Records, St. Louis, Missouri, or the National Personnel Records Center, St. Louis, Missouri.

(h) Irrespective of the requirement in § 337.2(a) of this chapter that an administrative oath ceremony be conducted in the United States and within the jurisdiction in which the application was filed or was transferred pursuant to § 335.9 of this chapter, the administrative oath ceremony for an applicant under this section may be held within the geographical limits of the Philippines, provided the examination on the application was conducted in the Philippines.

(i) If it should be necessary to institute revocation proceedings pursuant to section 340 of the Act in the case of a person naturalized outside the United States pursuant to § 329.5 and he or she has never resided in the United States, the report of facts required in § 340.11 of this chapter shall be made to the district director having jurisdiction over the person's current residence outside the United States.

Dated: April 21, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93-20981 Filed 8-27-93; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506 and 574

[93-87]

RIN 1550-AA36

Agency Disapproval of Directors and Senior Executive Officers of Savings Associations and Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its acquisition of control regulations, to add a new section implementing section 32 of the Federal Deposit Insurance Act, enacted as section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The new section requires certain savings associations and savings and loan holding companies to file a notice with the OTS prior to adding or replacing a member of the board of directors and prior to employing an individual in a position, or changing the responsibilities of an individual into another position, as a senior executive officer. The new regulation defines the terms "senior executive officer" and "troubled condition," establishes procedures for filing required notices, and clarifies the types of changes in control of a savings association or savings and loan holding company that require notices under section 32.

EFFECTIVE DATE: September 29, 1993.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Senior Counsel, (202) 906-6415, V. Gerard Comizio, Deputy Chief Counsel, (202) 906-6411, Corporate and Securities Division; Mary Jo Johnson, Policy Analyst, Supervision, (202) 906-5739; Jackie Durham, Project Manager, (202) 906-6712, David A. Sjogren, Program Manager, Corporate Analysis, (202) 906-6739; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On August 9, 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101-73, 103 Stat. 183, 484-5, was enacted into law. Section 914 of FIRREA added section 32 of the Federal Deposit Insurance Act (FDIA), codified at 12 U.S.C. 1831i (section 32), which requires that certain savings associations and savings and loan holding companies furnish the OTS with at least 30 days notice prior to adding any individual to the board of directors or employing any individual as a senior executive officer.

Savings associations and savings and loan holding companies subject to section 32 are prohibited from adding an individual as a member of the board of directors, or employing an individual as a senior executive officer, if the OTS issues a notice of disapproval of the addition or employment of such individual. The OTS must disapprove a notice if it finds that the competence, experience, character, or integrity of an individual indicates that it would not be in the best interests of the depositors of the savings association or the public for the individual to be employed by, or associated with, the savings association or savings and loan holding company. The OTS initially provided interim guidance concerning compliance with section 32 in Thrift Bulletin 45 (April 25, 1990).

II. Summary of Proposal

Notice of the proposed rule, published in the **Federal Register** on August 5, 1991, 56 FR 37162 (August 5, 1991), solicited public comment on all aspects of the proposal for a 30-day comment period. The proposed rule provided that a savings association or savings and loan holding company is subject to the notice requirement if the savings association or savings and loan holding company: (1) Has been chartered less than two years in the case of a savings association; (2) has undergone a change in control within the preceding two years; or (3) is not in compliance with the minimum capital requirements applicable to such savings association or is otherwise in a "troubled condition." The proposed rule included definitions of "director," "senior executive officer," and "troubled condition," and elaborated on the type of "change in control" that triggered the written notice requirement.

The proposed rule also set forth procedures for the filing of written notices, for the OTS's processing of the notices and requests for additional information, and for determining when the statutory 30-day review period begins. Under the proposed rule, individuals could assume their posts if the OTS issued a notice of intent not to disapprove. As permitted by section 32, the proposed rule provided for waivers of the prior notice requirement. Finally, the proposed rule set forth grounds for disapproval prescribed by section 32 and established an appeal procedure for cases where the OTS disapproved an individual's service as a director or senior executive officer.

Upon consideration of all the comments received during the public comment period, the OTS is adopting the proposal with some modifications, described below, in order to implement section 32 and also to clarify and provide guidance on various issues that have arisen in the application of these provisions.

III. Summary of Comments

The OTS received a total of 15 comment letters in response to the proposal, including 8 from savings associations and savings and loan holding companies, 3 from trade associations, and 4 from law firms that represent financial institutions. All of the commenters supported the proposal. The OTS has carefully considered all of the comments received during the comment period. The OTS also has reviewed the interim final rules promulgated by the other Federal banking agencies and has sought to adopt consistent provisions in order to provide a uniform scheme of regulation. The following is a discussion of the issues raised by the commenters:

Five commenters, primarily from the legal community, objected to the inclusion of "general counsel" or "their functional equivalents," within the definition of "senior executive officer," questioning the regulatory oversight of an association or holding company's appointment of counsel. These commenters noted that the position of "general counsel" was not included in the definitions of "senior executive officer" in the regulations implementing section 32 that were promulgated by the other Federal banking agencies, and also raised concerns about the potential for the OTS to interpret the phrase "functional equivalents" to require prior notice for outside counsel retained by a savings association or savings and loan holding company. One commenter noted that the definition should be limited to employees of an institution, since management and the board of directors, not outside consultants and law firms, make major policy decisions for an institution. As discussed below, the OTS believes it is appropriate to delete these terms from the final rule.

Five commenters expressed concern that the proposed definition of "troubled condition" was too broad in application and differed from the more limited definitions promulgated by the other Federal banking agencies. In particular, comments dealt with the types of enforcement actions, proceedings, and agreements that could characterize an association or holding company as being in "troubled condition." Other comments noted that the proposal lacked any degree of regulatory flexibility to otherwise not denote an association or holding company as being in "troubled condition," merely because a certain action gave rise to a formal written agreement. As discussed below, the OTS has clarified the definition of "troubled condition" contained in the final rule to provide consistency in the definitions promulgated by all of the Federal banking agencies.

Two comments were received concerning the proposed special rule for multi-tiered publicly held diversified savings and loan holding companies. One commenter urged that the OTS apply the special rule to multi-tiered non-diversified publicly held companies. One commenter urged that the OTS apply the special rule to diversified companies that do not have a class of stock registered under the Securities Exchange Act of 1934. As discussed below, the OTS has expanded the coverage of the special rule to all multi-tiered savings and loan holding companies and adopted an abbreviated notice procedure in certain circumstances to further ease regulatory compliance consistent with the scope and purpose of section 32.

Two comments were received pertaining to the application of section 32 requirements to a holding company acquiror of a savings association. One commenter recommended deletion of the reference to the Savings and Loan Holding Company Act and suggested an explicit exemption for acquisition transactions requiring an application by a company (including a bank or savings and loan holding company) that has been approved by the OTS after evaluation of its managerial resources. Another commenter recommended that the final rule clarify the term "change in control" to state that a savings and loan holding company does not experience a change in control when it acquires a savings association. As discussed below, the OTS has determined that acquisitions by companies will constitute a change in control, triggering the notice requirements, but only with respect to personnel changes at the savings association level.

Comments were received concerning the lateral transfer of a senior executive officer to another position at a savings association or holding company. Two commenters argued that section 32 should not apply since the individual is already in a policy-making position. As discussed below, the OTS believes that a change in responsibility of an individual is appropriate for regulatory oversight. The OTS's view is consistent with the positions expressed by the other Federal banking agencies.

IV. The Final Rule

The final rule is structured in four sections: (i) Definitions (§ 574.9(a)); (ii) prior notice requirements (§ 574.9(b)); (iii) savings associations and holding companies covered (§ 574.9(c)); and (iv) the procedures to be followed (§ 574.9(d)). In response to the comments received, the final rule reflects certain changes from the proposed rule, discussed below. In addition, the OTS has made other changes for purposes of clarification. Further, the final rule reflects certain changes from the procedures for processing notices, designed to streamline and simplify the requirements that may be imposed on a savings association or savings and loan holding company during the notice period.

