(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: February 25, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–5094 Filed 3–7–11; 8:45 am]

BILLING CODE 9110–9A–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. OTS–2011–0002]

RIN 1550–AC41

Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Establishment of a Risk-Based Capital Floor

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to: Amend its advanced risk-based capital adequacy standards (advanced approaches rules) [1] to be consistent with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) [2] and amend the general risk-based capital rules [3] to provide limited flexibility consistent with section 171(b) of the Act for recognizing the relative risk of certain assets generally not held by depository institutions.

DATES: Comments on this notice of proposed rulemaking must be received by May 9, 2011.

ADDRESSES: Comments should be directed to:

OTS: You may submit comments, identified by OTS–2011–0002 by any of the following methods:

Federal eRulemaking Portal: "Regulations.gov": Go to *http://www.regulations.gov* and follow the instructions for submitting comments.

- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2011–0002.
- *Fax:* (202) 906–6518.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, *Attention:* OTS–2011–0002.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change, including any personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.
- *Viewing Comments Electronically:* Go to *http://www.regulations.gov* and follow the instructions for reading comments.
- *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Sonja White, Director, Capital Policy, (202) 906–7857, Teresa A. Scott, Senior Policy Analyst, Capital Policy, (202) 906–6478, or Marvin Shaw, Senior Attorney, Regulations and Legislation Division, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Dodd-Frank Wall Street Reform and Consumer Protection Act

Section 171(b)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) [4] states that the Federal banking agencies [5] shall establish minimum risk-based capital requirements [6] applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Federal Reserve (covered institutions). In particular, and as described in more detail below, sections 171(b)(1) and (2) specify that the minimum leverage and risk-based capital requirements established under section 171 shall not be less than "generally applicable" capital requirements, which shall serve as a floor for any capital requirements the agencies may require. Moreover, sections 171(b)(1) and (2) specify that the Federal banking agencies may not establish leverage or risk-based capital requirements for covered institutions that are quantitatively lower than the generally applicable leverage or risk-based capital requirements in effect for insured depository institutions as of the date of enactment of the Act.

[1] 12 CFR part 567, Appendix C.

[2] Public Law 111–203, § 171, 124 Stat. 1376, 1435–38 (2010).

[3] 12 CFR part 567.

[4] Public Law 111–203, § 171, 124 Stat. 1376, 1435–38 (2010).

[5] The Office of Thrift Supervision (OTS), the Office of Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) are considered Federal banking agencies. Section 312 of the Act provides for the transfer of OTS functions to the FDIC, OCC, and Board, on the transfer date, which is July 21, 2011 (unless the Secretary of the Treasury designates a later date, but not later than January 21, 2012). More specifically, the Act transfers authority over Federal savings associations to the OCC, authority over State savings associations to the FDIC, and authority over savings and loan holding companies to the Board. OTS rulemaking authority relating to savings associations and savings and loan holding companies will be transferred to the OCC and Board, respectively. 12 U.S.C. 5412.

[6] OTS's capital regulations applicable to savings associations are set forth at 12 CFR part 567. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) directs the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. Accordingly, the banking agencies generally issue capital standards whose substance is as similar as possible, thereby minimizing interagency differences. Due to timing considerations, the OCC, Board, and FDIC published a notice of proposed rulemaking (Joint NPR) in the **Federal Register** which addressed section 171 of the Dodd-Frank Act (75 FR 82317, December 30, 2010). OTS is issuing today's NPR which essentially parallels the substance of the joint proposal.

