

# Rules and Regulations

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## GOVERNMENT ACCOUNTABILITY OFFICE

### 4 CFR Part 81

#### Public Availability of Government Accountability Office Records

**AGENCY:** Government Accountability Office.

**ACTION:** Final rule.

**SUMMARY:** GAO amends its records rule to clarify and broaden the existing exemption regarding the disclosure of congressional correspondence and to add a new provision regarding the handling of requests for records of interviews created by GAO in connection with its work. Specifically, the revision to the congressional correspondence exemption enables GAO to release or withhold congressional correspondence without prior congressional authorization. The new provision ensures that an agency from which an interview was obtained is notified of a request for the record of interview and receives an opportunity to advise GAO whether the record of interview or portions thereof should be exempt from disclosure. The new provision will enhance the open, frank, and honest exchange of information from other agencies, nonfederal organizations, and individuals to GAO during the course of a GAO audit, evaluation, or investigation.

**EFFECTIVE DATE:** October 4, 2007.

**FOR FURTHER INFORMATION CONTACT:** John A. Bielec, Deputy Assistant General Counsel; telephone 202-512-2846; e-mail [bielecj@gao.gov](mailto:bielecj@gao.gov).

**SUPPLEMENTARY INFORMATION:** On September 18, 2006, GAO published a proposed rule in the *Federal Register* proposing two revisions to 4 CFR Part 81.6 and requesting comments (71 FR 54597). Even though, as a legislative branch agency, GAO is not subject to the Administrative Procedures Act and was

not required by law to seek comments before issuing a final rule, GAO requested comments concerning its proposed revisions for a 45-day comment period ending November 2, 2006.

Two comments were received during the comment period. The first commenter objected to any change that would lessen the transparency of governmental actions. The second commenter opposed the creation of the additional exemption regarding records of interviews on the grounds that the new exemption is overly broad and could appear arbitrary and capricious. After careful review and consideration of the comments, GAO decided that no changes were needed to the proposed revision regarding congressional correspondence. With respect to the new provision in § 81.6 concerning records of interviews, GAO took into account the comment regarding the regulation appearing overly broad and added language to clarify the procedures to be followed when a request for records of interviews is made. Moreover, for the sake of clarity and transparency, GAO determined that this new provision should be placed in 4 CFR 81.5 rather than in § 81.6 since § 81.5 specifically relates to records obtained or created in the course of GAO's audit, evaluation, or investigative work.

As previously stated in the proposed rule, the revision to § 81.6(a) simply clarifies that GAO is not required to obtain congressional authorization prior to the release or withholding of congressional correspondence from its records. This revision ensures consistency in the handling of records that contain information regarding the communications between GAO and congressional members. It will not result in additional restrictions on the availability of such records.

The amendment to § 81.5 ensures that an agency from which an interview was obtained is given notice of the request for the record of interview and given an opportunity to advise GAO whether the record of interview or portions thereof should be exempt from disclosure. While a record of interview is a GAO-created record, the information contained therein comes directly from another agency. The agency from which an interview was obtained is in the best position to know whether particular

information contained in a record of interview may be sensitive or privileged, and therefore, whether it should be protected from public disclosure.

Although the amendment to § 81.5 provides an opportunity for input from another agency, the sole discretion regarding the release of records of interviews or portions thereof remains with GAO's Chief Quality Officer. In deciding whether to release a record of interview, the new provision makes clear that the Chief Quality Officer will consider the views of the agency from which the interview was obtained and the exemptions contained in § 81.6 or any other law or regulation.

While the amendment may restrict the availability of certain records of interviews, as discussed in the proposed rule, the success of GAO's work requires that employees of other agencies and organizations participate in interviews and provide open, frank, and honest opinions during these interviews. Without the amendment to § 81.5, GAO's ability to conduct necessary interviews could be diminished, which could negatively influence the quality of work GAO performs for Congress on behalf of the American people.

#### List of Subjects in 4 CFR Part 81

Administrative practice and procedure, Archives and records, Freedom of information.

■ For the reasons stated in the preamble, amend part 81 of title 4 of the Code of Federal Regulations as follows:

#### PART 81—PUBLIC AVAILABILITY OF GOVERNMENT ACCOUNTABILITY OFFICE RECORDS

■ 1. The authority citation for part 81 continues to read:

**Authority:** 31 U.S.C. 711.

■ 2. In § 81.5, revise the section heading, redesignate paragraph (b) as paragraph (c), and add new paragraph (b) to read as follows:

**§ 81.5 Records originating outside GAO, records of interviews, or records involving work in progress.**

\* \* \* \* \*

(b) It is the policy of GAO that prior to the release of a record of interview created by GAO in connection with an audit, evaluation, or investigation of a program, activity, or funding of a

government entity, GAO will notify the agency from which an interview was obtained of the request. GAO will provide that agency with a reasonable opportunity to indicate whether the record of interview or portions thereof should be exempt from disclosure and the reason(s) for the exemption. The public disclosure of a record of interview remains within the discretion of GAO's Chief Quality Officer, but GAO will consider the views of the agency and the exemptions provided for under § 81.6 or any other law or regulation in deciding whether to release all or portions of a record of interview.