A. Definitions

1. Senior Executive Officer

For purposes of the notice requirements of section 32, the term *senior executive officer* was proposed to include the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, general counsel, or their functional equivalents, or any individual who exercises significant influence over, or participates in, major policy-making decisions of a savings association or savings and loan holding company without regard to title, salary, or compensation.

The proposed term "senior executive officer" also included any employee of another entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation on behalf of a savings association or savings and loan holding company.

The final rule generally adopts the proposed definition of "senior executive officer." However, the OTS has made several changes to the proposed definition designed to clarify the rule's requirements and, where appropriate, streamline the regulatory compliance burden under the rule.

First, the senior executive officer definition is clarified by eliminating the reference to the phrase "or their functional equivalents" that had been in the proposal. A savings association or savings and loan holding company will not be obligated to file a notice for an individual other than for a specifically listed position, unless the OTS identifies that an individual who will occupy a position not specified in the list will exercise significant influence over, or participate in, major policy making decisions of the savings association or savings and loan holding company. The OTS believes that this change will provide savings associations and savings and loan holding companies with more certainty over which positions are covered by the definition of senior executive officer. Second, the position of president has been deleted from the definition, because the individual who will occupy that position generally will also perform one of the listed functions.[1]

In addition, the OTS has removed the specific reference to "general counsel" from the list of enumerated positions to be more consistent with the "senior executive officer" definitions of the other Federal banking agencies. However, if an individual holding that type of position exercises significant influence over or participates in major

[1] Where an individual is the president of a savings association or savings and loan holding company and does not perform one of the listed functions, the OTS still may determine that the individual exercises significant influence over, or participates in, major policy making decisions of the savings association or savings and loan holding company and, therefore, require that a notice under section 32 be filed.

policy-making decisions of a savings association or savings and loan holding company, the OTS may subject that individual to the requirements of section 32 and the rule.[2]

For the positions specifically listed in the final rule, responsibility rests with savings associations, savings and loan holding companies, and entities or persons covered by the rule to ensure compliance. Savings associations and savings and loan holding companies are encouraged to contact the appropriate OTS Regional Office prior to employing or retaining any individual, if questions exist regarding the application of section 32 to that individual.

The final rule makes clear that prior notice to the OTS must be given where a senior executive officer of a savings association or savings and loan holding company is promoted or laterally transferred to another position as a senior executive officer of the same savings association or savings and loan holding company subject to section 32. Section 32 requires the OTS to evaluate the competence, experience, character, and integrity of any individual proposed to occupy a position as director or senior executive officer, to determine if it is in the best interests of the depositors of the savings association and the public to permit the individual to be employed by, or associated with, a savings association or savings and loan holding company that is subject to the rule. Therefore, it is appropriate to apply the requirements whenever there is a "change in responsibilities" of any individual at a savings association or holding company subject to this rule, even though such "change in responsibilities" is not accompanied by a change in title or salary.

Furthermore, with respect to the applicability of section 32 to the "proposed addition of any individual to the board of directors," the final rule also clarifies that section 32 covers not only increases in board membership but also replacements, filling of vacancies on the board, and a "change in responsibilities" of any individual. Therefore, the notice requirement also applies to a senior executive officer who is proposed as a director of the savings association or savings and loan holding company and to a director who is offered employment as a senior executive officer. However, the provision is not intended to apply to a re-election of a director who is already serving on the board of directors of a savings association or savings and loan holding company.

2. Complete Notice

For purposes of clarity and to streamline filing and processing procedure requirements, further discussed below, the OTS has added to the final rule a definition of the term "complete notice". A complete notice is a notice that provides all the information required by § 574.9(d). This information includes legible fingerprints and complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers. The information also includes any additional information that the OTS may request following a determination that the original submission of the notice was not complete.

If a savings association or savings and loan holding company does not provide full and thorough information, the OTS will provide written notification to the filer of the notice that the notice is not complete, set forth the reasons for this determination, and may request that the filer of the notice submit additional information on specific topics.

If false information is provided concerning a material fact: (1) The person(s) responsible may be subject to criminal sanctions; (2) the fraudulent notice will be considered by the OTS as never having been complete; and (3) if a individual assumed the position designated in the fraudulent notice, that individual will be required to discontinue service to the savings association or savings and loan holding company.

3. Complete Notice Date

For purposes of clarity and to streamline the processing procedure requirements, the OTS has also added to the final rule a definition of the term "complete notice date." The OTS will provide written notification to the filer of a notice of the complete notice date when the OTS has received a "complete notice." This date of receipt will mark the beginning of the 30-day review period. If, however, the original submission of the notice is considered not complete, the OTS will inform the filer of the notice of this conclusion in writing.

4. Troubled Condition

a. Savings Associations. The term "troubled condition" with respect to savings associations was proposed to mean a savings association: (1) That has received a composite examination rating of 4 or 5 in its most recent report of examination; (2) that is subject to a capital directive or a formal enforcement action or proceeding or a written agreement entered into with the OTS, relating to the safety or soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or (3) that was informed in writing by the OTS that it has been designated in "troubled condition" for purposes of the requirements of section 32 as a result of its current financial statements or report of examination, or limited-scope review of the savings association or its holding company. In addition, a savings association that fails to meet any of its applicable regulatory capital requirements under 12 CFR part 567 would be subject to the section 32 notice requirement.

The OTS has clarified the definition contained in the final rule to provide greater consistency in the definitions promulgated by all of the Federal banking agencies. Therefore, a savings association is defined as being in "troubled condition" under the rule if it: (1) Has a composite examination rating of 4 or 5; (2) is informed in writing by the OTS that it has been designated in "troubled condition" based upon its current financial statements, report of examination, or limited scope review of the association; or (3) is subject to a capital directive, a cease and desist order, a consent order, a formal written agreement, or a prompt corrective action directive, relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS. Prompt corrective action directives have been added to the foregoing list in recognition of the effectiveness of the prompt corrective action provisions of section 38 of the FDIA, 12 U.S.C. 1831o.

b. Savings and Loan Holding Companies. The term "troubled condition" with respect to a savings and loan holding company was proposed to mean a savings and loan holding company: (1) That is subject to either a formal enforcement action or proceeding or a written agreement entered into with the OTS, relating to the safety or soundness or financial viability of its subsidiary savings

[2] Furthermore, in situations where a savings association or savings and loan holding company retains any outside person to perform the functions of a "senior executive officer" and that person is identified by the OTS as an individual that will exercise significant influence over or participate in major policy-making decisions of a savings association or savings and loan holding company, the individual would be subject to the rule. Thus, outside counsel, other professionals, or consultants may be subject to the rule if the individual performs the functions of a "senior executive officer" and is identified by the OTS as an individual that will exercise significant influence over or participate in major policy-making decisions of a savings association or savings and loan holding company.

association, unless otherwise informed in writing by the OTS; (2) that was informed in writing by the OTS that it has been designated in "troubled condition" for purposes of the requirements of section 32 as a result of the current financial statements or report of examination, or limited scope review of the holding company or its subsidiary association; or (3) that the OTS determines is having a detrimental or burdensome effect on its subsidiary savings association or that requires more than the normal level of supervision.

The OTS has clarified the types of enforcement actions that would trigger a holding company deemed to be in "troubled condition" to conform to the definitions used by the other Federal banking agencies. The OTS also has deleted the "detrimental and burdensome" standard and will use standards consistent with the standards used by the Board of Governors of the Federal Reserve System (Board of Governors), where appropriate, to determine if a holding company is in "troubled condition." Thus, a savings and loan holding company will be deemed to be in "troubled condition" if the holding company is rated unsatisfactory or is otherwise notified in writing by the OTS that it is having or has had an adverse effect on its subsidiary savings association.