B. Advanced Approaches Rules

On December 7, 2007, the Federal banking agencies implemented the advanced approaches rules, which are mandatory for U.S. depository institutions and bank holding companies (collectively, banking organizations) meeting certain thresholds for total consolidated assets or foreign exposure.[7] The advanced approaches rules incorporate a series of proposals released by the Basel Committee on Banking Supervision (Basel Committee or BCBS), including the Basel Committee's comprehensive June 2006 release entitled "International Convergence of Capital Measurement and Capital Standards: A Revised Framework" (New Accord).[8]

The advanced approaches rules establish a series of transitional floors to provide a smooth transition to the advanced approaches rules and to limit temporarily the amount by which a banking organization's risk-based capital requirements could decline relative to the general risk-based capital rules over a period of at least three years following completion of a satisfactory parallel run. The advanced approaches rules place limits on the amount by which a banking organization's risk-based capital requirements may decline. Under the advanced approaches rules, the banking organization must take the risk-based capital ratios equal to the lesser of (i) the organization's ratios calculated under the advanced approaches rules and (ii) the organization's ratios calculated under the general risk-based capital rules,[9] with risk-weighted assets multiplied by 95 percent, 90 percent, and 85 percent during the first, second, and third transitional floor periods, respectively, and compare these ratios to its minimum risk-based capital ratio requirements under section 3 of the advanced approaches rules.[10] Under this approach, banking organizations that use the advanced approaches rule could operate with lower minimum risk-based capital requirements during a transitional floor period, and potentially thereafter, than would be required under the general risk-based capital rules. At this time, no savings association or other banking organization has entered a transitional floor period and all organizations are required to compute their risk-based capital requirements using the general risk-based capital rules.

C. Requirements of Section 171 of the Act

Section 171(a)(2) of the Act defines the term "generally applicable risk-based capital requirements" to mean: "(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and (B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator." Section 171(b)(2) of the Act further provides that "[t]he appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act."

In accordance with section 38 of the Federal Deposit Insurance Act,[11] the Federal banking agencies established minimum leverage and risk-based capital requirements for insured depository institutions for prompt corrective action (PCA rules).[12] All insured institutions, regardless of their total consolidated assets or foreign exposure, must compute their minimum risk-based capital requirements for PCA purposes using the general risk-based capital rules, which currently are the "generally applicable risk-based capital requirements" defined by Section 171(a)(2) of the Act.

D. Effect of Section 171 of the Act on Certain Institutions and Their Assets

As explained in the Joint NPR, certain covered institutions may not previously have been subject to consolidated risk-based capital requirements. Some of these companies are likely to be similar in nature to most depository institutions and bank holding companies subject to the general risk-based capital rules. Other covered institutions may be different with exposure types and risks that were not contemplated when the general risk-based capital rules were developed. The Financial Stability Oversight Council has not yet designated any nonbank financial companies to be supervised by the Board; over time it is conceivable that it will designate one or more companies whose activities are quite different than those addressed in the general risk-based capital rules. As noted in the Joint NPR, the Board will be supervising these institutions for the first time and expects that there will be cases when it needs to evaluate the risk-based capital treatment of specific exposures not typically held by depository institutions, and that do not have a specific risk weight under the generally applicable risk-based capital requirements.

Under the general risk-based capital rules, exposures are generally assigned to five risk weight categories, that is, 0 percent, 20 percent, 50 percent, 100 percent, and 200 percent, according to their relative riskiness. Assets not explicitly included in a lower risk weight category are assigned to the 100 percent risk weight category. Going forward, there may be situations where exposures of a depository institution holding company or a nonbank financial company supervised by the Board not only do not wholly fit within the terms of a risk weight category, but also impose risks that are not commensurate with the risk weight otherwise specified in the generally applicable risk-based capital requirements.

For example, there are some material exposures of insurance companies that, while not riskless, would be assigned to a 100 percent risk weight category

[7] 72 FR 69288 (December 7, 2007). Subject to prior supervisory approval, other banking organizations can opt to use the advanced approaches rules. *See* 72 FR 69397 (December 7, 2007).

[8] The BCBS is a committee of banking supervisory authorities established by the central bank governors of the G–10 countries in 1975. The BCBS issued the New Accord to modernize its first capital Accord, which was endorsed by the BCBS members in 1988 and implemented by the agencies in 1989. The New Accord, the 1988 Accord, and other documents issued by the BCBS are available through the Bank for International Settlements' Web site at *http://www.bis.org.*

[9] 12 CFR part 567, Appendix C. *See also,* 12 CFR part 3, Appendix A (OCC); 12 CFR parts 208 and 225, Appendix A (Board); 12 CFR part 325, appendix A (FDIC).

