

**BILLING CODE: 4810-33-P**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 4, 5, 7, 8, 28, and 34**

**[Docket ID OCC-2011-0006]**

**RIN 1557-AD41**

**Office of Thrift Supervision Integration; Dodd-Frank Act Implementation**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is proposing to amend its regulations governing organization and functions, availability and release of information, and post-employment restrictions for senior examiners; and assessment of fees to incorporate the transfer of certain functions of the Office of Thrift Supervision (OTS) to the OCC pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The OCC also is proposing amendments to its rules pertaining to change in control of credit card banks and trust banks to implement section 603 of the Act; deposit-taking by uninsured Federal branches to implement section 335 of the Act; and its preemption and visitorial powers rules, subpart D, to implement various sections of the Act.

**DATES:** Comments must be received on or before [INSERT DATE THAT IS 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-

mail, if possible. Please use the title “OTS Integration; Dodd-Frank Act Implementation” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“regulations.gov”**: Go to <http://www.regulations.gov>. Select “Document Type” of "Proposed Rules," and in “Enter Keyword or ID Box,” enter Docket ID "OCC-2011-0006" and click "Search." On “View By Relevance” tab at bottom of screen, in the “Agency” column, locate the Notice of Proposed Rulemakings for OCC, in the “Action” column, click on “Submit a Comment” or "Open Docket Folder" to submit or view public comments and to view supporting and related materials for this rulemaking action.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **E-mail**: [regs.comments@occ.gov](mailto:regs.comments@occ.gov).
- **Mail**: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.
- **Fax**: (202) 874-5274.
- **Hand Delivery/Courier**: 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2011-0006” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or

personal information that you provide such as name and address information, e-mail addresses, or phone numbers. 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.

You may review comments and other related materials that pertain to this notice of proposed rulemaking by any of the following methods:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>. Select “Document Type” of “Public Submissions,” in “Enter Keyword or ID Box,” enter Docket ID “OCC-2011-0006,” and click “Search.” Comments will be listed under “View By Relevance” tab at bottom of screen.
- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 250 E Street, SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

**FOR FURTHER INFORMATION CONTACT:** Andra Shuster, Special Counsel, Heidi Thomas, Special Counsel, or Stuart Feldstein, Director, Legislative and Regulatory Activities Division, (202) 874-5090; Timothy Ward, Deputy Comptroller for Thrift Supervision, (202)

874-4468; or Frank Vance, Manager, Disclosure Services and Administrative Operations, Communications Division, (202)-874-5378, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, 124 Stat. 1376 (2010) (Dodd-Frank Act or Act). As part of the comprehensive package of financial regulatory reform measures enacted, Title III of the Dodd-Frank Act transfers the powers, authorities, rights and duties of the Office of Thrift Supervision to other banking agencies, including the OCC, on the “transfer date.” The transfer date is one year after the date of enactment of the Dodd-Frank Act, July 21, 2011 (unless extended in accordance with the provisions of the legislation). The Dodd-Frank Act also abolishes the OTS ninety days after the transfer date.

Title III of the Dodd-Frank Act transfers to the OCC all functions of the OTS and the Director of the OTS relating to Federal savings associations. As a result, the OCC will assume responsibility for the ongoing examination, supervision, and regulation of Federal savings associations.<sup>1</sup> The Act also transfers to the OCC rulemaking authority of the OTS relating to all savings associations, both state and Federal.<sup>2</sup> The legislation continues in effect all OTS orders, resolutions, determinations, agreements, regulations, interpretive rules, other interpretations,

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<sup>1</sup> Title III transfers all functions of the OTS relating to state savings associations to the Federal Deposit Insurance Corporation (FDIC) and all functions relating to the supervision of any savings and loan holding company and nondepository institution subsidiaries of such holding companies, as well as rulemaking authority for savings and loan holding companies, to the Board of Governors of the Federal Reserve System (FRB). Dodd-Frank Act, section 312(b)(1) and (2)(A) (savings and loan holding companies) and (2)(C) (state savings associations).

<sup>2</sup> Dodd-Frank Act, section 312(b)(2)(B)(i).

guidelines, procedures and other advisory materials in effect the day before the transfer date, and allows the OCC to enforce these issuances with respect to Federal savings associations, unless the OCC modifies, terminates, or sets aside such guidance or until superseded by the OCC, a court, or operation of law.<sup>3</sup> Title III also transfers OTS employees to either the OCC or FDIC, allocated as necessary to perform or support the OTS functions transferred to the OCC and FDIC, respectively.<sup>4</sup>

## **II. OCC Regulatory Actions to Integrate OTS Functions**

As part of its preparation for integrating the functions of the OTS into the OCC, the OCC is reviewing its regulations, as well as those of the OTS, to determine what changes are needed to facilitate a smooth regulatory transition. We expect this review to be accomplished in several phases. First, the proposed rule that the OCC is issuing today includes provisions revising OCC rules that will be central to internal agency functions and operations immediately upon the transfer of supervisory jurisdiction for Federal saving associations. Such revisions include, for example, providing for the OCC's assessment of Federal savings associations and adapting the OCC's rules governing the availability and release of information to cover information pertaining to the supervision of those institutions. These changes are essential to facilitate a seamless transition when the OCC assumes responsibility for supervising Federal savings associations on the transfer date.

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<sup>3</sup> Dodd-Frank Act, section 316(b).

<sup>4</sup> Dodd-Frank Act, section 322(a). Pursuant to section 322(a), the Director of the OTS, the Comptroller of the Currency, and the FDIC Chairman will jointly determine the number of OTS employees necessary to perform and support the functions transferred to each agency. Because most of the OTS's functions, *i.e.*, those relating to supervising Federal savings associations and all of the OTS's rulemaking authority for Federal and state savings associations, will transfer to the OCC on the transfer date, most of the OTS's approximately 1,000 employees will transfer to the OCC.

Also included in this proposal are changes to the OCC's regulations necessary to implement certain revisions to the banking laws that took effect on the enactment of the Dodd-Frank Act. These changes include revisions to the OCC's change in control rules to implement the moratorium on certain changes in control affected by section 603 of the Dodd-Frank Act and revisions to our Federal branch and agency rules to reflect the permanent increase in deposit insurance provided by section 335. We plan to publish a final rule resulting from this proposal that would be effective on or shortly after the transfer date.

As part of this first phase of its review of OTS and OCC regulations, the OCC also plans to issue an interim final rule with a request for comments, effective on the transfer date, that republishes those OTS regulations the OCC has the authority to promulgate and will enforce as of the transfer date.<sup>5</sup> These regulations will be moved into chapter I of title 12 of the Code of Federal Regulations and renumbered accordingly as OCC rules, with nomenclature and other technical amendments to reflect OCC supervision. OTS regulations that will be unnecessary following the transfer of OTS functions to the OCC, or that are superseded as of the transfer date by provisions of the Dodd-Frank Act, will be repealed at a later date.

In future phases of our regulatory review, which will occur subsequent to the transfer date, the OCC will consider more comprehensive substantive amendments, as necessary, to OTS regulations. For example, we may propose to repeal or combine provisions in cases where OCC and OTS rules are substantively identical or substantially overlap. In addition, we may propose to repeal or modify OCC or OTS rules where differences in regulatory approach are not required by statute or warranted by features unique to either charter. We expect to publish these

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<sup>5</sup> Section 316(c)(2) of the Dodd-Frank Act requires the OCC (along with the FDIC and FRB) to identify those OTS regulations that are continued under the Act that each agency will enforce. The OCC and FDIC must consult with each other in identifying these regulations, and the OCC, FRB, and FDIC must publish a list of these identified regulations in the Federal Register not later than the transfer date. The OCC is in the process of identifying these OTS rules and will publish a notice in the Federal Register in the near future.

amendments in one or more notices of proposed rulemaking, the first of which would be issued later in 2011.

### **III. Description of the Proposal**

To incorporate the regulation and supervision of Federal savings associations, the OCC is proposing to amend the OCC's rules at 12 CFR part 4 pertaining to its organization and functions, the availability of information from the OCC under the Freedom of Information Act (FOIA), the release of non-public OCC information, and restrictions on the post-employment activities of senior examiners; and at 12 CFR part 8, pertaining to assessments. The OCC also is proposing in this rulemaking amendments to 12 CFR parts 5 and 28 to implement sections 603 and 335 of the Dodd-Frank Act, respectively; and 12 CFR parts 5, 7 and 34, pertaining to preemption and visitorial powers.

Set forth below, in numerical order of the parts of our regulations to be amended, is a detailed description of the proposed changes.

#### **1. Part 4**

##### **a. Part 4, Subpart A – Organization and Functions**

Subpart A of 12 CFR part 4 describes the organization and functions of the OCC and provides the OCC's principal addresses. In light of the transfer of the powers and duties of the OTS and the OTS Director to the OCC and the Comptroller on the transfer date, the OCC proposes to amend subpart A to reflect the organizational and functional changes resulting from this transfer. Other changes conform this subpart to additional provisions of the Dodd-Frank Act.

Office of the Comptroller of the Currency (§ 4.2). Section 4.2 states that the OCC supervises and regulates national banks and Federal branches and agencies of foreign banks. It

lists ways in which this supervision and regulation is carried out, such as by examining these institutions, considering applications for changes in corporate or banking structure, and issuing rules pertaining to these institutions.

Section 312(b)(2)(B) of the Dodd-Frank Act transfers from the OTS to the OCC supervisory and regulatory authority over Federal savings associations, as well as rulemaking authority for all savings associations. Furthermore, section 314 of the Act updates the OCC's mission statement set forth at 12 U.S.C. 1 to reflect the OCC's current functions. It specifically provides that the OCC is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.

We are proposing to amend § 4.2 to reflect these changes. Specifically, we have revised this section to incorporate this mission statement; to include Federal savings associations in the list of entities that the OCC examines, supervises, and regulates to carry out this mission; to provide that the OCC has rulemaking authority for state savings associations; and otherwise to streamline the section.

Comptroller of the Currency (§ 4.3). Section 4.3 states that the Comptroller of the Currency, as the head of the OCC, is responsible for all OCC programs and functions. It also lists certain interagency boards and organizations on which the Comptroller, pursuant to statute, serves as a member. Section 111(a) of the Dodd-Frank Act establishes the Financial Stability Oversight Council (FSOC), with the stated purposes of identifying risks to U.S. financial stability, promoting market discipline, and responding to emerging threats to the financial system's stability.<sup>6</sup> Section 111(b)(1)(C) of the Dodd-Frank Act makes the Comptroller of the

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<sup>6</sup> Dodd-Frank Act, section 112(a)(1).

Currency a voting member of the FSOC. The proposed rule amends § 4.3 by adding the FSOC to the list of organizations on which the Comptroller serves as a member.

Washington office and website (§4.4). Section 4.4 describes the role of the OCC's Washington, D.C. main office and headquarters. It states that the Washington office directs OCC policy and operations and is responsible for the direct supervision of certain national banks, including the largest national banks through its Large Bank Supervision Department, as well as other national banks requiring special supervision. Pursuant to the Dodd-Frank Act's integration of the OTS into the OCC, the proposal makes a conforming change to § 4.4 to state that the OCC's Washington headquarters also will have direct supervision over certain Federal savings associations, including the largest Federal savings associations and those that require special supervision, and that large Federal savings associations will be overseen by the OCC's Large Bank Supervision Department. In addition, we have updated this section to provide that the Washington office also is responsible for the supervision of Federal branches and agencies of foreign banks and have added a reference to the OCC's website.

District and field offices (§ 4.5). Section 4.5 explains the role of the OCC's district and field offices. Paragraph (a) states that each district office supervises the national banks and Federal branches and agencies of foreign banks in its district, except for those national banks supervised by the Washington, D.C. office, and includes a chart that provides each district office's address and its geographical composition. Paragraph (b) states that OCC's field offices and duty stations support the district offices' bank supervisory responsibilities.