B. Prior Notice Requirement

Like the proposed rule, the final rule provides that a savings association or savings and loan holding company subject to this section shall notify the OTS of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such association or holding company at least 30 days before such addition or employment becomes effective. The final rule includes the clarification that a savings association or savings and loan holding company may not add any individual to the board of directors or employ any individual as a senior executive officer if the OTS issues a notice of disapproval of such addition or employment before the end of the 30-day period beginning on the date the OTS receives a complete notice of the proposed action under this section. The description of the savings associations and holding companies covered has been moved to a separate paragraph.

C. Savings Associations and Holding Companies Covered

Pursuant to section 32, the final rule identifies three categories of savings associations and savings and loan holding companies that must file a notice of intent to add a director or employ a senior executive officer.[3] As proposed, the first category includes savings associations that have been chartered for less than two years. However, the final rule also includes an exclusion for a savings association that has operated as an insured depository institution for at least two years, as determined by the OTS upon written request.

The second category includes savings associations or savings and loan holding companies that have directly or indirectly undergone a change in control within the preceding two years, subject to either the Change in Bank Control Act, 12 U.S.C. 1817(j), or the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, and the regulations promulgated under these provisions at 12 CFR part 574. The change in control standard for application of the section 32 requirements is triggered for a savings association if there is a direct change in control of the savings association or a change in control of the association's holding company. However, upon written request to the OTS, the OTS may determine that the transactions involving existing approved control parties and acquisitions of control that do not result in substantive changes of control, such as an Application H–(e)1–S or an Application H–(e)4, will not be deemed to be a change in control triggering the requirements of section 32.

The OTS has also concluded that a change in control at the savings association level that would trigger section 32 prior notice requirements for directors and senior executive officers at the association would not trigger section 32 requirements for directors or senior executive officers at an acquiring company. Of course, if a holding company also undergoes a change in control or is deemed to be in "troubled condition," section 32 would become applicable to changes in directors and senior executive officers at the holding company level.

The current standard for changes of control at mutual savings associations provides that a change of control occurs upon the filing of reports of change in control of mutual savings associations, pursuant to 12 CFR 563.181. The OTS had explicitly sought comments concerning whether a change in the highest-ranking official at a mutual association should also be treated as a change in control for purposes of section 32.

Because a change in the highest-ranking official of a mutual savings association could result in a change in the direction of the management or policies of the association, the OTS will review, on a case-by-case basis, the facts and circumstances surrounding the filing of notices filed under § 563.183, Reports of Change in Chief Executive Officer or Director. If, upon review of such notices, it appears that an actual change in control has occurred, the OTS will notify the association that, in the future, it is subject to section 32.

The third category of associations required to provide prior notice under section 32 includes savings associations not in compliance with any of the minimum capital requirements established pursuant to 12 CFR part 567 and savings associations or savings and loan holding companies that are otherwise deemed to be in a "troubled condition."

Failure to file prior notice of intent to add a director or employ a senior executive officer may require immediate resignation of the subject individual and may subject the individual, the savings association, or savings and loan holding company to enforcement actions, including assessment of civil money penalties.

D. Procedures

1. Filing Requirements

a. Required Information. Section 32 provides that notices filed pursuant to that section must contain the information required under section 7(j)(6)(A) of the FDIA, 12 U.S.C. 1817(j)(6)(A), and such additional information as the OTS may require by regulation. In particular, section 32 requires the OTS to review the competence, experience, character, and integrity of an individual proposed for a position as a director or senior executive officer of a savings association or savings and loan holding company.

The final rule provides that notices shall be filed in accordance with the filing procedures set forth at 12 CFR 516.1. Since the final rule includes all the processing procedures for a notice, the applications processing guidelines under 12 CFR 516.2 and the definitions under 12 CFR 516.3 will not apply to a notice.

[3] The OTS notes that under section 10(l) of the Home Owners' Loan Act, 12 U.S.C. 1467a(10)(l), state-chartered savings banks or cooperative banks not currently subject to regulation by the OTS may elect to be treated as savings associations for the purpose of section 10 of the HOLA. Regulation by the OTS of an institution that makes a section 10(l) election generally is limited to regulation of its savings and loan holding company under section 10 of the HOLA, and verification that the holding company's subsidiary institution meets the Qualified Thrift Lender Test.

Notices are required to be filed on the appropriate OTS form(s), which requests the identity, personal history, business background, and experience of the individual, including financial statements and other relevant financial data, pending legal or administrative proceedings, and an explanation of any criminal indictment or conviction involving the individual. The OTS may modify these requirements where appropriate, but will require at least the information that is required by section 7(j)(6)(A) of the FDIA (unless the special rule discussed below is applicable), and may request additional information necessary to permit a full evaluation of the competence, experience, character, or integrity of the individual with respect to whom the notice has been filed, or of the public interest factors the OTS must consider. Section 574.9(d)(2) of the final rule has been added to clarify the information requirements for the content of a notice.

In addition, for certain notices the OTS may require information regarding proposed compensation arrangements. The OTS has provided guidance on the matter of executive compensation.[4]

b. Special Rule for Multi-Tiered Holding Companies. The OTS will apply the full notice requirements required by this final rule only to savings and loan holding companies that directly control a savings association. However, if such savings and loan holding company is a "shell" in a multi-tiered holding company structure, *i.e.*, a minimally capitalized company without substantial assets and lacking independent operations, then that company and its immediate parent company, *i.e.*, the company that controls such shell company, also will be subject to the full notice requirements. In addition, in the event such second company also is a shell, then the company above it shall be subject to such requirements, and so on, until at least one savings and loan holding company in the line of ownership that is not a shell is subject to the full notification requirements of this provision.

Proposed directors and officials of companies in a multi-tiered savings and loan holding company structure who are not required to submit Form 1393 by virtue of this special rule may satisfy the OTS's notice requirements under section 32 by submitting: (1) The OTS's Regulatory Bulletin 20 certification regarding such individual's involvement in certain types of legal proceedings and (2) a certification, from the individual and the highest-ranking official of the company, that the appointment of the individual as a senior executive officer would not raise grounds for disapproval of the notice under section 32, 12 U.S.C. 1831i, or the OTS rule thereunder. All such filings are subject to § 563.180(b) regarding false or misleading statements or omissions in filings made with the OTS.

Notwithstanding this special rule, the OTS may require any such additional information as is necessary to adequately evaluate a notice filed under this section.

c. Waiver of Prior Notice. The final rule provides, in § 574.9(d)(8), that a savings association or savings and loan holding company may file with the OTS a written request for a waiver of the prior notice requirement. The OTS may waive the prior notice requirement, but not the filing of the notice required under section 32 of the FDIA, if the OTS finds that the waiver of prior notice would be in the best interest of the savings association or savings and loan holding company, would be in the public interest or that other extraordinary circumstances exist. The final rule clarifies that any request for a waiver of prior notice be in writing.

The final rule also clarifies, in § 574.9(d)(8)(ii), that in situations where directors are elected who were not nominated by the board of directors of the savings association or savings and loan holding company, such as in the case of a proxy contest, a waiver of prior notice is automatically granted to the savings association or savings and loan holding company. However, the waiver of prior notice is granted contingent upon the savings association or savings and loan holding company subsequently filing a complete notice with the OTS as soon as practicable but not later than seven days from the date the individual is notified of election to the board of directors.

In these contested election situations, there is potential for shareholders of a savings association or savings and loan holding company to draw a negative inference from the lack of prior regulatory review under section 32. Therefore, as an alternative to the above described waiver of notice procedure, the final rule provides, in § 574.9(d)(1)(ii), that an individual not nominated by the board of directors of the savings association or savings and loan holding company may submit a notice directly to the OTS. In these situations, the individual must certify that he or she provided the savings association or savings and loan holding company all non-confidential information contained in the notice and likewise certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete, and made in good faith. Therefore, under the final rule, an individual not nominated for election by the board of directors of the savings association or savings and loan holding company has the option of either submitting the notice directly to the OTS prior to the election as provided under § 574.9(d)(1)(ii) or relying on the automatic waiver provided under § 574.9(d)(8)(ii).

