association to divest the loan, unwind the transaction, or take other appropriate action.

(2) *Purchases or investments in securities.* A savings association may not purchase or invest in securities issued by any affiliate other than with respect to shares of a subsidiary. For the purposes of this paragraph (c)(2), subsidiary includes a bank and a savings association.

(3) *Recordkeeping.* A savings association must make and retain records that reflect, in reasonable detail, all transactions between the savings association and its affiliates and any other person to the extent that the proceeds of a transaction are used for the benefit of, or transferred to, an affiliate. At a minimum, these records must:

(i) Identify the affiliate;

(ii) Specify the dollar amount of the transaction and demonstrate that this amount is within the quantitative limits in 12 CFR 223.11 and 223.12, or that the transaction is not subject to those limits;

(iii) Indicate whether the transaction involves a low-quality asset;

(iv) Identify the type and amount of any collateral involved in the transaction and demonstrate that this collateral meets the requirements in 12 CFR 223.14 or that the transaction is not subject to those requirements;

(v) Demonstrate that the transaction complies with 12 CFR part 223, subpart F or that the transaction is not subject to those requirements;

(vi) Demonstrate that all loans and extensions of credit to affiliates comply with paragraph (c)(1) of this section; and

(vii) Be readily accessible for examination and supervisory purposes.

(4) *Notice requirement.* (i) OTS may require a savings association to notify the agency before the savings association may engage in a transaction with an affiliate or a subsidiary (other than exempt transactions under 12 CFR part 223). OTS may impose this requirement if:

(A) The savings association is in troubled condition as defined at § 563.555 of this part;

(B) The savings association does not meet its regulatory capital requirements;

(C) The savings association commenced *de novo* operations within the past two years;

(D) OTS approved an application or notice under 12 CFR part 574 involving the savings association or its holding company within the past two years;

(E) The savings association entered into a consent to merge or a supervisory agreement within the past two years; or

(F) OTS or another banking agency initiated a formal enforcement proceeding against the savings association and the proceeding is pending.

(ii) OTS must notify the savings association in writing that it has imposed the notice requirement and must identify the circumstance listed in paragraph (c)(4)(i) of this section that supports the imposition of the notice requirement.

(iii) If OTS has imposed the notice requirement under this paragraph, a savings association must provide a written notice to OTS at least 30 days before the savings association may enter into a transaction with an affiliate or a subsidiary. The written notice must include a full description of the transaction. If OTS does not object during the 30-day period, the savings association may proceed with the proposed transaction.

■ 5. Amend § 563.43 by revising paragraphs (d) and (e) to read as follows:

§ 563.43 Loans by savings associations to their executive officers, directors, and principal shareholders.

* * * * *

(d) The term *subsidiary* includes a savings association that is controlled by a company (including for this purpose

an insured depository institution) that is a savings and loan holding company. A company has control over a saving association if it: directly or indirectly, or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities; or would be deemed to control the company under § 574.4(a) of this chapter or presumed to control the company under § 574.4(b) of this chapter, and in the latter case, control has not been rebutted. Notwithstanding any other provision of this section, no company shall be deemed to own or control another by virtue of its ownership or control of shares in a fiduciary capacity. When used to refer to a subsidiary of a savings association, the term *subsidiary* means a ''subsidiary'' that is controlled by the savings association within the meaning of 12 CFR part 574 of this chapter.

(e) References to the Reserve Bank or the Comptroller shall be deemed to include the Director of OTS; and

* * * * *

Dated: September 29, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–25217 Filed 10–6–03; 8:45 am]

BILLING CODE 6720–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Statement of Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending its statement of organization and functions to reflect the transfer of the National Injury Information Clearinghouse from the Directorate for Epidemiology to the Office of the Secretary.

EFFECTIVE DATE: October 7, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Lemberg, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–7630, email *slemberg@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The reference to the Clearinghouse in section 1000.27, Directorate for Epidemiology, is being moved to section 1000.16, Office of the Secretary.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b) notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of the Act.

List of Subjects in 16 CFR Part 1000

Organization and functions (government agencies).

■ Accordingly, part 1000 is amended as follows:

PART 1000—[AMENDED]

■ 1. The authority citation for part 1000 continues to read as follows:

Authority: 5 U.S.C. 552(a).

§ 1000.27 [Amended]

■ 2. In § 1000.27, remove the last sentence.

§ 1000.16 [Amended]

■ 3. In § 1000.16, add at the end the sentence ''It administers the National Injury Information Clearinghouse.''

Dated: September 30, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–25297 Filed 10–6–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 1987F–0179]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Olestra; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 5, 2003 (68 FR 46403). The document denied the requests for a hearing and response to objections it has received on the final rule that amended the food additive regulations to provide for the safe use of sucrose esterified with medium and long chain fatty acids (olestra) as a replacement for fats and oils in savory snacks. The document was published with inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Mary Ditto, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3102.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–19509, appearing on page 46403 in the **Federal Register** of Tuesday, August 5, 2003, the following corrections are made:

1. On page 46408, in the second column, under the heading ''*D. Adequacy of Olestra's Label Statement* [33]'' the first sentence is corrected to read ''In its fifth objection and request for a hearing, CSPI challenges the label statement required by the 1996 final rule, claiming that it is not sufficient to protect the public from adverse effects associated with consumption of olestra.''

2. On page 46408, in the third column, under the heading ''*E. Alleged Procedural Problems in the Olestra Proceeding*'' the first sentence is corrected to read ''In its sixth objection and hearing request, CSPI claims that there were a number of problems with the procedures utilized by FDA to reach a decision about the safety of olestra.''

3. On page 46408, in the third column, under heading ''*E. Alleged Procedural Problems in the Olestra Proceeding*'' the second to the last sentence on that page is corrected to read ''As in the case with its fifth objection and hearing request, CSPI specifically identifies no factual issue underlying any of its six procedural complaints.''

Dated: September 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–25198 Filed 10–6–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1309, and 1310

[Docket No. DEA–210F]

RIN 1117–AA69

Implementation of the Methamphetamine Anti-Proliferation Act; Thresholds for Retailers and for Distributors Required To Submit Mail Order Reports; Changes to Mail Order Reporting Requirements

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.