Pursuant to the integration of the OTS into the OCC under the Dodd-Frank Act, the proposal amends § 4.5 to provide that each OCC district office also will have responsibility for certain Federal savings associations located in its district and that the OCC's field offices and

duty stations also will support the district offices' savings association supervisory responsibilities. We also have updated this section to remove the reference to Federal branches and agencies of foreign banks, which now are supervised by Large Bank Supervision, instead of to the District Offices. Finally, we propose a technical amendment to § 4.5 to reflect that the OCC has four district offices.

These changes, along with those in § 4.4, will provide guidance on which OCC office will have primary responsibility for the supervision of each newly integrated Federal savings association. The OTS rule setting forth OTS organization and functions, 12 CFR part 500, will be repealed at a later date.

Frequency of examination of national banks (§ 4.6). Section 4.6 sets forth the statutory authority pursuant to which the OCC conducts examinations of national banks and the frequency of these examinations. The current, nearly identical OTS rule, 12 CFR 563.171, contains the same examination provisions with respect to savings associations.<sup>7</sup> Specifically, each of these rules provides that the OCC or OTS are required to conduct a full scope, on-site examination of every regulated entity (national bank or savings association, respectively) at least once during each 12-month period. Each rule also provides that the OCC or OTS may examine certain small national banks or savings associations every 18 months, rather than every 12 months, and sets forth the conditions that must be satisfied for this 18-month rule to apply. Finally, each rule provides that the OCC and OTS may examine a national bank or savings association more frequently, as each agency deems necessary.

Pursuant to the transfer of the OTS's supervisory authority over Federal savings associations to the OCC, we are proposing to integrate § 563.171 into § 4.6 so that the OCC rule

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<sup>7</sup> See 12 U.S.C. 1820(d).

applies to both national banks and Federal savings associations. We also propose to amend this section by updating the OCC's statutory authority to conduct examinations to include the relevant statutory cite for the OCC's new authority to examine savings associations, 12 U.S.C. 1463(a)(1), as amended by the Dodd-Frank Act. As a result of this amendment to § 4.6, Federal savings associations will be subject to the same frequency of examinations as prior to the transfer of authority from the OTS to the OCC. Section 563.171 will be repealed at a later date.

b. Part 4, Subpart B – Freedom of Information Act

Subpart B contains the OCC's rules for making requests for agency records and documents under the FOIA, 5 U.S.C. 552. The proposed rule applies these rules to FOIA requests relating to Federal savings associations received by the OCC as of the transfer date, ensures that records of the OTS are subject to the OCC's FOIA regulations, and makes various technical changes to part 4 to correct technical errors and to update appropriate references to OCC units charged with handling FOIA requests.

Purpose and scope (§ 4.11). This section provides the purpose and scope of the OCC's FOIA rule, which is used to facilitate the OCC's interaction with the banking industry and the public. The proposal amends this section to include the Federal savings association industry within this rule's scope. We also have amended this section to provide that this subpart does not apply to FOIA requests filed with the OTS before July 21, 2011. Instead, these requests are subject to the rules of the OTS in effect on July 20, 2011. This will ensure continuity of processing for pending requests at the OTS.

Information available under the FOIA (§ 4.12). This section provides that OCC records are available to the public except those listed as exempt. We have added a provision to the list of exempt records to account for OTS information in the possession of the OCC.

Public inspection and copying (§ 4.14). Section 4.14 lists the type of information the OCC makes readily available for public inspection and copying. The proposal amends this section by adding cross-references to the appropriate Federal savings association-related rules for public securities-related filings and the public file of pending applications. In addition, the proposal adds to this list any similar OTS information, to the extent this information is in the possession of the OCC. Finally, the proposal updates an obsolete reference in § 4.14(c) to the Multinational Banking Department to provide that the public files of pending applications of banks, as well as Federal savings associations, supervised by Large Bank Supervision are available from the Large Bank Licensing Expert.

How to request records (§ 4.15). Section 4.15 describes the process by which a person may request records from the OCC through the FOIA. Paragraph (c)(2) currently states that the OCC's Director of Communications or that person's delegate initially determines whether to grant a request for OCC records. The proposal amends this statement to indicate that the Comptroller or the Comptroller's designee makes this initial determination, which more accurately reflects the current process at the OCC. We have also proposed a change to paragraph (b), adding a reference to the OCC's web portal as a means to submit or appeal a FOIA request.

Predisclosure notice for confidential commercial information (§ 4.16). This section describes the circumstances under which the OCC provides a submitter of confidential commercial information with prompt written notice of the receipt of a request for this information or of an appeal of a denial of a request for such information. The proposal amends this section to cover information submitted to the OTS or to the Federal Home Loan Bank Board, its predecessor agency, now in the possession of the OCC.

How to track a FOIA request (§ 4.18). Section 4.18 provides that the OCC will issue a tracking number to all FOIA requesters within 5 days of the receipt of the request and describes how a FOIA requester may track the progress of their FOIA request at the OCC. The proposal amends this section to more accurately reflect the OCC's current process of automatically issuing tracking numbers to FOIA requesters who file via the OCC's Freedom of Information Request Portal, <https://appsec.occ.gov/publicaccesslink/palMain.aspx>.

c. Part 4, Subpart C – Non-Public Information

Subpart C contains OCC rules and procedures for requesting access to various types of non-public information and the OCC's process for reviewing and responding to such requests. It also clarifies the persons and entities with which the OCC can share non-public information. The OTS has similar rules at 12 CFR 510.5. This proposal amends subpart C to include information related to Federal savings associations and to ensure that such information remains accessible, subject to appropriate procedures and safeguards. The amendments to subpart C also ensure that non-public information in the possession of former employees or officials of the OTS will remain subject to confidentiality safeguards and procedures for requesting access to such information.

Purpose and scope (§ 4.31). This section outlines the purposes and scope of the OCC's rule for requesting access to various types of non-public information. The proposal amends this section to make reference to Federal savings associations and state savings association regulatory agencies, where appropriate. We also have amended this section to provide that this subpart does not apply to requests for non-public information filed with the OTS before July 21, 2011. Instead, these requests are subject to the rules of the OTS in effect on July 20, 2011. This will ensure continuity of processing for pending requests at the OTS.

Definitions (§ 4.32). Among other terms, this section defines “non-public OCC information” as information that the OCC is not required to release under the FOIA or that the OCC has not yet published or made available pursuant to 12 U.S.C. 1818(u). It further provides that such information includes records created or obtained by the OCC in connection with the OCC's performance of its responsibilities, and sets forth examples of these records. The proposal amends this section to include OTS non-public information in the definition of “non-public information.” The proposal also amends the list of examples to include Federal savings association-related records. This would include OTS records in the possession of the OCC as of the transfer date as well as testimony from or an interview with, former OTS employees, officers, or agents concerning information acquired by that person in the course of his or her performance of official duties with the OTS or due to that person's official status with the OTS. Finally, the proposal makes technical amendments to this definition for clarification purposes and to remove duplicative information.

Section 4.32 also includes a definition of “supervised entity.” The proposal amends this definition to include Federal savings association and Federal savings association subsidiaries.

Consideration of requests (§ 4.35). This section outlines the OCC’s decision-making process for the release of non-public information, the standards for a denial of a request, and time periods for OCC consideration of the request. Paragraph (a)(5) of this section provides that the OCC generally notifies a national bank if it is the subject of a request for information, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue. The proposal amends this paragraph to include Federal savings associations.

Persons and entities with access to OCC information; prohibition on dissemination

(§ 4.37). Paragraph (a) of § 4.37 prohibits, except as authorized by this subpart or otherwise by the OCC, a current or former OCC employee or agent from disclosing or permitting the disclosure of any non-public OCC information to anyone other than an employee or agent of the Comptroller for use in the performance of OCC duties. This section also requires any current or former OCC employee or agent subpoenaed or otherwise requested to provide non-public information to immediately notify the OCC of such request, and outlines the duties of such employee or agent when subject to such a request. The proposal amends this section to cover former OTS employees. As a result, former OTS employees must comply with this section with respect to OTS information that is in the possession of the OCC and covered by this section after the transfer date.

Subsection (b) of this section prohibits any person, national bank, or other entity, including one in lawful possession of non-public OCC information, from disclosing such information except when the requester has sought the information from the OCC pursuant to this section and as ordered by a Federal court in a judicial proceeding in which the OCC has had the opportunity to appear and oppose discovery. This subsection also provides that a person, bank or other entity may disclose non-public OCC information to a person or organization officially connected with the bank as officer, director, employee, attorney, auditor, or independent auditor, or to a consultant with a specified agreement with the person, bank, or entity. Finally, this subsection outlines the duties of such person, bank or entity when subject to a request for non-public OCC information. The proposal amends paragraph (b) to include Federal savings associations.

Paragraph (c) provides that, when not prohibited by law, the Comptroller may make non-public information available to the Federal Reserve Board and FDIC, and in the Comptroller's sole discretion, to certain other government agencies of the United States and foreign governments, state agencies with authority to investigate violations of criminal law, and state bank regulatory agencies. The proposal amends this section to permit the Comptroller to also disclose this information to state savings association regulatory agencies.

Notification of parties and procedures for sharing and using OCC records in litigation (§ 4.39). This section requires persons requesting that the OCC permit the testimony of an OCC employee or former OCC employee to notify all other parties to the case that a request has been submitted. The proposal applies this section to requests for the testimony of former OTS employees.

Appendix A to Subpart C of Part 4—Model Stipulation for Protective Order and Model Protective Order. Appendix A to subpart C sets forth a model stipulation for protective order and a model protective order for the release of non-public OCC information. The proposal amends these models to include statutory citations relating to the Comptroller's authority to deem Federal savings association-related information confidential. Specifically, the proposal adds citations to 12 U.S.C. 1463(a)(1), 1464(a)(1) and 1464(d)(1)(B)(i), and 5 U.S.C. 301.

d. Part 4, Subpart E – One-Year Restrictions on Post-Employment Activities of Senior Examiners.

Twelve CFR part 4, subpart E sets forth the statutorily required post-employment restrictions placed on senior examiners after these individuals leave the employment of the OCC. Specifically, subpart E prohibits a senior examiner of a national bank from knowingly accepting compensation from that bank or a company that controls that bank for one year after leaving the

employment of the OCC, if such individual was the bank's senior examiner for two or more months during the last 12 months of OCC employment. The OTS applied substantively identical restrictions derived from the same statutory authority as the OCC rules on its senior examiners of savings associations at 12 CFR part 507.<sup>8</sup>

The OCC is proposing amendments to subpart E as part of its integration of the functions and former employees of the OTS. The resulting OCC regulation would include the same one-year post-employment restrictions that were imposed on senior examiners of national banks and savings associations when the OCC and OTS operated under separate regulations. Section 507 will be repealed at a later date, as it no longer will be necessary.

Definitions (§ 4.73). Section 4.73 defines certain terms used in subpart E. Specifically, § 4.73 defines a “consultant” of a national bank, bank holding company, or other company as one who works directly on matters for, or on behalf of, the bank, bank holding company, or other company. It defines “control” as having the meaning given in section 2 of the Bank Holding Company Act (12 U.S.C. 1841(a)). In the proposal, the OCC amends these definitions to encompass its oversight of Federal savings associations. Specifically, we propose to amend the definition of “consultant” to include also a consultant of a savings association or savings and loan holding company. We also propose to amend the definition of “control” to include reference to section 10 of the Home Owners’ Loan Act (12 U.S.C. 1467a) when referring to a savings association or a savings and loan holding company.

The proposal further adds the definitions of “savings association” and “savings and loan holding company.” Specifically, “savings association” would have the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(b)(1)). “Savings and loan holding company” would

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<sup>8</sup> See 12 U.S.C. 1820(k).

mean any company that controls a savings association or any other company that is a savings and loan holding company (as provided in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a)).