Finally, with respect to waivers of prior notice, the OTS has made three clarifying changes to the final rule. First, the OTS has revised the provision regarding waiver of prior notice to clarify that the length of the waiver period is based on the circumstances of each situation.

Second, once the OTS has granted a waiver of prior notice, the proposed individual may assume the position on an interim basis, and the savings association or savings and loan holding company must submit a complete notice in a timely manner as provided for in the waiver. If a complete notice is filed in a timely manner, the proposed individual can serve on an interim basis until the individual and the savings association or savings and loan holding company receive a notice of disapproval. If a complete notice is not filed in a timely manner, the proposed individual must resign his or her position as of the date the complete notice was due. The individual can assume the position on a permanent basis only after the savings association or savings and loan holding company receives a notice of intent not to disapprove or the 30-day review period elapses.

Third, in the last sentence of § 574.10(c)(5)(i) of the proposed rule, the OTS has replaced the phrase "within 30 days of the receipt of a complete notice" with "within 30 days of the expiration of such waiver." The new language is found in § 574.9(d)(8)(i) of the final rule. The OTS amended this language to be consistent with the statutory language of section 32 of the FDIA.[5] This change provides the OTS with the full 30 days to review the notice after the last possible date that the complete notice could be submitted under the terms of the waiver (i.e., on the date the waiver expires).

d. Requests for Additional Information Following Receipt of a

[4] *See*, OTS Regulatory Bulletin 27a, dated March 5, 1993.

[5] 12 U.S.C. 1831i(c)(2) provides that such waivers shall not affect the authority of each agency to issue notices of disapproval of such additions or employment of such individuals within 30 days after each such waiver.

Complete Notice. For purposes of clarification and to further streamline the notice requirements, the OTS final rule sets forth revised notice processing provisions. If the OTS, during its review of a complete notice, discovers information that may lead to a disapproval before the end of the 30-day review period, the OTS may request in writing, when feasible, that the filer of the notice submit additional information, within a certain time frame, which addresses the discovered information. Because the OTS cannot extend the 30-day review period, the filer of the notice must provide the additional information by the date specified by the OTS. However, if the 30-day review period is about to expire, the filer of the notice may request, under § 574.9(d)(4), that the OTS suspend processing the notice for up to 60 days if the filer of the notice is unable to respond to the request for additional information within the time period specified by the OTS.

If the filer of the notice does not provide the additional information before the expiration of the applicable time period, the OTS has two choices; it can make a decision on the notice based on the information then before it (drawing any reasonable inferences from the failure to provide the requested information) or it can treat the notice as withdrawn and inform the savings association or savings and loan holding company and the individual of this determination in writing.

e. Instances when the OTS Does not Receive Report(s) that it has Requested from other Government Agencies Within the 30-day Review Period. For purposes of clarification and to further streamline the notice requirements, the OTS final rule includes a notice processing provision that relates to background reports from other government agencies. Occasionally, the OTS does not receive a report or reports that it has requested from other government agencies concerning a proposed individual within the 30-day review period. In that case, the OTS may request that the savings association or savings and loan holding company and the proposed individual certify, by signing a letter provided by the OTS, that the individual will not assume the proposed position until the OTS has received and reviewed the report(s) and has issued a notice of intent not to disapprove. In making this request, the OTS will notify the savings association or savings and loan holding company and the individual of the basis for the OTS's unwillingness to issue a notice of intent not to disapprove before the end of the 30-day review period. If either the savings association or savings and loan holding company, or the individual does not sign the certification before the end of the 30-day review period, the OTS will decide whether to issue a notice of disapproval based on the information then before it. The final rule has been modified to reflect this change.

f. Commencement of Service. The proposed rule provided that the proposed individual may begin service in a position upon the expiration of the 30-day review period unless the OTS issues a notice of disapproval by the end of that period. The OTS has clarified the final rule to provide additional guidance on the question of when an individual can assume the proposed position. Under the final rule, an individual may assume the proposed position following the end of the 30-day review period, unless: (1) The OTS issues a notice of disapproval during the 30-day review period; (2) the OTS suspends the 30-day review period pursuant to § 574.9(d)(4)(i); (3) the savings association or savings and loan holding company and the proposed individual certify, pursuant to § 574.9(d)(4)(ii), that the individual will not assume the proposed position; or (4) the savings association or savings and loan holding company does not provide additional information within the time period required by the OTS pursuant to § 574.9(d)(3)(ii) and the OTS informs the savings association or savings and loan holding company in writing that it is treating the notice as withdrawn.

2. Appeals

The proposed rule included a specific provision concerning the procedures for appealing a notice of disapproval. Since the OTS's Application Restructuring Regulation[6] deleted provisions providing appeals procedures from various OTS regulations, the appeals provision included in the proposed rule has not been included in the final rule. However, until the OTS issues new procedures regarding appeals of notices of disapprovals, as a matter of policy, the OTS will follow the appeal procedures set forth in the proposed rule.[7]

If an appeal is not filed within the time period indicated in the notice of disapproval, objection to the notice of disapproval is waived. A timely appeal filed in accordance with the procedures set forth in the notice of disapproval or the OTS's procedures shall be mandatory for securing judicial review of a notice of disapproval.

E. Other Matters

1. Effect on Other Statutes

The OTS does not believe that Congress, in enacting section 32, intended to repeal, modify, or amend other pre-existing statutory authority permitting or requiring the OTS to require a notice in similar situations. Specifically, section 32 does not displace or supersede the OTS's authority implied in section 5(e) of the Home Owners' Loan Act, 12 U.S.C. 1464(5)(e), to require, as a condition of granting a charter, prior review of proposed changes in executive officers for three years after a savings association is chartered. Such a condition has been imposed on new thrift charters for many years.[8]

Similarly, section 32 does not replace or repeal section 7(j)(12) of the FDIA, 12 U.S.C. 1817(j)(12), that states that whenever a change in control occurs, the bank or savings association "shall report promptly * * * any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period * * *."

Nor does section 32 displace or repeal any provision of section 8(b) of the FDIA, 12 U.S.C. 1818(b), which authorizes the OTS to include a provision in a cease and desist order requiring a savings association to take "affirmative action to correct the conditions resulting from [any] violation or practice." Under this authority, the OTS can require a savings association to obtain prior approval from the OTS before a proposed individual becomes a director of, or is employed by, a savings association. This authority is also not subject to a requirement that review of requests be completed within 30 days.

Further, section 32 does not displace any provision of section 38(f) of the FDIA, 12 U.S.C. 1831o(f). This statute authorizes the OTS to do one or more of the following: order a new election for a savings association's board of directors; require a savings association to dismiss from office any director or senior executive officer who held office for more than 180 days immediately before the savings association became undercapitalized; or require a savings association to employ qualified senior executive officers (who, if the OTS so specifies, shall be subject to approval by the OTS). This statute, like the chartering authority, does not require the OTS to complete its review or to act

[6] *See*, 57 FR 14329 (Apr. 20, 1992).

[7] *See*, 56 FR 37162, 37166 (Aug. 5, 1991) (proposed to be codified at 12 CFR 574.10(c)(6)).

[8] *See*, 12 U.S.C. 1831i.

with respect to a proposed individual in 30 days.

Finally, it is emphasized that compliance with the prior notice requirement of section 32 does not remove the requirement for certain individuals to comply with the provisions of section 19 of the FDIA, 12 U.S.C. 1829. Pursuant to section 1829, persons previously convicted of criminal offenses involving dishonesty or breach of trust may not become institution-affiliated parties with respect to a savings association, or participate, directly or indirectly, in the conduct of a savings association's affairs, without obtaining the prior written consent of the FDIC. Section 32 does not preclude or remove the requirement for an affected individual to obtain separate prior written consent from the FDIC pursuant to section 1829.

Other statutes may also provide authority to review changes in executive officers or directors of savings associations or savings and loan holding companies and, similarly, are not preempted by the section 32 process.