[10] Under the advanced approaches rules, the minimum tier 1 risk-based capital requirement is 4 percent and the total risk-based capital requirement is 8 percent. *See* 12 CFR, part 567, Appendix C (OTS), *See also,* 12 CFR part 3, Appendix C (OCC); 12 CFR part 208, Appendix F and 12 CFR part 225, Appendix G (Board); and 12 CFR part 325 Appendix D (FDIC).

[11] *See* Public Law 102–242; 105 Stat. 2242 (1991).

[12] 12 CFR part 565 (OTS).

because they are not explicitly assigned to a lower risk weight category. An automatic assignment to the 100 percent risk weight category without consideration of an exposure's economic substance could overstate the risk of the exposure and produce uneconomic capital requirements for a covered institution.

II. Proposed Rule

A. Generally Applicable Risk-Based Capital Requirement Floor

Consistent with the Joint NPR, the OTS is proposing to modify its advanced approaches rule consistent with section 171(b)(2). In particular, like the other agencies, OTS is proposing to revise its advanced approaches rule by replacing the transitional floors in section 21(e) of the advanced approaches rule with a permanent floor equal to the tier 1 and total risk-based capital requirements under the current generally applicable risk-based capital rules. Thus, OTS is proposing to require each banking organization subject to the advanced approaches rule to maintain the systems and records necessary to calculate its required minimum risk-based capital requirements under both the general risk-based capital rules and the advanced approaches rules. Each quarter, each banking organization subject to the advanced approaches rules must calculate and compare its minimum tier 1 and total risk-based capital ratios as calculated under the general risk-based capital rules and the advanced approaches risk-based capital rules. The banking organization would then compare the lower of the two tier 1 risk-based capital ratios and the lower of the two total risk-based capital ratios to the minimum tier 1 ratio requirement of 4 percent and total risk-based capital ratio requirement of 8 percent in section 3 of the advanced approaches rules [13] to determine if it met its minimum capital requirements.

OTS is also proposing to eliminate the paragraphs of its advanced approaches rule dealing with the transitional floor periods, and the interagency study. These parts of the advanced approaches rules no longer serve a purpose.

Question 1: OTS seeks comment generally on the impact of a permanent floor on the minimum risk-based capital requirements for banking organizations subject to the advanced approaches rules, and on the manner in which OTS and the other Federal banking agencies are proposing to implement the provisions of section 171(b) of the Act.

B. Change to Generally Applicable Risk-Based Capital Requirements

The proposed floor, consistent with the requirements of section 171(b)(2), is based on the generally applicable risk-based capital requirements for depository institutions. To address the appropriate capital requirement for low risk assets that non-depository institutions may hold and for which there is no explicit capital treatment in the general risk-based capital rules, consistent with the other banking agencies, OTS is proposing that such exposures receive the capital treatment applicable under the capital guidelines for bank holding companies under limited circumstances. The circumstances are intended to allow for an appropriate capital requirement for low risk nonbanking exposures without creating unintended new opportunities for depository institutions to engage in capital arbitrage. OTS therefore proposes to limit this treatment to cases in which a depository institution is not authorized to hold the asset under applicable law other than under debt previously contracted or similar authority, and the risks associated with the asset are substantially similar to the risks of assets that receive a lower risk weight. Accordingly, OTS is proposing a change to the general risk-based capital rules for depository institutions to permit this limited flexibility to appropriately address exposures of depository institution holding companies and nonbank financial companies supervised by the Board. OTS requests comment on this change to the general risk-based capital rules.

Question 2: For what specific types of exposures do commenters believe this treatment is appropriate? Does the proposal provide sufficient flexibility to address the exposures of depository institution holding companies and nonbank financial companies supervised by the Federal Reserve? If not, how should the proposal be changed to recognize the considerations outlined in this section?