In addition, the proposal amends the definition of "senior examiner." Currently, § 4.73 defines "senior examiner" as an OCC officer or employee who has been authorized by the OCC to examine national banks and who meets certain other criteria. The OCC proposes to apply this same definition to officers and employees who examine Federal savings associations.

The OCC is aware that for one year following the transfer date, a senior examiner subject to the one-year post employment restriction may have worked for both the OTS and OCC during the one-year look-back period. We have drafted the proposed rule to address this situation by referring to either the OCC or the OTS as having had the authority to authorize the senior examiner's activities during this one-year look back period. One year after the transfer date, references to former OTS employment will not be needed, and the provision that references the OTS will sunset. It will be replaced by a provision that only addresses prior OCC employment.

One-year post-employment restrictions (§ 4.74). Section 4.74 contains the post-employment prohibition for senior examiners. As noted above, as of the transfer date, the OCC will assume responsibility for examining Federal savings associations and will employ former OTS employees, including the senior examiners, authorized to examine these institutions. Accordingly, the OCC proposes to amend § 4.74 to extend its post-employment restrictions to senior examiners of Federal savings associations and to their employment with such savings associations and controlling savings and loan holding companies.

As also noted above, however, for one year following the transfer date, the 12-month look-back window will include a period during which a savings association senior examiner may have been authorized by the OTS to conduct thrift examinations. The proposed language of § 4.74 addresses this period of time by referencing employment with the OCC and the OTS. One year post-transfer, the obsolete references to the OTS will sunset.

Effective Date; Waivers (§ 4.75). Section 4.75 states that the post-employment restrictions set forth in § 4.74 do not apply to any current or former OCC officer or employee if the Comptroller finds that granting the individual a waiver would not affect the integrity of the OCC's supervisory program. The OCC proposes to amend § 4.75 to recognize the Comptroller's authority to issue similar waivers for former OTS employees during the first year after the transfer date. After this time period, there will no longer be former OTS senior examiners who are subject to the post-employment restrictions. Therefore, one year after the transfer date, references in § 4.75 to former OTS employees will sunset.

The proposal also makes a technical amendment to this section by deleting § 4.75(a), which contains an obsolete reference to those who worked for the OCC prior to 2005. Conforming structural changes are made to the section in light of the deletion of this subsection.

Penalties (§ 4.76). This section sets forth the penalties that apply to a senior examiner who violates the one-year post-employment restrictions set forth in § 4.74. Section 4.76(a) states that this individual may be subject to an order (a) removing him from office or prohibiting him from participating in the affairs of the relevant bank, bank holding company, or other company that controls such institution for up to five years; and (b) prohibiting him from participating in the affairs of any insured depository institution for up to five years. Alternatively, he may be

subject to a civil money penalty of not more than \$250,000. Paragraphs (b) through (e) set forth the mechanics by which the penalties listed in subsection (a) are administered.

The proposal amends this section to include Federal savings associations, Federal savings association senior examiners, and former OTS employees within the scope of the § 4.76 penalty provisions. As noted above, language referencing former OTS employees will sunset one year after the transfer date, at which time the post-employment provisions no longer apply to former OTS employees.

Finally, the proposal makes a technical correction to this provision. The current provision incorrectly provides that penalties will be applied when the senior examiner of a bank accepts compensation from that bank at any time after leaving the employment of the OCC. This amendment limits the penalties to violations that occur during the one-year look-back period, the time period during which such employment is prohibited by the rule.

## **2. Dodd-Frank Act Amendments Affecting Approval of Change in Control Notices and Acceptance of Deposits by Federal Branches (Parts 5 and 28)**

This proposal contains amendments to 12 CFR part 5 to implement section 603 of the Dodd-Frank Act. Section 603 provides for a three-year moratorium (with certain exceptions) on the approval of a change in control of credit card banks, industrial banks and trust banks, if the change in control would result in a commercial firm controlling (directly or indirectly) such a bank. The moratorium took effect on the date of enactment of the Act, *i.e.*, July 21, 2010. The proposal amends 12 CFR 5.50(f) to implement this section of the Act.

Section 6 of the International Banking Act, 12 U.S.C. 3104(b), provides that uninsured Federal branches of foreign banks may not accept deposits in an amount of less than the standard maximum deposit insurance amount (SMDIA). The SMDIA is defined in 12 U.S.C.

1821(a)(1)(E) to mean \$100,000, subject to certain adjustments provided for in the statute. Section 335 of the Dodd-Frank Act, which takes effect on the transfer date, amends 12 U.S.C. 1821(a)(1)(E) to change the amount from \$100,000 to \$250,000. Section 28.16(b) of the OCC's regulations states that an uninsured Federal branch may accept initial deposits of less than \$100,000 only from certain persons. In order to conform this section of the OCC's regulations to the statutory changes and to prevent the need to continually amend this section for changes in the SMDIA, the proposal amends 12 CFR 28.16(b) to refer to 12 U.S.C. 1821(a)(1)(E), rather than the obsolete reference to \$100,000.

### **3. Dodd-Frank Act Provisions Affecting Preemption and Visitorial Powers (Parts 5, 7, and 34)**

#### **a. Preemption**

The Dodd-Frank Act contains provisions that affect the scope of national bank preemption, effective as of the transfer date.<sup>9</sup> The Act eliminates preemption of state law for national bank subsidiaries, agents and affiliates.<sup>10</sup> We therefore propose to rescind 12 CFR 7.4006, which is the OCC's regulation concerning the application of state laws to national bank operating subsidiaries.

The Act also changes the preemption standards applicable to Federal savings associations to conform to those applicable to national banks.<sup>11</sup> The Act specifically provides that, as of the

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<sup>9</sup> Section 1044, which amends chapter one of title LXII of the Revised Statutes by inserting a new section 5136C, contains the principal national bank preemption provisions.

<sup>10</sup> Dodd-Frank Act sections 1044(a), 1045, 124 Stat. 1376, 2016, 2017 (July 21, 2010).

<sup>11</sup> Dodd-Frank Act section 1046, 124 Stat. 2017 (to be codified at 12 U.S.C. 1465). In addition, the Act states that the provisions in section 1044 regarding visitorial powers shall apply to Federal savings associations and their subsidiaries to the same extent and in the same manner as if they were national banks or national bank subsidiaries. Dodd-Frank Act section 1047(b), 124 Stat. 2018 (to be codified at 12 U.S.C. 1465).

transfer date, determinations by a court or by the OCC under the Home Owners' Loan Act (HOLA) with respect to Federal savings associations must be made in accordance with the laws and legal standards applicable to national banks regarding the application of state law.<sup>12</sup>

In order to implement this standard for Federal savings associations, the OCC is proposing amendments to its regulations to apply national bank standards on preemption and visitorial powers to Federal savings associations and their subsidiaries to the same extent and in the same manner as these standards apply to national banks and their subsidiaries.<sup>13</sup>

In addition, section 1044 of the Dodd-Frank Act contains several provisions addressing preemption of “state consumer financial laws.”<sup>14</sup> The Act provides that “state consumer financial laws” may be preempted only if: (1) application of such a law would have a “discriminatory effect” on national banks compared with state-chartered banks in that state; (2) “in accordance with the legal standard for preemption” in the Supreme Court’s decision in Barnett Bank of Marion County, N.A. v. Nelson,<sup>15</sup> the state consumer financial law “prevents or significantly interferes with the exercise by the national bank of its powers” (“Barnett standard” preemption); or (3) the state consumer financial law is preempted by a provision of Federal law other than Title LXII of the Revised Statutes.<sup>16</sup>

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<sup>12</sup> Id.

<sup>13</sup> To fulfill this statutory mandate, the affected OTS preemption regulations will be repealed.

<sup>14</sup> The Dodd-Frank Act defines the term “state consumer financial law” to mean a state law that (1) does not directly or indirectly discriminate against national banks and that (2) directly and specifically (3) regulates the manner, content, or terms and conditions of (4) any financial transaction or related account (5) with respect to a consumer. Dodd-Frank Act section 1044(a), 124 Stat. at 2014-2015.

<sup>15</sup> 517 U.S. 25 (1996).

<sup>16</sup> Dodd-Frank Act section 1044(a), 124 Stat. at 2015.

Because these provisions only apply to preemption of “state consumer financial laws,” they do not affect the application of OCC regulations to state laws that do not come within that definition. We have therefore examined whether these Dodd-Frank provisions, and particularly the Barnett standard preemption provision, require changes to our rules with respect to that category of state law.

The language of the Barnett standard preemption provision in the final legislation differs substantially from earlier versions of the legislation. The version of the legislation passed by the House of Representatives made no reference to the Barnett decision.<sup>17</sup> Important changes were made in the Senate as the legislation progressed and sponsors of key language that was ultimately adopted have explained that the changes were intended to provide consistency and legal certainty by preserving the preemption standard of the Supreme Court’s Barnett decision.<sup>18</sup>

This is consistent with both the language of the statute and the substance of the Barnett decision. The Barnett standard preemption provision instructs that preemption will occur, if, “in accordance with the legal standard for preemption in the decision of the Supreme Court” in Barnett, a state consumer financial law “prevents or significantly interferes with the exercise by a national bank of its powers.”<sup>19</sup> The legal standard for preemption in Barnett is conflict preemption and the decision references different formulations of conflict to illustrate and explain the nature and level of interference with national bank powers that triggers preemption. The phrase “prevent or significantly interfere” is one exemplary formulation of conflict preemption

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<sup>17</sup> See H.R. 4103, 111<sup>th</sup> Cong. section 4404 (as passed by the House of Representatives Dec. 11, 2009).

<sup>18</sup> See 156 Cong. Rec. S5870-02, 2010 WL 2788025 (July 15, 2010) (colloquy between Senator Carper, the sponsor of the key language in the Barnett standard preemption provision, and Chairman Dodd). The same understanding was stated by Senator Johnson. See 156 Cong. Rec. S5889 (July 15, 2010).

<sup>19</sup> Dodd-Frank Act section 1044(a), 124 Stat. at 2015.

used in the decision. It is not the only formulation; it is not set apart from the others; and it is not presented as a test different from the others; rather, it is part of the whole of the Court’s reasoning in its decision. Thus, in the Barnett preemption provision, the phrase may serve as a touchstone or starting point in the analysis, but it takes meaning from the whole of the Supreme Court’s decision. Since the phrase must be “in accordance with the legal standard for preemption” in the decision of the Court, the analysis may not simply stop and isolate those terms from the rest of the decision; it is necessary to take into account the whole of the conflict preemption analysis in the Supreme Court’s decision.<sup>20</sup> Notably, a recent decision handed down by the 11<sup>th</sup> Circuit Court of Appeals cited other formulations of conflict preemption used in the Barnett decision for the conclusion that under the Dodd-Frank Act, the proper preemption test is conflict preemption.<sup>21</sup>

This result is supported by other precedent and portions of section 1044 of the Dodd-Frank Act. The Barnett standard preemption provision uses language virtually identical to that used in section 104(d)(2)(A) of the Gramm-Leach-Bliley Act of 1999 (GLBA).<sup>22</sup> The leading case applying that standard similarly treated the phrase “prevents or significantly interferes” as a reference to the whole of the Court’s Barnett preemption analysis and referred to the GLBA statutory language as “the traditional Barnett Bank standards.”<sup>23</sup> Other portions of section 1044

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<sup>20</sup> The Barnett decision describes in detail the analysis under the Barnett conflict preemption standard. 517 U.S. at 33-34.

<sup>21</sup> Baptista v. JPMorgan Chase, N.A., \_\_\_ F.3d \_\_\_, (11<sup>th</sup> Cir. May 11, 2011) (“Thus it is clear that under the Dodd-Frank Act, the proper preemption test asks whether there is a significant conflict between the state and federal statutes—that is, the test for conflict preemption.”).