2. Effective Date

Section 32 became effective upon the enactment of FIRREA on August 9, 1989. Accordingly, all savings associations and savings and loan holding companies that were subject to one of the three categories of applicability under section 32 upon enactment of the FIRREA were at that time subject to the section 32 prior notice requirements. This final rule clarifies and implements the application of section 32 to savings associations and savings and loan holding companies. It does not alter the August 9, 1989 effective date of the requirements of section 32.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

VI. Executive Order 12291

The OTS has determined that this final rule does not constitute a "major rule" for purposes of Executive Order 12291. Therefore, preparation of a regulatory impact analysis is not required.

VII. Paperwork Reduction Act

The reporting requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1550–0047. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The reporting requirements in this final rule are found in 12 CFR 574.9(d). The information is needed by the OTS to enable it to make a determination as to the hiring or appointment of senior executive officers or directors at savings institutions or thrift holding companies. The OTS determination must be based on an evaluation of the individual's competence, experience, character, and integrity. The information required by the collection is necessary to make this determination. The likely respondents are savings associations and savings and loan holding companies.

Estimated number of respondents: 900.

Estimated average annual burden per respondent: 2.5 hours.

Estimated annual frequency of responses: 1.

Estimated total annual reporting burden: 2,250 hours.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends parts 506 and 574, subchapters A and D, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by adding 16 new entries to the table in paragraph (b) in numerical order and by removing three entries to read as follows:

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
[Removed]	
* * * *	*
563.45	1550–0002
* * * *	*
563.131	1550–0028
* * * *	*
563b.20 through 563.33	1550–0074
* * * *	*
[Added]	
* * * *	*
552.6	1550–0025
552.7	1550–0025
* * * *	*
552.13.	1550–0025
* * * *	*
563.170	1550–0011
* * * *	*
563.181	1550–0032
563.183	1550–0032
* * * *	*
563.99 through 563.101 (subpart D), Appendix A	1550–0078
* * * *	*
563b.4	1550–0032
* * * *	*
563b.20 through 563.32	1550–0074
* * * *	*
571.5	1550–0016, 1550–0025
* * * *	*
574.3(b)	1550–0032
574.5	1550–0032
* * * *	*
574.9	1550–0047
* * * *	*
584.2–1	1550–0063
* * * *	*
584.9	1550–0063

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

3. The authority citation for part 574 is revised to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

4. Section 574.9 is added to read as follows:

§ 574.9 Additions of directors and employment of senior executive officers of savings associations and savings and loan holding companies.

(a) *Definitions.* As used in this section and in the forms under this section, the following definitions apply, unless the context otherwise requires:

(1) *Director.* The term *director* means any individual who serves on the board

of directors of a savings association or savings and loan holding company, except that such term does not include an advisory director who was not elected by the shareholders of the savings association or savings and loan holding company and is not authorized to vote on any matters before the board of directors, but provides only general policy advice to the board of directors. However, the term does include an advisory director who performs the same functions as a director or who exercises significant influence over, or participates in, major policy-making decisions of the board of directors of a savings association or savings and loan holding company.

(2) *Senior Executive Officer*. The term *senior executive officer* means the chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer and any other individual identified by the OTS to a savings association or a savings and loan holding company who exercises significant influence over, or participates in, major policy decisions of a savings association or a savings and loan holding company without regard to title, salary, or compensation. The term also includes employees of entities retained by a savings association or savings and loan holding company to perform such functions in lieu of directly hiring the individuals, who are similarly identified by the OTS to the savings association or savings and loan holding company.

(3) *Complete Notice*. The term *complete notice* means a notice that provides all the information requested in paragraph (d)(2) of this section, including legible fingerprints, complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the OTS may request following a determination that the original submission of the notice was not complete.

(4) *Complete Notice Date*. The term *complete notice date* means the date on which the OTS has received a complete notice.

(5) *Troubled Condition*. The term *troubled condition* means:

(i) Any savings association that:

(A) Has a composite rating of 4 or 5 under the examination rating system;

(B) Is subject to a capital directive, a cease and desist order, a consent order, a formal written agreement, or a pt corrective action directive, relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or

(C) Is informed in writing by the OTS that it has been designated in *troubled condition* based on the current financial statements, report of examination, or limited scope review of the savings association; or

(ii) Any savings and loan holding company that:

(A) Is subject to a cease and desist order, a consent order, a prompt corrective action directive, or a formal written agreement, relating to the safety and soundness or financial viability of its savings association subsidiary, unless otherwise informed in writing by the OTS;

(B) Is informed in writing by the OTS that it has been designated as being in *troubled condition* based on the current financial statements, report of examination, limited scope review, periodic filings, or other filings of the holding company or its subsidiary savings association; or

(C) Is rated unsatisfactory or is informed in writing by the OTS that it otherwise has an adverse effect on its subsidiary savings association.

(b) *Prior Notice*. (1) A savings association or savings and loan holding company described in paragraph (c) of this section shall notify the OTS of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such savings association or savings and loan holding company at least 30 days before such addition or employment becomes effective.

(2) A savings association or savings and loan holding company described in paragraph (c) of this section may not add any individual to the board of directors or employ any individual as a senior executive officer if the OTS issues a notice of disapproval of such addition or employment before the end of the 30-day period beginning on the complete notice date.

(c) *Savings associations and holding companies covered*. The requirements of paragraph (b) of this section shall apply:

(1) In the case of a savings association, a savings association that has been chartered less than two years, excluding a savings association that has operated as an insured depository institution for at least two years as determined by the OTS upon written request;

(2) In the case of a savings association or savings and loan holding company, a savings association or savings and loan holding company, respectively, that within the two years preceding the proposed addition or employment, has directly or indirectly undergone a change in control subject to the Change in Bank Control Act, 12 U.S.C. 1817(j), or the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, and the regulations promulgated thereunder at 12 CFR part 574, or the Reports of Change in Control of Mutual Savings Associations, 12 CFR 563.181, excluding transactions involving existing approved control parties and acquisitions of control that do not result in substantive changes of control as determined by the OTS upon written request, or

(3) In the case of a savings association, a savings association that is not in compliance with any of its applicable regulatory capital requirements established pursuant to 12 CFR part 567, or a savings association or the savings and loan holding company that is otherwise in troubled condition, as defined in this section.

(d) *Procedures*—(1) *Filing Requirements*. (i) Except where otherwise provided in this section, notices shall be filed in accordance with the filing procedures set forth at 12 CFR 516.1. Except as noted in paragraph (d)(5) of this section, the appropriate OTS form(s) shall be used for all notices. A notice is required to contain all the information set forth in paragraph (d)(2) of this section. A notice shall comply with all applicable regulations and guidelines. The OTS will provide written notification to the filer of a notice of the complete notice date when the OTS has received a complete notice. The 30-day review period begins on the complete notice date.

(ii) The notice shall be submitted by the savings association or savings and loan holding company that proposes a particular individual to serve as a director or senior executive officer; each individual on whose behalf a notice is filed must certify that, to the best of his or her knowledge and belief, all the information filed is true, correct, complete, and made in good faith; and a senior official of the savings association or savings and loan holding company must certify that information pertaining to that individual has been reviewed by the filing savings association or savings and loan holding company and that the information submitted is consistent with information obtained by the savings association or savings and loan holding company. Where the interests of the individual and the savings association or savings and loan holding company may be at odds, such as in the case of a proxy contest, the notice may be submitted to the OTS directly by the individual. In such case, the individual must certify that he or she provided the savings association or savings and loan holding company all non-confidential information contained in the notice and likewise certify that, to the best of his or her knowledge and belief, all of the information filed is true, correct, complete, and made in good faith. If a notice for such an individual has not been submitted to the OTS prior to the election, the individual and the savings association or savings and loan holding company have the alternative of relying on the automatically granted waiver under paragraph (d)(8)(ii) of this section.