Consistent with the joint efforts of the Federal banking agencies and the Basel Committee to enhance the regulatory capital rules, OTS anticipates that the generally applicable risk-based capital requirements and advanced approaches rule will be amended from time to time. These amendments would reflect advances in risk sensitivity and other potentially substantive changes to fundamental aspects of the New Accord such as the definition of capital, treatment of counterparty credit risk, and new regulatory capital elements such as an international leverage ratio and prudential capital buffers.

OTS will consider each proposed change to the risk-based capital rules and determine whether it is appropriate to implement the change by rulemaking based on the implications of each proposal for the capital adequacy of banking organizations, the implementation costs of such proposals, and the nature of any unintended consequences or competitive issues. The generally applicable risk-based capital requirements and generally applicable leverage capital requirements that OTS and the other agencies may establish in the future would, as required under the Act, become the minimum leverage and risk-based capital requirements for all banking organizations. Furthermore, as provided under the Act, any future amendments to the leverage requirements or risk-based capital requirements established by the Federal banking agencies may not result in capital requirements that are "quantitatively lower" than the generally applicable leverage requirements or risk-based capital requirements in effect as of the date of enactment of the Act.

To comply with this provision of the Act, OTS along with the other Federal banking agencies anticipate performing a quantitative analysis of the likely effect on capital requirements as part of developing future amendments to the capital rules to ensure that any new capital framework is not quantitatively lower than the requirements in effect as of the date of enactment of the Act. In the Joint NPR, the OCC, FDIC, and Board stated that they would not anticipate proposing to require banking organizations to compute two sets of generally applicable capital requirements from current and historic frameworks as the generally applicable requirements are amended over time. Those agencies further stated that they have not yet determined the quantitative method for measuring the equivalence of current, historic, and proposed future capital frameworks.

Question 3: OTS requests comment on the most appropriate method of conducting the aforementioned analysis. What are potential quantitative methods for comparing future capital requirements to ensure that any new capital framework is not quantitatively lower than the requirements in effect as of the date of the enactment of the Act?

The Federal banking agencies anticipate addressing aspects of Section 171 not addressed in this proposed rule in a subsequent rulemaking.

[13] 12 CFR part 567 (OTS). *See also,* 12 CFR part 3, Appendix C, § 3 (OCC); 12 CFR part 208, Appendix F, § 3 and 12 CFR part 225, Appendix G, § 3 (Board); and 12 CFR part 325, § 3 Appendix D (FDIC).

Question 4: OTS seeks comment on all other aspects of this proposed rule, including the costs and benefits. What, if any, changes should OTS and the other agencies make to the proposed rule or the risk-based capital framework to better balance costs and benefits?

III. Regulatory Analyses

A. Executive Orders 13563 and 12866

Executive Order 13563 "Improving Regulations and Regulatory Review" affirms and supplements Executive Order 12866, "Regulatory Planning and Review, which requires Federal agencies to prepare a regulatory impact analysis for agency actions that are found to be "significant regulatory actions." Significant regulatory actions include, among other things, rulemakings that "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities." Pursuant to Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) has designated the proposed rule to be significant.

Based on initial assessment of the costs and benefits likely to be incurred to comply with this proposed rulemaking, OTS anticipates that the effect on the economy of the final rule would not exceed the $100 million annual threshold.

B. OTS Regulatory Impact Assessment

1. Requirements of Proposed Regulation

a. Permanent Floor

As noted below, the OCC, the Board, and the FDIC published a notice of proposed rulemaking (Joint NPR) that addressed section 171 of the Dodd-Frank Act, (75 FR 82317)(the Act), on December 30, 2010. Consistent with the Joint NPR, OTS is proposing to modify its advanced approaches rule consistent with section 171(b)(2) of the Act. In particular, like the other agencies, OTS is proposing to revise its advanced approaches rule by replacing the transitional floors in section 21(e) of the advanced approaches rule with a permanent floor equal to the tier 1 and total risk-based capital requirements under the current generally applicable risk-based capital rules. The Federal banking agencies implemented the advanced approaches rules on December 7, 2007 that are mandatory for U.S. depository institutions and bank holding companies (collectively, banking organizations) that have $250 billion or more in total consolidated assets or more than $10 billion in foreign exposure.