<sup>22</sup> See 15 U.S.C. 6701(d)(2)(A).

<sup>23</sup> Association of Banks in Insurance Inc. v. Duryee, 270 F.3d 397, at 405, 408 (6<sup>th</sup> Cir. 2001).

similarly convey that the Barnett standard preemption provision refers to the legal standard for conflict preemption contained in the whole of the Court's decision.<sup>24</sup>

The OCC recognizes that the manner in which preemption under the Barnett case is stated in Dodd-Frank also could have been intended to clarify that standard relative to how current OCC regulations have distilled principles from the Barnett case. Portions of our current regulations provide that state laws that “obstruct, impair, or condition” a national bank's powers are not applicable to national banks. This formulation has created ambiguities and misunderstandings regarding the preemption standard that it was intended to convey. We are therefore proposing to remove this language where it appears in our regulations and to remove 12 CFR 7.4009 in its entirety. This language was drawn from an amalgam of prior precedents relied upon in the Supreme Court's decision in Barnett, and its elimination will remove any ambiguity that the conflict preemption principles of the Supreme Court's Barnett decision are the governing standard for national bank preemption. To the extent any existing precedent cited those terms in our regulations, that precedent remains valid, since the regulations were premised on principles drawn from the Barnett case. Going forward, however, that formulation would be removed as a regulatory preemption standard.

Accordingly, because the Dodd-Frank Act preserves the Barnett conflict preemption standard, OCC's rules<sup>25</sup> and existing precedents (including judicial decisions and interpretations)

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<sup>24</sup> The related requirement that the OCC must have “substantial evidence” on the record to support adoption of preemption rules or orders under this standard refers to the legal standard of the Barnett decision, not to a different standard based on a single phrase used in that decision, and thus incorporates the entirety of Barnett's conflict preemption analysis upon which the decision was founded. See Dodd-Frank Act section 1044(a), 124 Stat. at 2016 (providing that regulations and orders promulgated under Barnett standard preemption do not affect the application of a state consumer financial law to a national bank unless substantial evidence made on the record of the proceeding supports the specific finding of preemption “in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).”)

<sup>25</sup> See, e.g., 69 FR 1904 (Jan. 13, 2004).

consistent with that analysis are also preserved.<sup>26</sup> We have reviewed those rules, taking into account the definition of a state consumer financial law, to confirm that the specific types of laws cited in the rules are consistent with the standard for conflict preemption in the Supreme Court’s Barnett decision.

We are also proposing clarifications to the OCC’s preemption regulations regarding the types of laws that would not be preempted under the Dodd-Frank Act provisions. Specifically, the proposal amends provisions of the regulations describing the types of state laws that are not preempted, to make specific reference to the Barnett decision.

The OCC recognizes that going forward, after the transfer date, the Dodd-Frank Act imposes new procedures and consultation requirements with respect to how we may reach certain future preemption determinations and clarifies the criteria for judicial review of these determinations. Specifically, the Act requires that the OCC make preemption determinations with regard to state consumer financial laws under the Barnett standard by regulation or order on a “case-by-case basis” in accordance with applicable law.<sup>27</sup> The Act defines “case-by-case basis” as a determination by the Comptroller as to the impact of a “particular” state consumer

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<sup>26</sup> See Letters from Acting Comptroller John Walsh to Senator Thomas R. Carper and Senator Mark Warner, May 12, 2011. Earlier versions of the legislation would have had a retroactive impact by creating various new standards for preemption under the National Bank Act, invalidating an extensive body of national bank judicial, interpretive and regulatory preemption precedent. See H.R. 4103, supra note 17. The final version of the Dodd-Frank Act legislation did not adopt this approach. Section 1043 of the Act, which dated from those early versions of the legislation, was not changed to reflect the final version of the legislation, but remains relevant in connection with changes in the treatment of preemption for national bank subsidiaries, and federal savings associations and their subsidiaries and agents.

<sup>27</sup> Dodd-Frank Act section 1044(a), 124 Stat. at 2015.

financial law on “any national bank that is subject to that law” or the law of any other state with substantively equivalent terms.<sup>28</sup>

When making a determination under this provision that a state consumer financial law has substantively equivalent terms as the law the OCC is preempting, the OCC must first consult with and take into account the views of the Consumer Financial Protection Bureau (CFPB) in making that determination. We note that this consultation process synchronizes with the role and authorities granted to the CFPB under the Dodd-Frank Act. It can inform the CFPB’s exercise of its authority to enhance federal consumer protection rules, and that rulemaking process, in turn, includes consultation with appropriate prudential regulators.<sup>29</sup>

The Dodd-Frank Act also requires there to be substantial evidence, made on the record of the proceeding, to support an OCC order or regulation that declares inapplicable a state consumer financial law under the Barnett standard. Finally, the Act requires the OCC to conduct a periodic review, subject to notice and comment, every 5 years after issuing a preemption determination relating to a state consumer financial law and to publish a list of such preemption determinations every quarter.<sup>30</sup>

b. Visitorial Powers

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<sup>28</sup> Id. This language was designed “to permit the OCC to make a single determination concerning multiple states’ consumer financial laws, so long as the law contains substantively equivalent terms.” See S. Rep. 11-176, at 176 (April 30, 2010). The Act contains no statement that Congress intended to retroactively apply these procedural requirements to overturn existing precedent and regulations, and that interpretation would be contrary to the presumption against retroactive legislation. See e.g., Landgraf v. USI Film Products, 511 U.S., 272-73 (1994).

<sup>29</sup> Dodd-Frank Act section 1022(b), 124 Stat. at 1981.

<sup>30</sup> Dodd-Frank Act section 1044(a), 124 Stat. at 2016.

The National Bank Act, at 12 U.S.C. 484, vests in the OCC exclusive visitorial powers with respect to national banks, subject to certain express exceptions.<sup>31</sup> On June 29, 2009, the Supreme Court issued its opinion in Cuomo v. Clearing House Association, L.L.C.<sup>32</sup> The Court held that when a state attorney general files a lawsuit to enforce a state law against a national bank, “[s]uch a lawsuit is not an exercise of ‘visitorial powers’ and thus the Comptroller erred by extending the definition of ‘visitorial powers’ to include ‘prosecuting enforcement actions’ in state courts.”<sup>33</sup> At the same time, the decision recognized the “regime of exclusive administrative oversight by the Comptroller”<sup>34</sup> applicable to national banks. Accordingly, under Cuomo, a state attorney general may bring an action against a national bank in a court of appropriate jurisdiction to enforce non-preempted state laws, but is restricted in conducting non-judicial investigations or oversight of a national bank.

The Dodd-Frank Act expressly codifies the Supreme Court’s decision in Cuomo regarding enforcement of state law against national banks by providing that no provision or other limits restricting the visitorial powers to which a national bank is subject shall be construed to limit or restrict the authority of any state attorney general to “bring an action against a national bank in a court of appropriate jurisdiction to enforce an applicable law and to seek relief as authorized by such law.”<sup>35</sup> Accordingly, the OCC is revising § 7.4000 to provide that an action

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<sup>31</sup> The statute provides that “[n]o national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.”

<sup>32</sup> 129 S. Ct. 2710 (2009).

<sup>33</sup> Id. at 2721.

<sup>34</sup> Id. at 2718.

<sup>35</sup> Dodd-Frank Act section 1047(a), 124 Stat. 2018 (to be codified at 12 U.S.C. 25b). The Act also amends HOLA to apply the same visitorial standard that applies to national banks to Federal savings associations and their subsidiaries. Dodd-Frank Act section 1047(b), 124 Stat. 2018 (to be codified at 12 U.S.C. 1465).

by a state attorney general (or other chief law enforcement officer) in a court of appropriate jurisdiction to enforce a non-preempted state law against a national bank and seek relief as authorized thereunder is not an exercise of visitorial powers under 12 U.S.C. 484.

c. Description of the Proposed Rule

The proposal accordingly amends provisions of the OCC's regulations relating to preemption (12 CFR 7.4007, 7.4008, 7.4009, and 34.4), operating subsidiaries (12 CFR 5.34 and 7.4006), and visitorial powers (12 CFR 7.4000).

- The proposal adds §§ 7.4010(a) and 34.6 to provide that state laws apply to Federal savings associations and their subsidiaries to the same extent and in the same manner that those laws apply to national banks and their subsidiaries. The proposal also adds § 7.4010(b) to subject Federal savings associations and their subsidiaries to the same visitorial powers provisions that apply to national banks and their subsidiaries.
- The proposal makes conforming changes to §§ 7.4007, 7.4008, and 34.4. It revises paragraphs (b) in §§ 7.4007, (d) in § 7.4008, and (a) in § 34.4 by removing the phrase “state laws that obstruct, impair, or condition a national bank’s ability to fully exercise its Federally authorized . . . powers are not applicable to national banks.” The proposal further clarifies that a state law is not preempted to the extent consistent with the Barnett decision.
- The proposal deletes § 7.4009.
- The proposal deletes § 7.4006, which governs applicability of state laws to national bank operating subsidiaries. The proposal also makes conforming revisions to 12 CFR 5.34(a) and subsection (e)(3) by expressly referencing the new section 12 U.S.C. 25b adopted by the Dodd-Frank Act, which provides that Title LXII of the Revised Statutes and section

24 of the Federal Reserve Act (12 U.S.C. 371) do not preempt, annul, or affect the applicability of any state law to any subsidiary, affiliate, or agent of a national bank (other than a subsidiary, affiliate, or agent that is chartered as a national bank).

- The proposal makes a number of changes to § 7.4000 to conform the regulations to the Supreme Court’s decision in the Cuomo case as adopted by the Dodd-Frank Act. First, it adds a reference to 12 U.S.C. 484 in § 7.4000(a)(1). Second, it revises paragraph (a)(2)(iv) by adding “investigating or” before “enforcing compliance with any applicable Federal or state laws concerning those activities.” This incorporates the Cuomo Court’s recognition that nonjudicial investigations generally constitute an exercise of visitorial powers.<sup>36</sup> Third, it adds a new paragraph (b), which specifically provides that “[i]n accordance with the decision of the Supreme Court in Cuomo v. Clearing House Assn., L. L. C., 129 S. Ct. 2710 (2009), an action against a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce a non-preempted state law against a national bank and to

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<sup>36</sup> The Court stated that:

The request for information [by the Attorney General] in the present case was stated to be “in lieu of” other action; implicit was the threat that if the request was not voluntarily honored, that other action would be taken. All parties have assumed, and we agree, that if the threatened action would have been unlawful the request-cum-threat could be enjoined. Here the threatened action was not the bringing of a civil suit, or the obtaining of a judicial search warrant based on probable cause, but rather the Attorney General’s issuance of subpoena on his own authority under New York Executive Law, which permits such subpoenas in connection with his investigation of “repeated fraudulent or illegal acts. . . in the carrying on, conducting or transaction of business.” See N.Y. Exec. Law Ann. § 63(12) (West 2002). That is not the exercise of the power of law enforcement “vested in the courts of justice” which 12 U.S.C. § 484(a) exempts from the ban on exercise of supervisory power.

Accordingly, the injunction below is affirmed as applied to the threatened issuance of executive subpoenas by the Attorney General for the State of New York, but vacated insofar as it prohibits the Attorney General from bringing judicial enforcement actions.

Cuomo, 129 S. Ct. at 2721-2722 (emphasis added).

seek relief as authorized thereunder is not an exercise of visitorial powers under 12 U.S.C. 484.” Fourth, it redesignates paragraphs (b) and (c) as new paragraphs (c) and (d) and makes conforming revisions to § 7.4000(c)(2), which provides an exception from the general rule in § 7.4000(a)(1) for such visitorial powers as are vested in the courts of justice.