(2) *Content of Notice.* A notice must contain the identity, personal history, business background, and experience of each person whose designation as a director or senior executive officer is subject to this section. The notice must include:

(i) A description of his or her material business activities and affiliations during the 5 years preceding the date of the notice;

(ii) A description of any material pending legal or administrative proceedings in which he or she is a party,

(iii) Any criminal indictment or conviction by a State or Federal court; and

(iv) Legible fingerprints of such person, *except that* fingerprints are not required with respect to any person who, within the three years immediately preceding the date of the present notice, has been subject to a notice filed with the OTS pursuant to 12 U.S.C. 1831i or this section and has previously submitted fingerprints.

(3) *Requests for Additional Information.* (i) If the original submission of a notice is considered not complete, the OTS will provide written notification to the filer of the notice that the notice is not complete, set forth the reasons for this determination, and may request that the filer of the notice submit additional information.

(ii) Following receipt of a complete notice, the OTS may make a written request, when feasible, for additional information and may specify a time period during which such information must be provided.

(4) *Suspension of the 30-day Review Period* (i) When the OTS makes a request for additional information under paragraph (d)(3)(ii) of this section, the savings association or savings and loan holding company must provide the information within the time period specified by the OTS or the savings association or savings and loan holding company may request in writing that the OTS suspend processing of the notice. To enable the savings association or savings and loan holding company to provide such information, the OTS may suspend processing for a period of up to 60 days from the date of the request. If the savings association or savings and loan holding company has not provided the requested information within the latest applicable time period specified by the OTS:

(A) The OTS may make its decision based on the information then before it and may draw any reasonable inferences from the savings association or savings and loan holding company's failure to provide the requested information; or

(B) The OTS may treat the notice as withdrawn and inform the savings association or savings and loan holding company in writing.

(ii) If the OTS does not receive a report that it requested from another government agency concerning an individual proposed by the savings association or savings and loan holding company within the 30-day review period, the OTS may request that the savings association or savings and loan holding company and the proposed individual certify, by signing a letter provided by the OTS, that the individual will not assume the proposed position until the OTS has received and reviewed the report and has issued a notice of intent not to disapprove. In making this request, the OTS will notify the savings association or savings and loan holding company and the individual of the basis for its unwillingness to issue a notice of intent not to disapprove before the end of the 30-day review period without receipt and review of the report. If either the savings association or savings and loan holding company or the individual do not sign the certification before the end of the 30-day review period, the OTS will decide whether to issue a notice of disapproval based on the information then before it.

(5) *Special Notice Rule for Multi-Tiered Savings and Loan Holding Companies.* (i) With respect to multi-tiered savings and loan holding companies, the notification required by paragraph (d)(1) of this section will only be required for the savings and loan holding company that directly controls a savings association; provided that if such company is without substantial assets other than the ownership of the subsidiary savings association, then the company that directly controls such savings and loan holding company shall also be subject to the notification requirement of paragraph (d)(1) of this section; further provided that, in the event the first indirect savings and loan holding company also is without substantial assets other than the ownership of the direct savings and loan holding company, then each company that directly and/or indirectly holds the indirect savings and loan holding company shall be subject to the notification requirement of paragraph (d)(1) of this section until a savings and loan holding company in the line of ownership that has substantial assets other than the indirect ownership of the savings association is subject to the notification requirement of paragraph (d)(1) of this section.

(ii) Other savings and loan holding companies in a multi-tiered ownership structure described in paragraph (d)(5)(i) of this section may satisfy the notification requirement of paragraph (d)(1) of this section by submitting:

(A) An executed copy of the OTS's RB 20 certification regarding the subject individual's involvement in certain types of legal proceedings; and

(B) A certification from the individual and the highest-ranking official of the company, certifying that the appointment of the individual as a senior executive officer would not raise grounds for disapproval of the notice under 12 U.S.C. 1831i or this section.

(iii) Notwithstanding the provisions of paragraphs (d)(5)(i) and (ii) of this section, the OTS may require submission of a complete notice under this section for any savings and loan holding company in a multi-tiered ownership structure.

(6) *Notice of Disapproval.* The OTS may disapprove an individual proposed as a member of the board of directors or as a senior executive officer of a savings association or savings and loan holding company upon determining that, on the basis of the individual's competence, experience, character, or integrity, it would not be in the best interests of the depositors of the savings association or savings and loan holding company or of the public to permit the individual to be employed by, or associated with, the savings association or savings and loan holding company. The OTS will send a notice of disapproval to both the savings association or savings and loan holding company and the disapproved individual. The notice of disapproval will contain a statement of the basis for disapproval.

(7) *Notice of Intent Not to Disapprove.* An individual proposed as a member of the board of directors or as a senior executive officer of a savings association or savings and loan holding company may begin service before the expiration of the 30-day review period if the OTS notifies the savings association or savings and loan holding company of an intention not to disapprove the

proposed director or senior executive officer.

(8) *Waiver of Prior Notice.* (i) A savings association or savings and loan holding company may file with the OTS a written request for a waiver of the prior notice requirement. The OTS may waive the prior notice requirement but not the filing of a notice under this section, if the OTS finds that waiver would be in the best interest of the savings association or the savings and loan holding company, would be in the public interest, or that other extraordinary circumstances justify waiving the prior notice requirement of this provision. The length of any waiver depends on the circumstances in each individual case. If a waiver is granted, the required notice shall be filed within the time period specified in the waiver and the proposed individual may assume the position on an interim basis until the individual and the savings association or savings and loan holding company receive a notice of disapproval. If the required notice is not filed within the time period specified in the waiver, the proposed individual must immediately resign his or her position. The individual can assume the position on a permanent basis only after the savings association or savings and loan holding company receives a notice of intent not to disapprove or after the 30-day review period elapses. A waiver shall not affect the authority of the OTS to subsequently issue a notice of disapproval within 30 days of the expiration of such waiver.

(ii) In the case of the election at a meeting of the shareholders of a new director not proposed by the board of directors of the savings association or savings and loan holding company, if the individual has not submitted a notice directly to OTS under paragraph (d)(1)(ii) of this section, a waiver is automatically granted and the proposed individual may begin service as a director. However, under these circumstances, the savings association or savings and loan holding company must file the required notice with the OTS as soon as practical but not later than seven days from the date the individual is notified of the election to the board of directors.

(9) *Commencement of Service.* An individual proposed as a member of the board of directors or as a senior executive officer may assume the office following the end of the 30-day review period, which begins on the complete notice date, unless:

(i) The OTS issues a notice of disapproval during the 30-day review period,

(ii) The OTS suspends the 30-day review period pursuant to paragraph (d)(4)(i) of this section;

(iii) The savings association or savings and loan holding company and the individual certify, pursuant to paragraph (d)(4)(ii) of this section, that the individual will not assume the proposed position; or

(iv) The savings association or savings and loan holding company does not provide additional information within the time period required by the OTS pursuant to paragraph (d)(3)(ii) of this section and the OTS treats the notice as withdrawn.

Dated: June 3, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93–20688 Filed 8–27–93; 8:45 am]

BILLING CODE 6720–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

Description of NCUA; Requests for Action

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule.

SUMMARY: This rule contains descriptions of the various offices of NCUA and a means for requesting agency action. Due to changes in the duties and responsibilities of various offices, and to the change in addresses of the Central Office, some Regional Offices, and the Central Liquidity Facility (the "CLF"), it is necessary to amend this part. In addition, descriptions are added for the Asset Liquidation Management Center (the "ALMC") and the Chairman, Community Development Revolving Loan Program (the "Program"). The section regarding requests for agency action remains unchanged.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Conrey, Staff Attorney, at 202–682–9630.

SUPPLEMENTARY INFORMATION:

Discussion

The NCUA Board, in accordance with its policy to update, clarify, simplify, and review existing regulations every three years, has reviewed part 790. The revisions made to this part are not subject to the notice and comment provisions of the Administrative Procedure Act (the "APA"), 5 U.S.C. 551 *et seq* The final rule revisions relate only to matters relating to agency management and personnel, topics exempt from APA requirements. 5 U.S.C. 553(a)(2).

