

# Rules and Regulations

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 509

[No. 2005-08]

RIN 1550-AB96

#### Special Rules for Adjudicatory Proceedings for Certain Holding Companies

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

**ACTION:** Interim final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is adding a new subpart to its Rules of Practice and Procedure in Adjudicatory Proceedings to provide for expedited processing of certain actions to determine if a company is exercising a controlling influence over the management or policies of a savings association or savings and loan holding company (collectively, savings association) for certain purposes under section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a (HOLA). The new proceedings will be used only to determine if a company has acquired a controlling influence over the management or policies of a savings association for purposes of those subsections of section 10 other than subsections (c), (d), (f), (h)(2), (m), (n), (q) and (s). Under the new procedure, a company that holds no more than ten percent of the stock of a savings association may be found to control that savings association, thereby becoming an OTS-regulated entity.

**DATES:** This rule is effective on April 1, 2005. Comments must be received by May 2, 2005.

**ADDRESSES:** You may submit comments, identified by No. 2005-08, by any of the following methods:

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

- *E-mail address:* [regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov). Please include No. 2005-08 in the subject line of the message and include your name and telephone number in the message.

- *Fax:* (202) 906-6518.

- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2005-08.

- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2005-08.

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

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

#### FOR FURTHER INFORMATION CONTACT:

Donna M. Deale, Assistant Managing Director, Examinations and Supervision Policy, (202) 906-7488; and Aaron B. Kahn, Special Counsel, Business Transactions Division, (202) 906-6263, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

#### SUPPLEMENTARY INFORMATION:

## I. Interim Final Rule

OTS is adding a new subpart to its Rules of Practice and Procedure in Adjudicatory Proceedings to provide for expedited processing of certain actions to determine if a company is exercising a controlling influence over the management or policies of a savings association. OTS may commence an adjudicatory proceeding under its existing rules to determine if a company has obtained a controlling influence over the management or policies of a savings association. However, the present regulation does not differentiate between proceedings that may lead to a finding that an acquiror has obtained control for all purposes under section 10 of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a, and proceedings that may lead to a conclusion that a company has obtained control for only certain provisions of section 10. The new proceedings will be used only to determine if a company has acquired a controlling influence over the management or policies of a savings association for purposes of those subsections of section 10 other than subsections (c), (d), (f), (h)(2), (m), (n), (q) and (s).<sup>1</sup>

Under the new procedure, a company that holds no more than ten percent of the stock of a savings association may be found to control that savings association, thereby becoming an OTS-regulated entity. However, the company found to be in control generally would not become subject to certain provisions of HOLA section 10 that are more appropriately applied when the company controls a greater percentage of a savings association's stock, such as transactions with affiliates provisions or activities limitations.<sup>2</sup> The OTS Holding Company Handbook describes OTS's regulatory approach regarding a company found to exercise a controlling influence over the management or

<sup>1</sup> The procedure would not be applicable to bank holding companies that are subject to the Bank Holding Company Act of 1956. See 12 U.S.C. 1467a(t). However, companies that are not bank holding companies but own or control foreign banks could be subject to the proceedings. Thus, for example, a domestic company with European financial activities could be subject to the proceedings.

<sup>2</sup> Once a company becomes regulated by OTS the agency could, if warranted, issue such orders to the company as necessary or appropriate to carry out the purposes of HOLA section 10. See 12 U.S.C. 1467a(g).

policies of a savings association under this provision.<sup>3</sup>

The new procedure will be applied only where OTS has reason to believe that a company has acquired control of a savings association through ownership of at least one percent but not more than ten percent of the voting stock of such savings association.<sup>4</sup> OTS believes that some large companies that engage, directly or indirectly, in insurance, securities, or banking activities may acquire small stakes (10 percent or less of the voting shares) in individual savings associations. While such ownership does not necessarily mean that the acquiring company has obtained control of the savings association, the relative size of the companies involved and the fact that they operate in related industries may result in the acquiring company obtaining a controlling influence over the management or policies of the savings association.