#### **4. Assessments (Part 8)**

##### **a. Background**

The Dodd-Frank Act transfers authority to collect assessments for Federal savings associations from the OTS to the OCC.<sup>37</sup> This authority is effective as of the transfer date, July 21, 2011.<sup>38</sup> The Dodd-Frank Act also provides that, in establishing the amount of an assessment, the Comptroller may consider the nature and scope of the activities of the entity, the amount and type of assets it holds, the financial and managerial condition of the entity, and any other factor that is appropriate.<sup>39</sup>

The OCC and the OTS currently assess banks and savings associations respectively using different methodologies, although the agencies’ methodologies generally result in similar levels of assessments. Under the OTS assessment system, assessments are due each year on January 31 and July 31, and are calculated based on an institution’s asset size, condition, and complexity.<sup>40</sup>

The asset size component of the assessment is calculated using a table and formula contained in

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<sup>37</sup> See Dodd-Frank Act section 318(b) (authorizing the Comptroller to collect assessments, fees, or other charges from entities for which it is the appropriate Federal banking agency). See also *id.* section 312(c) (amending the Federal Deposit Insurance Act to designate the OCC as the appropriate Federal banking agency for Federal savings associations); *id.* section 369 (amending the HOLA to authorize the Comptroller to assess savings associations and affiliates of savings associations for the cost of examinations as the Comptroller “deems necessary or appropriate”).

<sup>38</sup> Dodd-Frank Act section 312.

<sup>39</sup> Dodd-Frank Act section 318(b).

<sup>40</sup> 12 CFR part 502.

the OTS's regulation.<sup>41</sup> The OTS sets specific rates that apply to the table through a Thrift Bulletin on assessments and fees.<sup>42</sup>

The condition component in the OTS's regulation applies to savings associations with Uniform Financial Institutions Rating System (UFIRS) ratings of 3, 4, or 5. The condition surcharge is determined by multiplying a savings association's size component by 50%, in the case of any association that receives a composite UFIRS rating of 3, and 100% in the case of any association that receives a composite UFIRS rating of 4 or 5. Under the OTS regulation, there is no cap on the condition surcharge.

The assessment for complexity is based on a savings association's trust assets under management and on its non-trust assets. The OTS charges a complexity component for trust assets if a savings association has more than \$1 billion in one of three components: trust assets, the outstanding principal balance of assets that are covered by recourse obligations or direct credit substitutes, and the principal amount of loans that the institution services for others. The OTS charges a complexity component for non-trust assets above \$1 billion under tiers and rates set out in a Thrift Bulletin.

If a savings association administers trust assets of \$1 billion or less, the OTS may assess fees for its examinations and investigations of those institutions. The OTS also may assess a savings association for examination or investigation of its affiliates. Again, these fees are set in a Thrift Bulletin.

Under the OCC's assessment regulation, assessments for each national bank are due on March 31 and September 30 of each year.<sup>43</sup> The semiannual assessment for each national bank

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<sup>41</sup> 12 CFR 502.20.

<sup>42</sup> Thrift Bulletin 48-29.

is based on an institution's asset size and is calculated using a table and formula in the OCC's regulation.<sup>44</sup> The OCC sets the specific rates for the table each year in the Notice of Comptroller of the Currency Fees (Notice of Fees).<sup>45</sup> The OCC may provide a reduced semiannual assessment for each non-lead bank within a bank holding company.<sup>46</sup>

In addition to the semiannual assessment, the OCC applies a separate assessment for its examination of "independent credit card banks" and "independent trust banks."<sup>47</sup> A bank is an independent credit card bank if it engages primarily in credit card operations and is not affiliated with a full-service national bank.<sup>48</sup> The assessment is based on "receivables attributable," defined as the total amount of outstanding balances due on credit card accounts owned by the bank (the receivables attributable to those accounts), minus receivables retained on the bank's balance sheet.

An "independent trust bank" is a national bank with trust powers that has fiduciary and related assets, does not primarily offer full-service banking, and is not affiliated with a full-

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<sup>43</sup> See 12 CFR part 8. Part 8 contains parallel assessment rules for Federal branches and agencies.

<sup>44</sup> 12 CFR 8.2.

<sup>45</sup> See <http://www.occ.gov/news-issuances/bulletins/2010/bulletin-2010-41.html> (Notice of Comptroller of the Currency Fees for Year 2011).

<sup>46</sup> A "lead bank" is defined in the OCC's regulation as the largest national bank controlled by a company based on the total assets held by each national bank controlled by that company. 12 CFR 8.2(a)(6)(ii)(A). A "non-lead" bank means a national bank that is not the lead bank controlled by a company that controls two or more national banks. *Id.* § 8.2(a)(6)(ii)(B). The percentage of the discount for non-lead banks is set in the annual Notice of Comptroller of the Currency Fees.

<sup>47</sup> 12 CFR 8.2(c), 8.6(c). The OCC also assesses a fee for special examinations and investigations, such as special examinations and investigations of affiliates of national banks. 12 CFR 8.6.

<sup>48</sup> A "full service national bank" is defined as a bank that generates more than 50% of its interest and non-interest income from activities other than credit card operations or trust activities and is authorized according to its charter to engage in all types of permissible banking activities. 12 CFR 8.2(c)(3)(iii), 8.6(c)(3)(ii).

service national bank.<sup>49</sup> The independent trust assessment is made up of a minimum amount, set in the Notice of Fees, and an additional amount for banks with over \$1 billion in fiduciary and related assets. The specific rate applicable to fiduciary and related assets above \$1 billion is also set in the annual Notice of Fees.

The OCC applies a condition-based surcharge to the semiannual assessment of national banks.<sup>50</sup> The condition surcharge applies to national banks with UFIRS ratings of 3, 4, or 5. The condition surcharge is determined by multiplying the general semiannual assessment by 1.5, in the case of any national bank that receives a composite UFIRS rating of 3, and 2.0 in the case of any national bank that receives a composite UFIRS rating of 4 or 5. The condition surcharge is assessed against, and limited to, the first \$20 billion of a national bank's book assets.

b. Description of the Proposed Rule

The proposed rule would amend part 8 to incorporate Federal savings associations into the OCC's assessment structure. Under the proposed rules, these savings associations would be assessed using the same methodologies, rates, fees, and payment due dates that apply currently to national banks. The OTS's existing assessment regulation would no longer be in effect and will be repealed at a later date.

Under the OCC's assessment system, some savings associations will pay marginally more assessments than in the past, while others will pay lower assessments. However, during the first two assessment cycles after the transfer date, the OCC will base savings association assessments on either the OCC's assessment regulation (as amended to include Federal savings associations) or the former OTS assessment structure, whichever yields the lower assessment for

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<sup>49</sup> 12 CFR 8.6(c)(3)(iii).

<sup>50</sup> 12 CFR 8.2(d).

that savings association. After the March 2012 assessment, all national banks and Federal savings associations would be assessed using the OCC's assessment structure.<sup>51</sup> The OCC believes that this phase-in will allow savings associations sufficient time to adjust to the OCC's assessment program.

The proposed rule also implements section 605(a) of the Dodd-Frank Act, which provides the OCC (and other appropriate Federal banking agencies) with authority to conduct examinations of depository-institution permissible activities of nondepository institution subsidiaries of depository institution holding companies. Section 605 provides specific authority for the OCC and other regulators to assess such nondepository institution subsidiaries for the costs of examination. The proposed rule would implement this new statutory assessment authority.

#### **IV. Request for comments**

The OCC encourages comment on any aspect of this proposal and especially on those issues specifically noted in this preamble.

#### **V. Regulatory Analysis**

##### Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the Federal Register along with its rule. We have concluded that the proposed rule does not have an significant economic impact on a substantial number of small entities currently supervised by the

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<sup>51</sup> The OCC intends to implement this phase-in through an amended Notice of Comptroller of the Currency Fees.

OCC (i.e., national banks and Federal branches and agencies of foreign banks). In addition, although the proposed rule will directly affect all Federal savings associations, we have concluded that it does not have a significant economic impact on a substantial number of small Federal savings associations. Specifically, the amendments to part 4 do not contain new compliance requirements. Any costs that may be associated with integrating the functions of the two agencies, and other proposed changes to part 4, will be borne by the OCC. In addition, there are no costs directly associated with the proposed amendments to 12 CFR 5.50(f)(5) and Part 28, implementing sections 603 and 335 of the Dodd-Frank Act, respectively, or with the amendments necessary to apply national bank preemption standards to Federal savings associations. Furthermore, we have determined that the amendments to the preemption and visitorial powers provisions affecting national banks will not have a significant economic impact on a substantial number of small entities. Lastly, although the amendments to part 8, assessments, will economically impact a substantial number of small savings associations, this impact will not be significant. Therefore, pursuant to Section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

#### Paperwork Reduction Act

The rule contains several currently approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).<sup>52</sup> The amendments adopted today do not introduce any new collections of information into the rules, nor do they amend the rules in a way that substantively modifies the collections of information that OMB has approved. Therefore, no

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<sup>52</sup> See OMB Control numbers 1557-0014, 1557-0200 and 1557-0223.

PRA submissions to OMB are required, with the exception of non-substantive submissions to OMB to adjust the number of respondents.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in 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 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 OCC has determined that this proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, this proposal is not subject to Section 202 of the Unfunded Mandates Act.

#### **List of Subjects**

##### 12 CFR Part 4

National banks, Organization and functions, Reporting and recordkeeping requirements, Administrative practice and procedure, Freedom of Information Act, Records, Non-public information, Post-employment activities.

##### 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

##### 12 CFR Part 7

Computer technology, Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 8

National banks, Reporting and recordkeeping requirements.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 4 - ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS**

1. The authority citation for part 4 is revised to read as follows:

**Authority:** 12 U.S.C 1, 12 U.S.C. 93a, 12 U.S.C. 5321, 12 U.S.C. 5412, and 12 U.S.C. 5414. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a)(2) and (3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p-1, 1831o, 1867, 1951 et seq., 2601 et seq., 2801 et seq., 2901 et seq., 3101 et seq., 3401 et seq.; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e. Subpart E is also issued under 12 U.S.C. 1820(k).

2. Revise § 4.2 to read as follows:

**§ 4.2 Office of the Comptroller of the Currency.**

The OCC is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction. The OCC examines, supervises, and regulates national banks, Federal branches and agencies of foreign banks, and Federal savings associations to carry out this mission. The OCC also issues rules and regulations applicable to state savings associations.

**§ 4.3 [Amended]**

3. Amend § 4.3 in the third sentence by adding “a member of the Financial Stability Oversight Council,” after “Federal Deposit Insurance Corporation,”.

4. Revise § 4.4 to read as follows:

**§ 4.4 Washington office and website.**

The Washington office of the OCC is the main office and headquarters of the OCC. The Washington office directs OCC policy, oversees OCC operations, and is responsible for the direct supervision of certain national banks and Federal savings associations, including the largest national banks and the largest Federal savings associations (through the Large Bank Supervision Department); other national banks and Federal savings associations requiring special supervision; and Federal branches and agencies of foreign banks (through the Large Bank Supervision Department). The Washington office is located at 250 E Street, SW, Washington, DC 20219. The OCC’s website is at [www.occ.gov](http://www.occ.gov).

5. Amend § 4.5 by:

a. Revising paragraph (a); and

b. In paragraph (b), adding “and savings association” after “support the bank”.