Several agency management and personnel changes have been made since the last revision of part 790 in 1989 54 FR 18473 (May 1, 1989). The Central Office, the Central Liquidity Facility (the "CLF"), and Regional Offices in Regions II and IV will move or have recently moved to new locations. Moreover, the State of New Jersey was transferred from the jurisdiction of Region I to the jurisdiction of Region II. Similarly, the Commonwealth of Puerto Rico and the Virgin Islands were transferred from the jurisdiction of Region I to the jurisdiction of Region III. In addition, three of the Offices have recently been renamed: (1) The former "Controller's Office" has been retitled the "Office of the Controller"; (2) the former "Personnel Office" has been retitled the "Office of Human Resources"; and (3) the former "Administrative Office" has been retitled the "Office of Administration." The Office of the Chief Economist has been abolished, and the functions of that office have been transferred to the Office of Examination and Insurance.

For the first time, the Asset Liquidation Management Center (the "ALMC") is included and described. The ALMC was created in 1988 by the NCUA Board to manage NCUA's acquired assets, real estate and recoveries from National Credit Union Share Insurance Fund ("NCUSIF") liquidations. In 1990, the NCUA Board expanded the responsibilities of the ALMC to include all facets of NCUA's liquidation functions.

A description of the Chairman, Community Development Revolving Loan Program (the "Program") is included and described for the first time. In 1991, the NCUA Board created this position to approve and disapprove applications for loans from the Program, and to provide technical assistance to credit unions participating in the Program. The Program was transferred to the NCUA in 1986 by the Community Development Credit Union Revolving Loan Fund Transfer Act. 42 U.S.C. 9822 note. Part 705 of the NCUA Rules and Regulations was promulgated under this authority in 1987, and was revised earlier this year. Final Rule, 58 FR 21642 (April 23, 1993). Before creation of the position of Program Chairman, the NCUA Board performed all delegated Program functions.

Several changes are made in the description of the CLF. The positions of

Vice President for Credit and Vice President for Finance have long been vacant and have been incorporated into the position of CLF President. In the near future, the NCUA Board intends to revise the Bylaws of the CLF to incorporate these changes, along with several others not pertinent here.

Other changes are semantic in nature, and not substantive. Section 790.3, requests for action, remains unchanged.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Analysis concerning the effect of these changes in internal agency office addresses, descriptions and responsibilities indicates that no significant economic impact will result from the rule. Therefore, the NCUA Board has determined and certifies that, under the authority granted in 5 U.S.C. 605(b), this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule does not change any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed regulation applies only to the internal organization of the NCUA, and to means of making requests to the NCUA. Therefore, the final rule does not affect state interests.

List of Subjects in 12 CFR Part 790

Organization and functions.

By the National Credit Union Administration Board on August 23, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set out in the preamble, 12 CFR part 790 is amended as set forth below.

1. Part 790 is revised to read as follows:

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

790.1 Scope
790.2 Central and regional office organization.
790.3 Requests for agency action.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552.

§ 790.1 Scope.

This part contains a description of NCUA's organization and the procedures for public requests for action by the Board. Part 790 pertains to the practices of the National Credit Union Administration (NCUA) only and does not apply to credit union operations.

§ 790.2 Central and regional office organization.

(a) *General organization.* NCUA is composed of the Board with a Central Office in Alexandria, Virginia, six Regional Offices, the Asset Liquidation Management Center, the Community Development Revolving Loan Program, and the NCUA Central Liquidity Facility (CLF).

(b) *Central Office.* The Central Office address is NCUA, 1775 Duke St., Alexandria, Virginia 22314–3428.

(1) *The NCUA Board.* NCUA is managed by its Board. The Board consists of three members appointed by the President, with the advice and consent of the Senate, for six-year terms. One Board member is designated by the President to be Chairman of the Board. A second member is designated by the Board to be Vice-Chairman. The Board is also responsible for management of the National Credit Union Share Insurance Fund (NCUSIF) and serves as the Board of Directors of the CLF.

(2) *Secretary of the Board.* The Secretary of the Board is responsible for the secretarial functions of the Board. The Secretary's responsibilities include preparing agendas for meetings of the Board, preparing and maintaining the minutes for all official actions taken by the Board, and executing and maintaining all documents adopted by the Board or under its direction. The Secretary also serves as the Secretary of the CLF.

(3) *Office of Administration.* The Director of the Office of Administration is responsible for providing NCUA's executive offices and Regional Directors with administrative services generally, including: Agency security; information resources management, contracting and procurement; contract management; management of equipment and supplies; acquisition; records management; printing and graphics; and warehousing and distribution. The Director is also responsible for carrying out the Board's responsibilities under the Freedom of Information Act, the Privacy Act, the Paperwork Reduction Act, and in directing NCUA responses to reporting requirements.

(4) *Asset Liquidation Management Center.* The President of the Asset Liquidation Management Center is responsible for all of NCUA's acquired assets, credit union recoveries, and involuntary liquidations; responsible for managing the payout process for all federally insured credit unions placed in involuntary liquidation; manages the orderly processing of payment of share insurance, sale and/or collection of loan portfolios, and liquidation of other assets; responsible for managing the evaluation, disposal and/or management of major assets acquired by the NCUSIF. The address of the ALMC is 4807 Spicewood Springs Road, suite 5100, Austin, Texas 78759–8490.

(5) *Office of the Controller.* The Controller, NCUA's chief financial officer, is in charge of budgetary, accounting and financial matters for the NCUA. The Controller is responsible for submitting annual budget and staffing requests for approval by the Board and, as required, by the Office of Management and Budget (OMB); for managing NCUA's budgetary resources; for collecting from federally insured credit unions the capitalization deposits required as a condition of deposit insurance, and, as determined by the Board, for collecting annual operating fees from Federal credit unions; for maintaining NCUA's accounting system and accounting records; for processing payroll, travel, and accounts payable disbursements; and for preparing internal and external financial reports.

(6) *Office of Examination and Insurance.* The Director of the Office of Examination and Insurance: Formulates standards and procedures for examination and supervision of the community of federally insured credit unions, and reports to the Board on the performance of the examination program; administers the National Credit Union Share Insurance Fund (NCUSIF), and reports on its condition and performance, including the premiums invested, income earned, and assistance provided; serves as the Board expert on accounting principles and standards, on auditing standards, and on investments for credit unions; represents NCUA at meetings with the American Institute of Certified Public Accountants (AICPA), Federal Financial Institutions Examination Council (FFIEC) and Government Accounting Office (GAO); and collects data and provides statistical and economical reports and research papers on market trends affecting credit unions. The Director is also responsible for developing and conducting research in support of NCUA programs, and for preparing reports on research activities for the information and use of agency staff, credit union officials, state credit

union supervisory authorities, and other governmental and private groups.

The Director, Office of Examination and Insurance, also manages NCUA's corporate credit union program in accordance with established policies. The Director's duties include: Directing chartering, insurance, examination, and supervision programs to promote and assure safety and soundness; managing corporate resources to meet program objectives in the most economical and practical manner, and maintaining good public relations with public, private, and governmental organizations, corporate credit union officials, credit union organizations, and other groups which have an interest in corporate credit union matters.

(7) *Office of the Executive Director.* The Executive Director translates NCUA Board policy decisions into workable programs, delegates responsibility for these programs to appropriate staff members, and coordinates the activities of the senior executive staff, which includes: The General Counsel; the Regional Directors; and the Office Directors for Administration, Controller, Examination and Insurance, Human Resources, Information Systems, and Public and Congressional Affairs. Because of the nature of the attorney/client relationship between the Board and General Counsel, the General Counsel may be directed by the Board not to disclose discussions and/or assignments with anyone, including the Executive Director. The Executive Director is otherwise to be privy to all matters within senior executive staff's responsibility.

(8) *Office of General Counsel.* The General Counsel has overall responsibility for all legal matters affecting NCUA and for liaison with the Department of Justice. The General Counsel represents NCUA in all litigation and administrative hearings when such direct representation is permitted by law and, in other instances, assists the attorneys responsible for the conduct of such litigation. The General Counsel also provides NCUA with legal advice and opinions on all matters of law, and the public with interpretations of the Federal Credit Union Act, the NCUA Rules and Regulations, and other NCUA Board directives. The General Counsel has responsibility for the drafting, reviewing, and publication of all items which appear in the **Federal Register**, including rules, regulations, and notices required by law.