Thus, OTS is proposing to require each savings association subject to the advanced approaches rule to maintain the systems and records necessary to calculate its required minimum risk-based capital requirements under both the general risk-based capital rules and the advanced approaches rules. Each quarter, each savings association subject to the advanced approaches rules must calculate and compare its minimum tier 1 and total risk-based capital ratios as calculated under the general risk-based capital rules and the advanced approaches risk-based capital rules. The savings association would then compare the lower of the two tier 1 risk-based capital ratios and the lower of the two total risk-based capital ratios to the minimum tier 1 ratio requirement of 4 percent and total risk-based capital ratio requirement of 8 percent in section 3 of the advanced approaches rules to determine if it met its minimum capital requirements.

OTS reviewed the holdings and corporate structure of 941 savings associations subject to OTS regulation. As of this analysis, only two savings associations ($1.5 billion in total assets; and $15 billion in total assets, respectively), due to their corporate ownership structure by larger banking organizations, are subject to the advanced approaches rule. Both have begun the parallel run portion of preparation for the advanced approach, and they are unlikely to enter the first transitional floor within the next six months. One other savings association may be eligible for the advance approach because its foreign exposure exceeds $10 billion. However, it has not yet submitted an implementation plan, which must be approved before the institution begins the parallel run portion of its preparation; it is not likely to do so in the next six months. Section 312 of the Act provides for the transfer of OTS functions to the FDIC, OCC, and Board, on the transfer date, which is July 21, 2011 (unless the Secretary of the Treasury designates a later date, but not later than January 21, 2012). More specifically, the Act transfers authority over Federal savings associations to the OCC, authority over State savings associations to the FDIC, and authority over savings and loan holding companies to the Board. OTS rulemaking authority relating to savings associations and savings and loan holding companies will be transferred to the OCC and Board, respectively.

b. Implementation Costs

In estimating the implementation costs to the covered institutions, OTS assumed that costs would generally fall in two areas:

- Quarterly calculation costs to determine minimum risk-based capital requirements.
- The costs of maintaining higher capital levels, if required.

Given that OTS currently has, at most, three smaller savings associations that may be subject to the rule, the annual costs of calculating alternative minimum capital requirements are likely to be small. Two of the savings associations are subsidiaries of larger banking organizations that are required to calculate their overall risk-based capital requirements under a rule promulgated by the other banking agencies, and thus the marginal costs for the two savings association are likely to be minimal. Whether these particular institutions would be required to hold additional capital is very difficult to determine at this time. Any costs associated with holding additional capital would be offset, to some degree, by the reduced costs of borrowing, as the institution would then be better capitalized and its borrowing costs reduced because of its lowered risk. The sum of the identified costs is likely, given these three institutions, to fall well below the $100 million annual cost benchmark.

2. Risk Weights for Holding Company Assets

While none of three savings associations currently hold such assets, to address the appropriate capital requirement for low risk assets that non-depository institutions may hold and for which there is no explicit capital treatment in the general risk-based capital rules, consistent with the other banking agencies and consistent with the Joint NPR, OTS is proposing that such exposures receive the capital treatment applicable under the capital guidelines for bank holding companies under limited circumstances. The circumstances are intended to allow for an appropriate capital requirement for low risk nonbanking exposures without creating unintended new opportunities for depository institutions to engage in capital arbitrage. OTS therefore proposes to limit this treatment to cases in which a depository institution is not authorized to hold the asset under applicable law other than under debt previously contracted or similar authority, and the risks associated with the asset are substantially similar to the risks of assets that receive a lower risk

weight. Accordingly, consistent with the other banking agencies, OTS is proposing a change to the general risk-based capital rules to permit this limited flexibility to appropriately address certain exposures of depository institution holding companies and nonbank financial companies supervised by the Board.