The revision reads as follows:

**§ 4.5 District and field offices.**

(a) District offices. Each district office of the OCC is responsible for the direct supervision of the national banks and Federal savings associations in its district, with the exception of the national banks and Federal savings associations supervised by the Washington office. The four district offices cover the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. The office address and the geographical composition of each district follows:

<b>District</b>	<b>Office address</b>	<b>Geographical composition</b>
Northeastern District	Office of the Comptroller of the Currency, 340 Madison Avenue, 5th Floor New York, NY 10173-0002	Connecticut, Delaware, District of Columbia, northeast Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, the Virgin Islands, Virginia, and West Virginia.
Central District	Office of the Comptroller of the Currency, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605	Illinois, Indiana, central and southern Kentucky, Michigan, Minnesota, eastern Missouri, North Dakota, Ohio, and Wisconsin.
Southern District	Office of the Comptroller of the Currency, 500 North Akard Street, Suite 1600, Dallas, TX 75201	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.
Western District	Office of the Comptroller of the Currency, 1225 17th Street, Suite 300, Denver, CO 80202	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, western Missouri, Montana, Nebraska, Nevada, New Mexico, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, Wyoming, and Guam.

6. Amend § 4.6 by:

a. Revising the section heading;

b. In paragraph (a):

i. Adding in the first sentence “and Federal savings associations” after “examines national banks”; “(with respect to national banks) and 1463(a)(1) and 1464 (with respect to Federal savings associations)” after “12 U.S.C. 481”; and “(with respect to national banks and Federal savings associations)” after “12 U.S.C. 1820(d)”; and

ii. Adding in the second sentence “and Federal savings association” after “every national bank”.

c. In paragraph (b):

i. Adding in the introductory text “or a Federal savings association” after “a national bank”;

ii. Adding in paragraphs (b)(1), (b)(2), (b)(4), and (b)(5) “or Federal savings association” after “bank” each time it appears; and

iii. In paragraph (b)(3) removing “, the OCC” in the introductory text and revising paragraphs (b)(3)(i) and (b)(3)(ii); and

iv. In paragraph (b)(4), adding “, OTS” after “OCC”.

d. In paragraph (c), adding “or Federal savings association” after “national bank”.

The revisions read as follows:

**§ 4.6 Frequency of examination of national banks and Federal savings associations.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) The bank or Federal savings association was assigned a rating of 1 or 2 for management as part of the bank's or association's rating under the Uniform Financial Institutions Rating System; and

(ii) The bank or Federal savings association was assigned a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.

\* \* \* \* \*

**§ 4.7 [Amended]**

7. In paragraph (a) of § 4.7, remove the phrase “(h) and (i)” and add in its place “(g) and (h)”.

8. Amend § 4.11 by:

a. In paragraph (a), removing “industry” and adding in its place “and savings association industries” after the word “banking”;

b. Adding paragraph (b)(4), as follows.

**§ 4.11 Purpose and scope.**

\* \* \* \* \*

(b) \* \* \*

(4) This subpart does not apply to FOIA requests filed with the Office of Thrift Supervision (OTS) before July 21, 2011. These requests are subject to the rules of the OTS in effect on July 20, 2011.

9. Amend § 4.12 by:

a. Removing “and” at the end of paragraph (b)(8) and removing the period and adding “; and” at the end of paragraph (b)(9); and

b Adding paragraph (10), as follows:

**§ 4.12 Information available under the FOIA.**

\* \* \* \* \*

(b) \* \* \*

(10) Any OTS information similar to that listed in paragraphs (b)(1) through (9) of this section, to the extent this information is in the possession of the OCC.

\* \* \* \* \*

10. Amend § 4.14 by:

a. Adding in paragraph (a)(7), footnote. 1, first sentence, “and Federal savings associations” after “banks” and removing “, such as the Consolidated Report of Condition and Income (FFIEC 031-034),”;

b. Adding in paragraph (a)(9) “, or parts 563d and 563g of chapter V” after “of this chapter”;

c. Removing “and” at the end of paragraph (a)(10);

d. Removing the period at the end of paragraph (a)(11) and adding in its place “; and”;

e. Adding paragraph (a)(12); and

f. Revising paragraph (c).

The addition and revision read as follows:

**§ 4.14 Public inspection and copying.**

(a) \* \* \*

(12) Any OTS information similar to that listed in paragraphs (a)(1) through (a)(12) of this section, to the extent this information is in the possession of the OCC.

\* \* \* \* \*

(c) Addresses. The information described in paragraphs (a)(1) through (10) and (a)(12) of this section is available from the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. The information described in paragraph (a)(11) of this section in the case of both banks and Federal savings

associations is available from the Licensing Manager at the appropriate district office at the address listed in §4.5(a), or in the case of banks and savings associations supervised by Large Bank Supervision, from the Large Bank Licensing Expert, Licensing Department, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

#### **§ 4.15 [Amended]**

11. Amend § 4.15 by:

a. Adding in paragraph (b)(1) “through the OCC’s FOIA Web portal at <https://appsec.occ.gov/publicaccesslink/palMain.aspx>, or” after “must submit the request or appeal”; and

b. Removing in paragraph (c)(2) “OCC’s Director of Communications or that person’s” and adding in its place “Comptroller or the Comptroller’s”.

#### **§ 4.16 [Amended]**

12. Amend § 4.16:

a. In paragraph (b)(1)(i) by adding “or to the Federal Home Loan Bank Board, the predecessor of the OTS,” after “OCC”;

b. In paragraph (b)(1)(i)(C) by removing “OCC” and adding “from the OCC or the Federal Home Loan Bank Board, the predecessor of the OTS” after “confidentiality”;

c. In paragraph (b)(1)(ii) by adding “or to the OTS (or the Federal Home Loan Bank Board, its predecessor agency)” after “OCC”;

d. In paragraph (b)(1)(ii)(B) by adding “or to the OTS (or the Federal Home Loan Bank Board, its predecessor agency)” after “OCC”; and

e. In paragraph (b)(2)(iv) by adding “or the OTS (or the Federal Home Loan Bank Board, its predecessor agency)” after “OCC”.

13. Revise § 4.18 to read as follows:

**§ 4.18 How to track a FOIA request.**

(a) Tracking number. (1) Internet requests. The OCC will issue a tracking number to all FOIA requesters automatically upon receipt of the request (as described in §4.15(g)) by the OCC's Communications Department via the OCC's Freedom of Information Request Portal, <https://appsec.occ.gov/publicaccesslink/palMain.aspx>. The tracking number will be sent via electronic mail to the requester.

(2) If a requester does not have Internet access. The OCC will issue a tracking number to FOIA requesters without Internet access within 5 days of the receipt of the request (as described in § 4.15(g)) in the OCC's Communications Department. The OCC will mail the tracking number to the requester's physical address, as provided in the FOIA request.

(b) Status of request. FOIA requesters may track the progress of their requests via the OCC's Freedom of Information Request Portal, <https://appsec.occ.gov/publicaccesslink/palMain.aspx>. Requesters without Internet access may continue to contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at (202) 874-4700 to check the status of their FOIA request(s).

14. Amend § 4.31 by:

- a. Adding in paragraph (a)(5) "Federal savings associations," after "national banks,";
- b. Adding in paragraph (b)(3) "or state savings association" after "state bank"; and
- c. Adding paragraph (b)(5) to read as follows:

**§ 4.31 Purpose and scope.**

\* \* \* \* \*

(b) \* \* \*

(5) This subpart does not apply to requests for non-public information filed with the Office of Thrift Supervision (OTS) before July 21, 2011. These requests are subject to the rules of the OTS in effect on July 20, 2011.

15. Amend § 4.32 by:

- a. Revising paragraph (b)(1)(i);
- b. In paragraph (b)(1)(ii) adding “or the OTS” after “OCC”, removing “the OCC’s”, and adding “either agency’s” after “with”;
- c. Adding in paragraph (b)(1)(iii) “or OTS” after “compiled by the OCC”;
- d. Revising paragraph (b)(1)(v);
- e. Adding in paragraph (b)(1)(vi) “, Federal savings associations, and savings and loan holding companies” after “national banks”;
- f. Removing the second sentence in paragraph (b)(2); and
- g. Revising paragraph (e);

The revisions read as follows:

**§ 4.32 Definitions.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) A record created or obtained:

(A) By the OCC in connection with the OCC's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a national bank, a Federal savings association, a bank holding company, a savings and loan holding company, or an affiliate; or

(B) By the OTS in connection with the OTS's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a Federal savings association, a savings and loan holding company, or an affiliate;

\* \* \* \* \*

(v) Testimony from, or an interview with, a current or former OCC employee, officer, or agent or a former OTS employee, officer, or agent concerning information acquired by that person in the course of his or her performance of official duties with the OCC or OTS or due to that person's official status at the OCC or OTS; and

\* \* \* \* \*

(e) Supervised entity includes a national bank or Federal savings association, a subsidiary of a national bank or Federal savings association, or a Federal branch or agency of a foreign bank licensed by the OCC as defined under 12 CFR 28.11(g) and (h), or any other entity supervised by the OCC.

\* \* \* \* \*

16. Revise § 4.35(a)(5) to read as follows:

**§ 4.35 Consideration of requests.**

(a) \* \* \*

(5) Notice to subject national banks and Federal savings associations. Following receipt of a request for non-public OCC information, the OCC generally notifies the national bank or Federal savings association that is the subject of the requested information, unless the OCC, in its discretion, determines that to do so would advantage or prejudice any of the parties in the matter at issue.

\* \* \* \* \*

17. Amend § 4.37 by:

a. In paragraph (a):

i. Adding in the heading “; former OTS employees or agents” after “former OCC employees or agents”;

ii. Adding “or former OTS employee or agent,” after “former OCC employee or agent” each time that phrase appears;

iii. Adding at the end of paragraph (a)(2)(ii), “and former OTS employees or agents”;

b. In paragraph (b):

i. Adding in paragraph (b)(1)(i) introductory text “Federal savings association,” after “national bank,”;

ii. Revising paragraph (b)(2) introductory text;

iii. Adding at the end of paragraph (b)(2)(ii) “or Federal savings association”;

iv. Adding in paragraph (b)(3) introductory text “ Federal savings association,” after “national bank,”; and

c. In paragraph (c), adding in the first sentence “and state savings association” after “state bank”.

The revision reads as follows:

**§4.37 Persons and entities with access to OCC information; prohibition on dissemination.**

\* \* \* \* \*

(b) \* \* \*

(2) Exception for national banks and Federal savings associations. When necessary or appropriate for business purposes, a national bank, Federal savings association, or holding company, or any director, officer, or employee thereof, may disclose non-public OCC

information, including information contained in, or related to, OCC reports of examination, to a person or organization officially connected with the bank or Federal savings association as officer, director, employee, attorney, auditor, or independent auditor. A national bank, Federal savings association, or holding company or a director, officer, or employee thereof, may also release non-public OCC information to a consultant under this paragraph if the consultant is under a written contract to provide services to the bank or Federal savings association and the consultant has a written agreement with the bank or Federal savings association in which the consultant:

\* \* \* \* \*

**§ 4.39 [Amended]**

18. In § 4.39(a), add “OCC or OTS” after “former”.

**APPENDIX A TO SUBPART C OF PART 4 [AMENDED]**

19. In Appendix A to Subpart C of Part 4:

a. In I. Model Stipulation, second paragraph, add “, 1463(a)(1), 1464(a)(1), and 1464(d)(1)(B)(i)” after 12 U.S.C. 481”; and

b. In II. Model Protective Order, add “, 1463(a)(1), 1464(a)(1), and 1464(d)(1)(B)(i)” after 12 U.S.C. 481” in the second paragraph.

20. Amend § 4.73 by:

a. In the definition of “Consultant”:

i. Adding “savings association,” after “national bank,”;

ii. Adding “savings and loan holding company,” after “bank holding company,” each time it appears; and

iii. Adding “savings association,” after “such bank,”;

b. In the definition of “Control” adding “or in section 10 of the Home Owners’ Loan Act (12 U.S.C. 1467a), as applicable under the circumstances” after “1841(a)”;

c. Adding definitions of “Savings association” and “Savings and loan holding company” in alphabetical order; and

d. Revising the definition of “Senior examiner”.