The new procedure is designed to provide an opportunity to determine whether the type of company identified above has obtained a controlling influence over the management or policies of a savings association in an expedited fashion where, if the facts are not in dispute or all the evidence is documentary, the agency will commence proceedings, preside at the hearing, and enter the final decision.<sup>5</sup> Thus, the new procedure reduces regulatory burdens by dispensing with unnecessary extended proceedings requiring an Administrative Law Judge and a recommended decision.

The proceedings will be commenced by OTS exercising its discretion to issue a notice to the company. The notice will contain a statement setting forth why OTS believes the company is exercising a controlling influence over the management or policies of the savings association. Thereafter, the company may consent to the allegations in the notice either by written consent or by choosing not to respond to the notice. If the company answers the notice and denies the allegations, an evidentiary hearing will be held unless OTS determines to withdraw the notice. If either party seeks discovery or to

present oral testimony the expedited procedure contained in this new subpart will be terminated and the procedures presently in the regulations will be employed until a final decision is reached.

Because the new procedures do not affect any substantive rights, impose any new burdens, or require any new action by any regulated entity, OTS is issuing these regulations as interim final regulations. However, OTS is seeking comments on all aspects of these regulations.

## II. Regulatory Analysis

### A. Administrative Procedure Act

Section 553 of the Administrative Procedure Act exempts rules of agency organization, procedure, and practice from notice and comment procedures. 5 U.S.C. 553. OTS finds that prior notice and public comment are not required to the extent that this rule modifies current OTS rules and procedures for adjudicatory proceedings under section 10(a)(2)(D) of the HOLA, 12 U.S.C. 1467a(a)(2)(D), to determine control of savings associations. The rule revises OTS rules for adjudicatory proceedings to provide more streamlined procedures for OTS to find a company in control of a savings association under certain limited circumstances. OTS finds good cause for issuing these rule changes as an interim final rule. Accordingly, OTS finds that prior notice and public comment on these rule changes are impractical, unnecessary, and contrary to the public interest.

### B. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this rule easier to understand. For example:

- (1) Have we organized the material to suit your needs?
- (2) Are the requirements in the rule clearly stated?
- (3) Does the rule contain technical language or jargon that isn't clear?
- (4) Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- (5) Would more (but shorter) sections be better?
- (6) What else could we do to make the rule easier to understand?

### C. Paperwork Reduction Act

OTS has determined that this interim final rule does not involve a collection

of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### D. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule amends OTS regulations regarding adjudicatory proceedings to provide more streamlined procedures for OTS to find a company in control of a savings association under certain limited circumstances. These changes should not have a significant impact on small institutions. Accordingly, OTS has determined that regulatory flexibility analysis is not required.

### E. Executive Order 12866

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

### F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The interim final rule revises OTS rules for adjudicatory proceedings to provide more streamlined procedures for OTS to find a company in control of a savings association under certain limited circumstances. Accordingly, OTS has determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more and that a budgetary impact statement is not required.

### List of Subjects in 12 CFR Part 509

Administrative practice and procedure, Penalties.

### Authority and Issuance

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

<sup>3</sup> See *e.g.*, OTS Holding Company Handbook, section 940.

<sup>4</sup> OTS anticipates that, in most cases, its initial belief will be engendered by the company informing OTS of its stock holdings. However, OTS recognizes the possibility that other circumstances may give rise to OTS's preliminary view that a company has obtained a controlling influence over the management or policies of a savings association.

<sup>5</sup> OTS anticipates that either the Director of OTS or a senior OTS official, acting with delegated authority, will constitute the "agency" for purposes of such proceedings.

## PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

■ 1. The authority citation for part 509 continues to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

■ 2. Revise § 509.100(a) of subpart B to read as follows:

### Subpart B—Local Rules

#### § 509.100 Scope.

\* \* \* \* \*

(a) Proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of a savings association or any other company, except to the extent the Director exercises his or her discretion to commence a proceeding of the kind identified in subpart C of this part;

\* \* \* \* \*

■ 3. Amend part 509 by adding a new Subpart C to read as follows:

### Subpart C—Special Rules

Sec.

509.200 Scope.

509.201 Definitions.

509.202 Commencement of proceedings and contents of notice.

509.203 Answer, consequences of failure to answer, and consent.

509.204 Hearing Procedure.

#### § 509.200 Scope.

The rules and procedures in subpart C of this part and those rules and procedures in subparts A and B of this part that are identified in subpart C of this part shall apply to any proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine for purposes of section 10 of the HOLA, other than subsections (c), (d), (f), (h)(2), (m), (n), (q) and (s), whether any company that owns at least one percent but no more than 10 percent of the outstanding shares of a savings association or savings and loan holding company directly or indirectly exercises a controlling influence over the management or policies of such savings association or savings and loan holding company.

#### § 509.201 Definitions.

The definitions contained in § 509.3 of this part shall apply to this subpart.

#### § 509.202 Commencement of proceedings and contents of notice.

(a) *Commencement of proceedings.* The Director commences a proceeding by issuing a notice and having it served on the respondent in the manner provided for service by the Director in § 509.11 of this part;

(b) *Contents of notice.* The notice must set forth: (1) The legal authority for the proceeding and for the Office's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing the Office is entitled to issue an Order finding, for purposes of section 10 of the HOLA, other than subsections (c), (d), (f), (h)(2), (m), (n), (q) and (s), the respondent to be directly or indirectly exercising a controlling influence over the management or policies of a savings association or savings and loan holding company;

(3) A proposed Order;

(4) A statement that the respondent must file an answer and, if it so desires, request a hearing within 20 days of service of the notice; and

(5) The time and place of the hearing if one is properly requested by the respondent.

#### § 509.203 Answer, consequences of failure to answer, and consent.

(a) *Content of answer.* (1) An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes a prayer for relief or proposed Order.

(2) If a respondent does not contest the allegations in a notice, the respondent may file an answer that contains only a statement that the respondent consents to the entry of the proposed Order. At any time thereafter, the proposed Order may be issued as a final Order.

(b) *Default.* Failure of a respondent to file an answer within the time provided constitutes a waiver of its right to appear and contest the allegations in the notice. If a timely answer is not filed, a default Order may be entered. A respondent that believes that there was

good cause for it to not file an answer within the time allowed may request that the Office exercise its discretion to vacate such a default Order. A default Order based upon a respondent's failure to answer is deemed to be a final Order issued upon consent.

#### § 509.204 Hearing Procedure.

(a) (1) The Director shall preside at the hearing and enter the final decision of the agency, provided that no party seeks discovery or proffers any oral testimony;

(2) Respondents shall provide two copies of any pleadings and other filings to the Office of the Chief Counsel, Business Transactions Division. The Office of the Chief Counsel, Business Transactions Division shall serve in the manner provided in § 509.11 of this part, each respondent separately represented with a copy of any pleading or other filing made by the Office.

(b) If any party seeks discovery or proffers any oral testimony, the procedures in subparts A and B of this part shall apply from that time until the conclusion of the proceeding.

Dated: February 24, 2005.

By the Office of Thrift Supervision.

**James E. Gilleran,**

*Director.*

[FR Doc. 05–4017 Filed 3–1–05; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 563e

[No. 2005–09]

RIN 1550–AB48

#### Community Reinvestment Act—Assigned Ratings

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, OTS is making changes to its Community Reinvestment Act (CRA) regulations to reduce burden, provide greater flexibility to meet community needs, and restore the focus of CRA to lending. Specifically, OTS is providing additional flexibility to each savings association evaluated under the large retail institution test to determine the combination of lending, investment, and service it will use to meet the credit needs of the local communities in which it is chartered, consistent with safe and sound operations.