3. Implementation Costs

It is difficult to assess the benefit that this rule making would convey, as (1) it applies to certain nonbank-like exposures of depository holding companies and nonbank financial companies supervised by the Board, and (2) it is very narrow in scope but is being proposed to address unforeseen circumstances in which the absence of an existing risk weight designation would require substantially more capital than a comparability test would suggest is appropriate.

4. Conclusion

Because of the limited number of institutions and the amount of assets involved, OTS concludes that the impact of this proposed rulemaking would not exceed $100 million in annual costs.

C. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act,[14] (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $175 million) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

The rule would affect savings associations that use the advanced approaches rules to calculate risk-based capital requirements according to certain internal ratings-based and internal model approaches. A savings association must use the advanced approaches rules only if: (i) It has consolidated total assets (as reported on its most recent year-end regulatory report) equal to $250 billion or more; (ii) it has consolidated total on-balance sheet foreign exposures at the most recent year-end equal to $10 billion or more; or (iii) it is a subsidiary of a bank holding company or bank that would be required to use the advanced approaches rules to calculate its risk-based capital requirements.

With respect to the proposed changes to the general risk-based capital rules, the proposal has the potential to affect the risk weights applicable only to assets that generally are impermissible for savings associations to hold. These proposed changes are accordingly unlikely to have a significant impact on savings associations. OTS also notes that the changes to the general risk-based capital rules would not impose any additional obligations, restrictions, burdens, or reporting, recordkeeping or compliance requirements on savings associations including small banking organizations, nor do they duplicate, overlap or conflict with other Federal rules.

OTS estimates that no small savings associations are required to use the advanced approaches rules.[15] Therefore, OTS believes that the proposed rule will not result in a significant economic impact on a substantial number of small entities.

D. OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that its proposed rule will not result in expenditures by State, local, and Tribal governments, or by the private sector, of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

E. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995,[16] OTS may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. OTS has an established information collection for the paperwork burden imposed by the advanced approaches rule.[17] This notice of proposed rulemaking would replace the transitional floors in section 21(e) of the advanced approaches rule with a permanent floor equal to the tier 1 and total risk-based capital requirements under the current generally applicable risk-based capital rules. The proposed change to transitional floors would change the basis for calculating a data element that must be reported to OTS under an existing requirement. However, it would have no impact on the frequency or response time for the reporting requirement and, therefore, does not constitute a substantive or material change subject to OMB review.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. In light of this requirement, OTS has sought to present the proposed rule in a simple and straightforward manner. OTS invites comment on whether it could take additional steps to make the proposed rule easier to understand.

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Office of Thrift Supervision proposes to amend part 567 of chapter V of Title 12, Code of Federal Regulations as follows:

PART 567—CAPITAL

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

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

2. In § 567.6, add new paragraph (a)(1)(v) as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

* * * * *

(a) * * *

(1) * * *

(v) Subject to the requirements in paragraphs (a)(1)(v)(A) and (B) of this section, a savings association may assign an asset not included in the categories above to the risk weight category applicable under the capital guidelines for bank holding companies (12 CFR part 225, appendix A), provided that all of the following conditions apply:

(A) The savings association is not authorized to hold the asset under

[14] 5 U.S.C. 605(b).

[15] All totals are as of September 30, 2010.

[16] 44 U.S.C. 3501–3521.

[17] *See* Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework, FFIEC 101, OTS OMB Number 1550–0115.

applicable law other than debt previously contracted or similar authority; and

(B) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category less than 100 percent under this section.

* * * * *

3. In Appendix C to part 567:

a. Revise Part I, section 3 to read as set forth below; and

b. Remove section 21(e).

Appendix C to Part 567—Risk-Based Capital Requirements—Internal Ratings-Based and Advanced Measurement Approaches

Part I. General Provisions

* * * * *

Section 3. Minimum Risk-Based Capital Requirements

(a)(1) Except as modified by paragraph (c) of this section or by section 23 of this appendix, each savings association must meet a minimum:

(i) Total risk-based capital ratio of 8.0 percent; and

(ii) Tier 1 risk-based capital ratio of 4.0 percent.