The additions and revisions read as follows:

**§ 4.73 Definitions.**

\* \* \* \* \*

Savings association has the meaning given in section 3 of the FDI Act (12 U.S.C. 1813(b)(1)).

Savings and loan holding company means any company that controls a savings association or any other company that is a savings and loan holding company (as provided in section 10 of the Home Owners’ Loan Act (12 U.S.C. 1467a)).

Senior examiner. For purposes of this subpart, an officer or employee of the OCC is considered to be the “senior examiner” for a particular national bank or savings association if—

(1) The officer or employee has been authorized by the OCC to conduct examinations on behalf of the OCC or had been authorized by the Office of Thrift Supervision (OTS) to conduct examinations on behalf of the OTS;

(2) The officer or employee has been assigned continuing, broad, and lead responsibility for examining the national bank or savings association; and

(3) The officer's or employee's responsibilities for examining the national bank or savings association—

(i) Represent a substantial portion of the officer's or employee's assigned responsibilities;  
and

(ii) Require the officer or employee to interact routinely with officers or employees of the national bank or savings association, or its affiliates.

21. Effective July 21, 2012, in § 4.73, revise the definition of Senior examiner to read as follows:

**§ 4.73 Definitions.**

\* \* \* \* \*

Senior examiner. For purposes of this subpart, an officer or employee of the OCC is considered to be the “senior examiner” for a particular national bank or savings association if—

(1) The officer or employee has been authorized by the OCC to conduct examinations on behalf of the OCC;

(2) The officer or employee has been assigned continuing, broad, and lead responsibility for examining the national bank or savings association; and

(3) The officer's or employee's responsibilities for examining the national bank or savings association—

(i) Represent a substantial portion of the officer's or employee's assigned responsibilities;

(ii) Require the officer or employee to interact routinely with officers or employees of the national bank or savings association, or its affiliates.”

22. Revise § 4.74 to read as follows:

**§ 4.74 One-year post-employment restrictions.**

An officer or employee of the OCC who serves, or former officer or employee of the OTS who served, as the senior examiner of a national bank or savings association for two or

more months during the last twelve months of such individual's employment with the OCC or OTS may not, within one year after leaving the employment of the OCC or OTS, knowingly accept compensation as an employee, officer, director or consultant from the national bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls the national bank or savings association.

23. Effective July 21, 2012, revise § 4.74 to read as follows:

**§ 4.74 One-year post-employment restrictions.**

An officer or employee of the OCC who serves as the senior examiner of a national bank or savings association for two or more months during the last twelve months of such individual's employment with the OCC may not, within one year after leaving the employment of the OCC, knowingly accept compensation as an employee, officer, director or consultant from the national bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls the national bank or savings association.

24. Revise § 4.75 to read as follows:

**§ 4.75 Waivers.**

The post-employment restrictions set forth in section 10(k) of the FDI Act (12 U.S.C. 1820(k)) and § 4.74 do not apply to any officer or employee of the OCC, or any former officer or employee of the OCC or OTS, if the Comptroller of the Currency certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions would not affect the integrity of the OCC's supervisory program.

25. Effective July 21, 2012, revise § 4.75 to read as follows:

**§ 4.75 Waivers.**

The post-employment restrictions set forth in section 10(k) of the FDI Act (12 U.S.C. 1820(k)) and § 4.74 do not apply to any officer or employee of the OCC, or any former officer or employee of the OCC, if the Comptroller of the Currency certifies, in writing and on a case-by-case basis, that granting the individual a waiver of the restrictions would not affect the integrity of the OCC's supervisory program.

26. Amend § 4.76 by revising paragraph (a) to read as follows:

**§ 4.76 Penalties.**

(a) Penalties under section 10(k) of FDI Act (12 U.S.C. 1820(k)). If a senior examiner of a national bank or savings association, after leaving the employment of the OCC or OTS, accepts compensation as an employee, officer, director, or consultant from that bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls that bank or savings association in violation of § 4.74 then the examiner shall, in accordance with section 10(k)(6) of the FDI Act (12 U.S.C. 1820(k)(6)), be subject to one of the following penalties—

(1) An order—

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant national bank, savings association, bank holding company, savings and loan holding company, or other company that controls such institution for a period of up to five years; and

(iii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than \$250,000.

\* \* \* \* \*

27. Effective July 21, 2012, amend § 4.76 by revising paragraph (a) to read as follows:

**§ 4.76 Penalties.**

(a) Penalties under section 10(k) of FDI Act (12 U.S.C. 1820(k)). If a senior examiner of a national bank or savings association, after leaving the employment of the OCC, accepts compensation as an employee, officer, director, or consultant from that bank, savings association, or any company (including a bank holding company or savings and loan holding company) that controls that bank or savings association in violation of § 4.74 then the examiner shall, in accordance with section 10(k)(6) of the FDI Act (12 U.S.C. 1820(k)(6)), be subject to one of the following penalties—

(1) An order—

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant national bank, savings association, bank holding company, savings and loan holding company, or other company that controls such institution for a period of up to five years; and

(iii) Prohibiting the individual from participating in the affairs of any insured depository institution for a period of up to five years; or

(2) A civil monetary penalty of not more than \$250,000.

\* \* \* \* \*

**PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES**

28. The authority citation for part 5 continues to read as:

**Authority:** 12 U.S.C. 1 et seq., 93a, 215a-2, 215a-3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

29. Amend § 5.34 by revising paragraph (a) and the first sentence of paragraph (e)(3) to read as follows:

**§ 5.34 Operating subsidiaries.**

(a) Authority. 12 U.S.C. 24 (Seventh), 24a, 25b, 93a, 3101 et seq.

\* \* \* \* \*

(e) \* \* \*

(3) Examination and supervision. An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank, except as otherwise provided with respect to the application of state law under sections 1044(e) and 1045 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b). \* \* \*

\* \* \* \* \*

30a. Amend § 5.50 by redesignating paragraph (f)(6) as paragraph (f)(7) and adding a new paragraph (f)(6) to read as follows:

**§ 5.50 Change in bank control; reporting of stock loans.**

\* \* \* \* \*

(f) \* \* \*

(6) Disapproval of notice involving credit card banks or trust banks. (i) In general. The OCC shall disapprove a notice if the proposed change in control occurs before July 21, 2013, and would result in the direct or indirect control of a credit card bank or trust bank, as defined in section 2(c)(2)(F) and (D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F) and (D)), by a commercial firm. For purposes of this paragraph a company is a “commercial firm” if the annual gross revenues derived by the company and all of its affiliates from activities

that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))) and, if applicable, from the ownership or control of one or more insured depository institutions, represent less than 15 percent of the consolidated annual gross revenues of the company.

(ii) Exception to disapproval. Paragraph (6)(i) shall not apply to a proposed change in control of a credit card bank or trust bank that:

(A)(1) Is in danger of default, as determined by the OCC;

(2) Results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the credit card bank or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the OCC; or

(3) Results from the acquisition of voting shares of a publicly traded company that controls a credit card bank or trust bank, if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25 percent of any class of the voting shares of the company; and

(B) Has obtained all regulatory approvals otherwise required for such change of control under any applicable Federal or state law, including review pursuant to section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) and 12 CFR 5.50.

\* \* \* \* \*

## **§ 5.50 [Amended]**

30b. Effective July 21, 2013, amend § 5.50 by removing paragraph (f)(6) and redesignating paragraph (f)(7) as paragraph (f)(6).

## **PART 7—BANK ACTIVITIES AND OPERATIONS**

31. The authority citation for part 7 is revised to read as follows:

**Authority:** 12 U.S.C. 1 et seq., 25b, 71, 71a, 92, 92a, 93, 93a, 481, 484, 1465, 1818 and 5412(b)(2)(B).

**Subpart D—Preemption**

32. Amend § 7.4000 by:

- a. Revising the first sentence of paragraph (a)(1);
- b. Revising paragraph (a)(2)(iv);
- c. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
- d. Adding a new paragraph (b); and
- e. Revising newly designated paragraph (c)(2).

The additions and revisions read as follows:

**§ 7.4000 Visitorial powers.**

(a) \* \* \*

(1) Under 12 U.S.C. 484, only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks. \* \* \*

(2) \* \* \*

(iv) Investigating or enforcing compliance with any applicable Federal or state laws concerning those activities.

\* \* \* \* \*

(b) Exclusion. In accordance with the decision of the Supreme Court in Cuomo v. Clearing House Assn., L. L. C., 129 S. Ct. 2710 (2009), an action against a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce a non-preempted state law against a national bank and to seek relief as authorized thereunder is not an exercise of visitorial powers under 12 U.S.C. 484.

(c) \* \* \*

(2) Exception for courts of justice. National banks are subject to such visitorial powers as are vested in the courts of justice. This exception pertains to the powers inherent in the judiciary.

\* \* \* \* \*

**§ 7.4006 [Removed and Reserved]**

33. Remove and reserve § 7.4006.

34. Amend § 7.4007 by:

a. Removing paragraph (b)(1);

b. Redesignating paragraph (b)(2) introductory text as paragraph (b) introductory text;

c. Redesignating paragraphs (b)(2)(i) through (vii) as paragraphs (b)(1) through (7),

respectively;

d. Revising paragraph (c) introductory text;

e. Revising footnote 5 in paragraph (c)(3); and

f. Revising paragraph (c)(8).

The revisions read as follows:

**§ 7.4007 Deposit-taking**

\* \* \* \* \*

(c) State laws that are not preempted. State laws on the following subjects are not inconsistent with the deposit-taking powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al. 517 U.S. 25 (1996):

\* \* \* \* \*

(3) Criminal law;<sup>3</sup>

<sup>3</sup> But see the distinction drawn by the Supreme Court in Easton v. Iowa, 188 U.S. 220, 238 (1903), where the Court stated that “[u]ndoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction \* \* \*. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States.” Id. at 239 (holding that Federal law governing the operations of national banks preempted a state criminal law prohibiting insolvent banks from accepting deposits).

\* \* \* \* \*

(8) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al. 517 U.S. 25 (1996), or that is made applicable by Federal law.

35. Amend § 7.4008 by:

a. Removing paragraph (d)(1);

b. Redesignating paragraph (d)(2) introductory text as paragraph (d) introductory text;

c. Redesignating paragraphs (d)(2)(i) through (x) as paragraphs (d)(1) through (10),

respectively; and

d. Revising paragraphs (e) introductory text; and (e)(8).

The revisions read as follows:

**§ 7.4008 Lending.**

\* \* \* \* \*

(e) State laws that are not preempted. State laws on the following subjects are not inconsistent with the non-real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996):

\* \* \* \* \*

(8) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996) or that is made applicable by Federal law.

**§ 7.4009 [Removed and Reserved]**

36. Remove and reserve § 7.4009.

37. Add § 7.4010 to read as follows:

**§ 7.4010 Applicability of state law and visitorial powers to Federal savings associations and subsidiaries.**

(a) In accordance with section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b), state laws apply to Federal savings associations and their subsidiaries to the same extent and in the same manner that those laws apply to national banks and their subsidiaries.

(b) In accordance with section 1047 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1465), the provisions of section 5136C(i) of the Revised Statutes regarding visitorial powers apply to Federal savings associations and their subsidiaries to the same extent and in the same manner as if they were national banks or national bank subsidiaries.

**PART 8—ASSESSMENT OF FEES**

38. The authority citation for part 8 is revised to read as follows:

**Authority:** 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, 3108, and 5412(b)(1)(B); and 15 U.S.C. 78c and 78 l.

39. Section 8.1 is revised to read as follows:

**§ 8.1 Scope and application.**

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, and 3108; and 15 U.S.C. 78c and 78l.

