

**Office of Thrift Supervision  
Department of the Treasury**

*Preliminary Plan for Retrospective Analysis of Existing Rules*

**May 18, 2011**

**I. Executive Order 13563**

On January 18, 2011 President Obama issued Executive Order 13563 (76 FR 3821 (January 21, 2011)) (E.O. 13563), concerning the promulgation of regulations by Executive Branch agencies. Section 6 of E.O. 13563 requires each agency to undertake a retrospective analysis of the agency's existing rules. More specifically: By May 18, 2011, "each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, expanded, streamlined, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

**II. Abolition of the Office of Thrift Supervision**

The Office of Thrift Supervision (OTS), an autonomous office within the Department of the Treasury, is the federal regulator of savings associations and their holding companies. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), Pub. L. No. 111-203, 124 Stat. 1376, (2010), enacted on July 21, 2010, substantially alters the regulation of savings associations and savings and loan holding companies. Section 312 of the Act<sup>1</sup> provides for the transfer of OTS functions to the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and the Board of Governors of the Federal Reserve System (FRB), on July 21, 2011 (Transfer Date).<sup>2</sup> More specifically, the Act transfers authority over Federal savings associations to the OCC, authority over State savings associations to the FDIC, and authority over savings and loan holding companies to the FRB. The OTS will transfer rulemaking authority relating to savings associations and savings and loan holding companies to the OCC and FRB, respectively.<sup>3</sup>

Title X of the Act requires the OTS and several other agencies to transfer their consumer financial protection rulemaking authority (as well as other consumer financial protection authority) to the newly created Bureau of Consumer Financial Protection (CFPB) on July 21, 2011.<sup>4</sup>

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<sup>1</sup> 12 U.S.C § 5412.

<sup>2</sup> Up until April 27, 2011 the Secretary of the Treasury, in consultation with the OTS, OCC, FRB and FDIC, may designate a later date, but not later than January 21, 2012. 12 U.S.C. § 311(b).

<sup>3</sup> 12 U.S.C. § 5412.

<sup>4</sup> 12 U.S.C. §§ 5581 and 5582; 75 FR 57252 (September 20, 2010).

The OTS will be abolished by operation of law 90 days after the Transfer Date.<sup>5</sup>

### **III. Treatment of OTS Regulations under the Act**

Under section 316(b) of the Act,<sup>6</sup> all OTS regulations remain in effect after the Transfer Date. However, by the Transfer Date the OCC (in consultation with FDIC), the FDIC (in consultation with OCC), and the FRB, must each identify the OTS regulations that will be enforced by that agency. Each agency must publish in the Federal Register a list of OTS regulations to be enforced.<sup>7</sup> Also, after the Transfer Date the OCC and FRB are able to change or rescind OTS rules and promulgate its own rules concerning savings associations and savings and loan holding companies, respectively.

The CFPB is subject to a similar requirement. Under section 1063(i) of the Act<sup>8</sup>, the CFPB must identify OTS and other transferring agency regulations that it will enforce. A list of such regulations must be published in the Federal Register by July 21, 2011. After this date the CFPB will also have the ability to change or rescind OTS and other transferring agency rules and promulgate its own rules concerning consumer financial protection.

### **IV. Review of OTS Regulations**

In light of the transfer of functions and abolition of the OTS and consistent with the agency's current resources and regulatory priorities, the OTS has concluded that the objectives of the preliminary plan envisioned under section 6 of E.O. 13563 will be achieved through the review of OTS regulations under sections 316(c) and 1063(i) of the Act. We understand that the OCC, FDIC, FRB and CFPB are currently reviewing OTS regulations to determine which OTS regulations to continue to enforce. In undertaking this review these agencies are in effect performing a similar review as the review contemplated under section 6 of E.O. 13563.<sup>9</sup>

By making the determination of the regulations to be enforced, the OCC, FDIC, FRB and CFPB are in effect reviewing OTS's existing regulations to determine whether any such regulations should be modified, expanded, streamlined, or repealed so as to make each agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. Any determination not to enforce a particular OTS regulation has the same effect as a repeal of that regulation for the regulated entities. Also, after the

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<sup>5</sup> 12 U.S.C. § 5413.

<sup>6</sup> 12 U.S.C. § 5414(b).

<sup>7</sup> *Id.*

<sup>8</sup> 12 U.S.C. §5583(i).

<sup>9</sup> Section 6 of E.O. 13536 provides that an agency's retrospective review of regulations is to "determine whether any such regulations should be modified, expanded, streamlined, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives." Sections 316(c) and 1063(i) of the Act only implicitly require a review of OTS regulations and do not specify any standards for such review. Although not the primary purpose of such review, the OCC, FDIC, FRB and CFPB may consider whether such regulations should be effectively repealed or modified in order to make that agency's regulatory program more effective or less burdensome.

Transfer Date the OCC, FRB and CFPB will undoubtedly make changes to modify, expand, streamline or repeal OTS regulations. For example, the OCC may substantively modify and streamline OTS regulations to make regulations governing savings associations and national banks more uniform.