(2) A savings association's total risk-based capital ratio is the lower of:

(i) Its total qualifying capital to total risk-weighted assets; and

(ii) Its total risk-based capital ratio as calculated under part 567.

(3) A savings association's tier 1 risk-based capital ratio is the lower of:

(i) Its tier 1 capital to total risk-weighted assets; and

(ii) Its tier 1 risk-based capital ratio as calculated under part 567.

(b) Each savings association must hold capital commensurate with the level and nature of all risks to which the savings association is exposed.

(c) When a savings association subject to any applicable market risk rule calculates its risk-based capital requirements under this appendix, the savings association must also refer to any applicable market risk rule for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

Dated: January 31, 2011.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2011–5011 Filed 3–7–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No.: 110119042–1174–02]

RIN 0610–XA04

Request for Comments: Review and Improvement of EDA's Regulations

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and request for comments; extending public comment deadline.

SUMMARY: On February 1, 2011, the Economic Development Administration (EDA) published a **Federal Register** notice requesting public input to improve the agency's regulations (76 FR 5501). Because of strong interest in the agency's efforts to streamline and update its regulations, EDA publishes this notice to extend the deadline for submitting regulatory comments.

DATES: Comments must be received no later than 5 p.m. Eastern Time on April 11, 2011.

ADDRESSES: Comments will continue to be accepted by the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.eda.gov/.* EDA has created an online feature for submitting comments. Follow the instructions at *http://www.eda.gov/.*
- *E-mail: regulations@eda.doc.gov.* Include "Comments on EDA's regulations" and Docket No. 110119042–1041–01 in the subject line of the message.
- *Fax:* (202) 482–5671, Attention: Office of Chief Counsel. Please indicate "Comments on EDA's regulations" and Docket No. 110119042–1041–01 on the cover page.
- *Mail:* Economic Development Administration, Office of Chief Counsel, Suite D–100, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Please indicate "Comments on EDA's regulations" and Docket No. 110119042–1041–01 on the envelope.

FOR FURTHER INFORMATION CONTACT: Jamie Lipsey, Attorney Advisor, U.S. Department of Commerce, Economic Development Administration, Office of Chief Counsel, 1401 Constitution Avenue, NW., Suite D–100, Washington, DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION: EDA's regulations, which are codified at 13 CFR chapter III, provide the framework through which the agency administers its economic development assistance programs. In a **Federal Register** notice published on February 1, 2011 (76 FR 5501), EDA requested public feedback on any obstacles created by EDA's current regulations and ways to improve them to help the agency better advance innovative economic development in the 21st century. Because of strong interest in this initiative and to ensure our stakeholders have ample time to comment, EDA is extending the deadline for the submission of comments from March 9, 2011, to April 11, 2011. Although EDA welcomes comments on all of its regulations, the agency requests particular input on those regulations that impact the creation and growth of Regional Innovation Clusters (RICs) and on the agency's property management regulations. Please see the notice and request for comments, 76 FR 5501 (February 1, 2011), and EDA's Web site at *http://www.eda.gov/* for more information. As part of the Administration's commitment to open government, EDA is interested in broad public and stakeholder participation in this effort and strives to create a simplified regulatory system that balances the agency's fiduciary and transparency responsibilities with good, commonsense customer service to our stakeholders and the American people.

Comments should be submitted to EDA as described in the **ADDRESSES** section of this notice. EDA strongly encourages the use of the online feature on the agency's Web site to share comments and suggestions, which is easily accessible at *http://www.eda.gov/* and offers participants an opportunity to view the comments of others. EDA will consider all comments submitted in response to this notice that are received by 5 p.m. Eastern Time on April 11, 2011, as referenced under **DATES** EDA will not accept public comments accompanied by a request that a part or all of the material be treated confidentially for any reason; EDA will not consider such comments and will return such comments and materials to the commenter. All public comments (including faxed or e-mailed comments) submitted in response to this notice must be in writing and will be a matter of public record. All comments submitted will be available for public inspection and copying at *http://www.regulations.gov.*