(9) *The Office of Human Resources.* The Office of Human Resources provides a comprehensive program for the management of NCUA's human resources. This is done in support of NCUA's goal to recruit, develop, and retain a quality and representative workforce. The Director is responsible for managing NCUA's compensation program, for facilitating good organization design, for staffing positions through recruitment and merit promotion programs, and for maintaining an automated personnel records system. The Director is also responsible for the Board's training, performance management, incentive awards, employee assistance, and benefit programs. These programs are geared to foster healthy employee/management relations and to provide employees with good working conditions.

(10) *Office of Information Systems.* The Director of the Office of Information Systems is responsible for managing NCUA's automated information resources, which includes: Ensuring the accuracy, validity, security, and integrity of the Board's data base; providing and supporting efficient, relevant, and reliable automated products and related services; supporting the Board's hardware and software environment; and operating NCUA's automated information processing facility. The Director advises and counsels of the Board on all automation issues affecting the NCUA.

(11) *Office of the Inspector General.* The Inspector General reports directly to the Board and provides semi-annual reports regarding audit and investigation activities to the Board and the Congress. The Inspector General is responsible for: (a) Conducting independent audits and investigations of all NCUA programs and functions to promote efficiency; (b) reviewing policies and procedures to evaluate controls to prevent fraud, waste, and abuse; and (c) reviewing existing and proposed legislation and regulations to evaluate their impact on the economic and efficient administration of the Agency.

(12) *Office of Public and Congressional Affairs.* The Director of the Office of Public Congressional Affairs is responsible for maintaining NCUA's relationship with the public and the media; for liaison with the U.S. Congress, and with other Executive Branch agencies concerning legislative matters; and for the analysis and development of legislative proposals and public affairs programs.

(c) *Regional offices.*

(1) NCUA's programs are conducted through six regional offices:

Region No.	Area within region	Office address
I	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.	9 Washington Square, Washington Avenue Extension, Albany, NY 12205.
II	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia.	1775 Duke Street, suite 4206, Alexandria, VA 22314-3437.
III	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands.	7000 Central Parkway, Suite 1600, Atlanta, GA 30328.
IV	Illinois, Indiana, Michigan, Missouri, Ohio, Wisconsin	4225 Naperville Rd., suite 125, Lisle, IL 60532.
V	Arizona, Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, South Dakota, Oklahoma, Texas, Utah, Wyoming.	4807 Spicewood Springs Road, suite 5200, Austin, TX 78759.
VI	Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.	2300 Clayton Road, suite 1350, Concord, CA 94520.

(2) A Regional Director is in charge of each Regional Office. The Regional Director manages NCUA's programs in the Region assigned in accordance with established policies. This person's duties include: Directing chartering, insurance, examination, and supervision programs to promote and assure safety and soundness; managing regional resources to meet program objectives in the most economical and practical manner; and maintaining good public relations with public, private, and governmental organizations, Federal credit union officials, credit union organizations, and other groups which have an interest in credit union matters in the assigned Region. The

Director maintains liaison and cooperation with other regional offices of Federal departments and agencies, state agencies, city and county officials, and other governmental units that affect credit unions. The Regional Director is aided by a Deputy Regional Director and an Associate Regional Director. Staff working in the Regional Office, with the exception of the Special Actions staff, report to the Deputy Regional Director. Each Region is divided into examiner districts, each assigned to a Supervisory Examiner; groups of examiners are directed by a Supervisory Examiner, each of whom in turn reports directly to the Associate Regional Director. Special Actions staff also report to the Associate Regional Director.

(d) *NCUA Central Liquidity Facility (CLF)*—(1) *General organization.* The CLF was created to improve general financial stability by providing funds to meet the liquidity needs of credit unions. It is a mixed ownership Government corporation under the Government Corporation Control Act (32 U.S.C. 9101, *et seq.*). The CLF corporate headquarters is located at 1775 Duke Street, suite 4013, Alexandria, Virginia 22314–3428. NCUA's Central and Regional Offices provide services and information to the CLF on a cost reimbursable basis; depending upon need, employees of CLF may be assigned to the Regional Offices. The CLF is also assisted in its operations by corporate credit unions designated as "Agent Members," which provide CLF services to other credit unions lacking direct access to the CLF.

(2) *Board of Directors.* The CLF is managed by the NCUA Board, which acts as the CLF Board of Directors. The Chairman of the NCUA Board is the Chairman of the Board of Directors. The CLF Board is assisted in managing the CLF by a President, Secretary, and Treasurer who are appointed by and are responsible to the CLF Board.

(3) *President.* The President is the chief executive officer of the CLF and works under the general supervision of the CLF Board. The President provides overall executive direction and guidance and is responsible for the ongoing management of the CLF. The President manages the CLF staff and their activities in the Central Office and the Regions; provides general supervision to the other officers of the CLF; and initiates and maintains working relationships with the credit union community, other Federal and state government authorities, and the banking and investment communities. The President is also responsible for planning, implementing, and directing programs related to the CLF's lending policies, procedures and regulations, and for directing CLF lending to regular members, agent members and agent group representatives, and for monitoring lending activities throughout the CLF to assure conformity with policies, procedures and regulations. The President must also develop and maintain a working relationship with state supervisors, state insurance authorities, and Federal financial agencies. In addition, the President is responsible for planning, implementing, and directing borrowing and investment programs to finance CLF operations. The President has responsibility for directing CLF borrowing from the Federal Financing Bank for the CLF's investment of funds in the U.S. Government and agency securities; and for developing and maintaining working relationships with the investment and banking communities and Federal financial agencies.

(4) *Treasurer.* The Treasurer develops and manages the CLF's operational systems to monitor and report the use of the CLF's funds. The Treasurer establishes accounting policies and procedures for the CLF, and maintains working relationships with Agent members, state supervisors, state insurance corporations, and Federal financial agencies.

(5) *Secretary.* The Secretary of the Board serves as the Secretary of the CLF. The Secretary has responsibility for preparing the Board's agenda, giving all required notices, and keeping the minutes of the Board.

(e) *Community Development Revolving Loan Program.* The Chairman, Community Development Revolving Loan Program, is responsible for the operation of the Community Development Revolving Loan Program for Credit Unions (the "Program"). The Chairman approves and disapproves applications for loans from the Program, and provides technical assistance to credit unions participating in the Program and performs other duties necessitated by part 705 of subchapter A of this chapter. The address is the same as for the Central Office.

§ 790.3 Requests for action.

Except as otherwise provided by NCUA regulation, all applications, requests, and submittals for action by the NCUA shall be in writing and addressed to the appropriate office described in § 790.2. This will usually be one of the Regional Offices. In instances where the appropriate office cannot be determined, requests should be sent to the Office of Public and Congressional Affairs.

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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 825

RIN 1215–AA85

Family and Medical Leave Act of 1993; Extension of Comment Period

AGENCY: Wage and Hour Division, Labor.

ACTION: Interim rule; extension of comment period.

SUMMARY: This document extends the period for filing written comments on the interim final regulations implementing the Family and Medical Leave Act of 1993. This action is being taken in order to provide interested parties additional time and experience under the Act to prepare their comments.

DATES: Comments must be received on or before December 3, 1993.

ADDRESSES: Address written comments to Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters desiring notification of receipt of their comments are requested to include a self-addressed, stamped post card. As a convenience to commenters, written comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122. This is not a toll-free number

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Interim final regulations, 29 CFR part 825, implementing the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601 *et seq.*, were published in the **Federal Register** on Friday, June 4, 1993 (58 FR 31794). The interim rules, which became effective on August 5, 1993, invited interested parties to submit public comments on or before September 2, 1993. Because of the interest that has been expressed in the implementation of this Act, and the desire of some commenters to gain