\* \* \* \* \*

■ 3. In § 81.6, revise paragraph (a) to read as follows:

**§ 81.6 Records which may be exempt from disclosure.**

\* \* \* \* \*

(a) Records relating to work performed in response to a congressional request (unless authorized by the congressional requester), congressional correspondence, and congressional contact memoranda.

\* \* \* \* \*

Dated: August 27, 2007.

**Gary L. Keplinger,**  
General Counsel, Government Accountability Office.

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 585

[OTS-2007-0008]

RIN 1550-AC14

#### Prohibited Service at Savings and Loan Holding Companies Extension of Expiration Date of Temporary Exemption

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

**ACTION:** Final rule.

**SUMMARY:** OTS is amending its rules implementing section 19(e) of the Federal Deposit Insurance Act (FDIA), which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with respect to a savings and loan holding company

(SLHC). Specifically, OTS is extending the expiration date of a temporary exemption granted to persons who held positions with respect to a SLHC as of the date of the enactment of section 19(e). The revised expiration date for the temporary exemption is March 1, 2008.

**DATES: Effective Date:** The final rule is effective on September 4, 2007.

**FOR FURTHER INFORMATION CONTACT:** Donna Deale, Director, Holding Companies and Affiliates, Supervision Policy, (202) 906-7488, or Karen Osterloh, Special Counsel, Regulations and Legislation, (202) 906-6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** On May 8, 2007, OTS published an interim final rule adding 12 CFR part 585. This new part implemented section 19(e) of the FDIA, which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with a SLHC. Section 19(e) also authorizes the Director of OTS to provide exemptions from the prohibitions, by regulation or order, if the exemption is consistent with the purposes of the statute.

The interim final rule described the actions that are prohibited under the statute and prescribed procedures for applying for an OTS order granting a case-by-case exemption from the prohibition. The rule also provided regulatory exemptions to the prohibitions, including a temporary exemption for persons who held positions with respect to a SLHC on October 13, 2006, the date of enactment of section 19(e). This temporary exemption expires on September 5, 2007, unless a case-by-case exemption is filed prior to that expiration date.

OTS found that the temporary exemption was needed to ensure that the new prohibition did not needlessly disrupt SLHC operations by requiring the immediate termination of existing relationships. OTS designed this exemption to ensure that SLHCs would have sufficient time to determine which persons have convictions or pre-trial diversions involving the described criminal offenses, and to provide a meaningful opportunity for the SLHC or the prohibited person to demonstrate that the person's continued relationship with the SLHC is consistent with the purposes of the statute.

Since the publication of the interim final rule, some SLHCs have contacted

OTS to indicate that they have not had adequate time to review all of their existing relationships and file for appropriate permanent exemptions. To avoid needless disruptions of these SLHC operations, OTS is extending the expiration date of the temporary exemption to March 1, 2008. OTS has concluded that this extension of the exemption is consistent with the purposes of section 19(e) of the FDIA.<sup>1</sup>

### Regulatory Findings

#### Notice and Comment and Effective Date

For the reasons set out in the interim final rule,<sup>2</sup> OTS has concluded that: Notice and comment on this extension are unnecessary and contrary to the public interest under section 552(b)(B) of the Administrative Procedure Act; there is good cause for making the extension effective immediately under section 553(d) of the APA; and the delayed effective date requirements of section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) do not apply.

#### Regulatory Flexibility Act

For the reasons stated in the interim final rule,<sup>3</sup> OTS has concluded that this extension does not require an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and that this extension should not have a significant impact on a substantial number of small entities, as defined in the RFA.

#### Paperwork Reduction Act

OTS has determined that this extension does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

#### Unfunded Mandates Act of 1995

For the reasons stated in the interim final rule,<sup>4</sup> OTS has determined that this extension will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year.

#### Executive Order 12866

OTS has determined that this extension is not a significant regulatory action under Executive Order 12866.

<sup>1</sup> OTS is continuing to review the public comments submitted on the interim final rule and plans to publish a final rule addressing these comments later this year.

<sup>2</sup> 72 FR at 25953.

<sup>3</sup> 72 FR at 25953-25954.

<sup>4</sup> 72 FR at 25954.