40. Section 8.2 is amended by:

a. Adding in paragraph (a) introductory text “and each Federal savings association” after “each national bank” both times it appears;

b. Adding in the table that follows paragraph (a), in the caption above the first two columns, “or Federal savings association’s” after “If the bank’s”;

c. Adding in paragraph (a)(1) in the first sentence “and every Federal savings association” after “Every national bank”; inserting, in the second sentence, “or Federal savings association’s” after “A bank’s”; and inserting, in the third sentence, “or Federal saving association” after “bank”;

d. Adding in paragraph (a)(2) “or Federal savings association” after “bank”;

e. Adding in paragraph (a)(3) “or Federal savings association’s” after “bank’s”;

f. Revising paragraph (a)(5) to read as follows;

g. Adding in paragraph (a)(6)(i) “or non-lead Federal savings association” after “each non-lead bank”;

h. Revising paragraphs (a)(6)(ii)(A) and (B);

i. Adding in paragraph (a)(6)(ii)(C) “with respect to national banks” after “Control and company”;

j. Adding paragraph (a)(6)(ii)(D);

k. Revising paragraph (c) heading;

l. In paragraph (c)(1), by adding “and independent credit card Federal savings association” after “independent credit card bank”; and inserting “or Federal savings association” after “owned by the bank”;

m. Revising paragraph (c)(2) heading;

n. Adding in paragraph (c)(2):

i. “and an independent credit card Federal savings association” after “independent credit card bank”;

ii. “or Federal savings association” after “notwithstanding that the bank”; and

iii. “or full-service Federal savings association,” after “full-service national bank”;

o. Adding in paragraph (c)(3)(i) “, with respect to national banks,” after “Affiliate”;

p. Redesignating paragraphs (c)(3)(ii) through (v) as paragraphs (c)(3)(iii), (c)(3)(iv), (c)(3)(vi), and (c)(3)(viii) respectively;

q. Adding a new paragraph (c)(3)(ii);

r. Revising newly redesignated paragraph (c)(3)(iii);

s. Adding new paragraph (c)(3)(v);

t. Adding paragraph (c)(3)(vii);

u. In newly redesignated paragraph (c)(3)(viii) adding “or an independent credit card Federal savings association” after “independent credit card bank”, and by adding “or Federal savings association’s” after “bank’s”;

v. Adding in paragraph (c)(4) “and independent credit card Federal savings associations” after “Independent credit card banks”; and

w. Revising paragraph (d) heading and adding in paragraphs (d)(1) and (d)(2), “or Federal savings association” after “in the case of any bank” each time it appears.

The additions and revisions read as follows:

**§ 8.2 Semiannual assessment.**

(a) \* \* \*

(5) The specific marginal rates and complete assessment schedule will be published in the “Notice of Comptroller of the Currency Fees,” provided for at § 8.8 of this part. Each semiannual assessment is based upon the total assets shown in the national bank's or Federal savings association's most recent “Consolidated Reports of Condition and Income” (Call Report) or “Thrift Financial Report,” as appropriate, preceding the payment date. Each bank or Federal savings association subject to the jurisdiction of the Comptroller of the Currency on the date of the second or fourth quarterly Call Report or Thrift Financial Report, as appropriate, required by the Office under 12 U.S.C. 161 and 12 U.S.C. 1464(v) is subject to the full assessment for the next six month period.

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(ii) \* \* \*

(A) Lead bank or lead Federal savings association means the largest national bank or Federal savings association controlled by a company, based on a comparison of the total assets held by each national bank or Federal savings association controlled by that company as reported in each bank's or savings association's Call Report or Thrift Financial Report, as appropriate, filed for the quarter immediately preceding the payment of a semiannual assessment.

(B) Non-lead bank or non-lead Federal savings association means a national bank or Federal savings association that is not the lead bank or lead savings association controlled by a company that controls two or more national banks or savings associations.

\* \* \* \* \*

(D) Control and company with respect to Federal savings associations have the same meanings as these terms have in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

\* \* \* \* \*

(c) Additional assessment for independent credit card banks and independent credit card Federal savings associations. \* \* \*

(2) Credit card banks and independent credit card Federal savings associations affiliated with full-service national banks or Federal savings associations. \* \* \*

\* \* \* \* \*

(3) \* \* \*

(ii) Affiliate, with respect to Federal savings associations, has the same meaning as in 12 U.S.C. 1462(9).

(iii) Engaged primarily in card operations means a bank described in section 2(c)(2)(F) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(F)) or a bank or a Federal savings association whose ratio of total gross receivables attributable to the bank's or Federal savings association's balance sheet assets exceeds 50%.”

\* \* \* \* \*

(v) Full-service Federal savings association is a Federal savings association that generates more than 50% of its interest and non-interest income from activities other than credit card

operations or trust activities and is authorized according to its charter to engage in all types of activities permissible for Federal savings associations.

\* \* \* \* \*

(vii) Independent credit card Federal savings association is a Federal savings association that engages primarily in credit card operations and is not affiliated with a full-service Federal savings association.

\* \* \* \* \*

(d) Surcharge based on the condition of the bank or Federal savings association. \* \* \*

\* \* \* \* \*

41. Section 8.6 is amended by:

- a. Revising paragraph (a) introductory text;
- b. Adding in paragraph (a)(1) “and Federal savings associations” after “national banks”;
- c. Adding in paragraph (a)(2) “, and Federal savings associations” after “foreign banks”;
- d. Adding in paragraph (a)(3) “or Federal savings association” after “particular bank”;  
adding “or Federal savings association’s” after “significance to the bank’s”; and adding “or Federal savings association” after “which the bank”;
- e. Adding in paragraph (a)(4) “, Federal savings associations,” after “banks” and removing the word “and” at the end of the paragraph;
- f. Removing in paragraph (a)(5) the period at the end of the sentence and adding the phrase “; and” in its place;
- g. Adding paragraph (a)(6);
- h. Revising the paragraph (c) heading and paragraph (c)(1) introductory text heading;

- i. Adding in paragraph (c)(1) introductory text “and independent trust Federal savings associations” after “independent trust banks”;
- j. Adding in paragraph (c)(1)(i) and (c)(1)(ii) “and independent trust Federal savings associations” after “independent trust banks”;
- k. Adding in paragraph (c)(1)(iii) “and independent trust Federal savings association” after “independent trust bank”;
- l. Revising the headings of paragraph (c)(1)(ii) and (c)(1)(iii);
- m. Revising paragraph (c)(2);
- n. Adding in paragraph (c)(3)(i) “with respect to a national bank” after “Affiliate”;
- o. Redesignating paragraphs (c)(3)(ii), (c)(3)(iii), and (c)(3)(iv) as paragraphs (c)(3)(iii), (c)(3)(v), and (c)(3)(vii), respectively and removing the “and” at the end of newly designated paragraph (v);
- p. Adding new paragraphs (c)(3)(ii), (c)(3)(iv), and (c)(3)(vi);
- q. Revising, effective from July 21, 2011 to December 31, 2011, newly designated paragraph (c)(3)(vii) to read as follows; and
- r. Adding paragraph (c)(3)(viii).

The additions and revisions read as follows:

**§ 8.6 Fees for special examinations and investigations.**

(a) Fees. Pursuant to the authority contained in 12 U.S.C. 16, 481, 482, 1467, and 1831c, the Office of the Comptroller of the Currency may assess a fee for:

\* \* \* \* \*

(6) Conducting examinations of depository-institution permissible activities of nondepository institution subsidiaries of depository institution holding companies pursuant to

section 605(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1831c).

\* \* \* \* \*

(c) Additional assessments on trust banks and trust Federal savings associations—(1) Independent trust banks and independent trust savings associations. \* \* \*

\* \* \* \* \*

(ii) Additional amount for independent trust banks and independent trust Federal savings associations with fiduciary and related assets in excess of \$1 billion. \* \* \*

(iii) Surcharge based on the condition of the bank or of the Federal savings association. \*

\* \*

(2) Trust banks affiliated with full-service national banks and trust Federal savings associations affiliated with full-service Federal savings associations. The OCC will assess a trust bank and a trust Federal savings association in accordance with paragraph (c)(1) of this section, notwithstanding that the bank is affiliated with a full-service national bank, or that the Federal savings association is affiliated with a full-service Federal savings association, if the OCC concludes that the affiliation is intended to evade the assessment regulation.

(3) \* \* \*

(ii) Affiliate, with respect to Federal savings associations, has the same meaning as in 12 U.S.C. 1462(9).

\* \* \* \* \*

(iv) Full-service Federal savings association is a Federal savings association that generates more than 50% of its interest and non-interest income from activities other than credit

card operations or trust activities and is authorized according to its charter to engage in all types of activities permissible for Federal savings associations.

\* \* \* \* \*

(vi) Independent trust Federal savings association is a Federal savings association that has trust powers, does not primarily offer full-service banking, and is not affiliated with a full-service Federal savings association;

(vii) Fiduciary and related assets for national banks are those assets reported on Schedule RC-T of FFIEC Forms 031 and 041, Line 10 (columns A and B) and Line 11 (column B), any successor form issued by the FFIEC, and any other fiduciary and related assets defined in the Notice of Comptroller of the Currency Fees; and

(viii) Fiduciary and related assets for Federal savings associations are those assets reported on Schedule FS of OTS Form 1313, Line FS21, any successor form issued by the OTS, and any other fiduciary and related assets defined in the Notice of Comptroller of the Currency Fees.

42. Effective December 31, 2011, add the word “and” at the end of paragraph (vi), revise paragraph (c)(3)(vii) to read as follows, and remove paragraph (c)(3)(viii).

**§ 8.6 Fees for special examinations and investigations.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(vii) Fiduciary and related assets are those assets reported on Schedule RC-T of FFIEC Forms 031 and 041, Line 10 (columns A and B) and Line 11 (column B), any successor

form issued by the FFIEC, and any other fiduciary and related assets defined in the Notice of Comptroller of the Currency Fees.

**§ 8.7 [Amended]**

43. Amend § 8.7. paragraph (a), by removing “and” after “Federal branch”; adding “, and each Federal savings association” after “each Federal agency”; and adding “, each Federal savings association,” after “each national bank”.

**PART 28—INTERNATIONAL BANKING ACTIVITIES**

44a. . The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 24(Seventh), 93a, 161, 602, 1818, 3101 et seq., and 3901 et seq.

**§ 28.16 [Amended]**

44b. Section 28.16 is amended by removing in paragraph (b) the term “\$100,000” and adding in its place “the standard maximum deposit insurance amount as defined in 12 U.S.C. 1821(a)(1)(E)”.

**PART 34—REAL ESTATE LENDING AND APPRAISALS**

45. The authority citation for part 34 is revised to read as follows:

**Authority:** 12 U.S.C. 1 et seq., 25b, 29, 93a, 371, 1465, 1701j-3, 1828(o), 3331 et seq., and 5412(b)(2)(B).

**Subpart A—General**

46. Amend § 34.4 by:

- a. Revising paragraph (a) introductory text;
- b. Revising paragraph (b) introductory text; and
- c. Revising paragraph (b)(9).

The revisions read as follows:

**§ 34.4 Applicability of state law.**

(a) A national bank may make real estate loans under 12 U.S.C. 371 and § 34.3, without regard to state law limitations concerning:

\* \* \* \* \*

(b) State laws on the following subjects are not inconsistent with the real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996):

\* \* \* \* \*

(9) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996), or that is made applicable by Federal law.

47. Add § 34.6 to subpart A to read as follows:

**§ 34.6 Applicability of state law to Federal savings associations and subsidiaries.**

In accordance with section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b), state laws apply to Federal savings associations and their subsidiaries to the same extent and in the same manner that those laws apply to national banks and their subsidiaries.

//S//

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Date: May 19, 2011

John Walsh  
Acting Comptroller of the Currency.