The OTS, therefore, proposes to remove obsolete statutory references, eliminate redundancy, enhance where possible consistency with the policies of other federal banking agencies, clarify the OTS's most recent policy considerations, and generally provide for more flexible standards for processing applications for the establishment of *de novo* federal savings associations. The OTS also intends to recodify these provisions as part of its regulations on the incorporation of federal savings associations.

II. Statutory and Regulatory Requirements

A. Statutory Requirements

The statutory chartering and insurance framework initially established by FIRREA provided that the FDIC could insure the accounts of a de novo federal savings association upon application by the savings association and upon receipt by the FDIC of a certificate issued by the Director of the OTS.8 The OTS, as chartering authority for federal savings associations, was required to certify to the FDIC that it had considered certain factors, set forth at section 6 of the Federal Deposit Insurance Act (FDIA), in granting a federal thrift charter. These factors included: (1) the financial history and condition of the association; (2) the adequacy of its capital structure; (3) its future earnings prospects; (4) the character and fitness of its proposed management; (5) the risk presented to the insurance fund; (6) the convenience and needs of the community to be served; and (7) whether the association's proposed corporate powers would be consistent with the purposes of the FDIA.9

FDICIA removed this certification requirement. Instead, a de novo federal savings association may obtain insurance of its accounts "upon application and examination by the [FDIC] and approval by the [FDIC] Board of Directors * * *." 10 In acting on the application for insurance, the FDIC Board is required to consider the statutory factors enumerated at section 6 of the FDIA and set forth above. FDICIA made no changes to the section 6 factors. The FDIC has issued a Statement of Policy Regarding Applications for Deposit Insurance (FDIC Policy Statement) which establishes the standards used by the FDIC in granting deposit insurance and

provides guidelines for making applications for insured status.¹¹

Although the OTS is no longer required to certify to the FDIC that it has considered the factors in section 6 of the FDIA, section 5(e) of the HOLA 12 requires the OTS to make findings that resemble the section 6 factors before granting a federal charter. Section 5(e) of the HOLA requires the OTS to determine: (1) the character of the organizers; (2) the need for the association in the community to be served; (3) the reasonable probability of the association's usefulness and success; and (4) whether the association can be established without undue injury to existing local thrift and home financing institutions. In addition, pursuant to the Community Reinvestment Act of 1977 13 (CRA), the OTS must assess the new institution's proposed CRA statement and plans for meeting the credit needs of its community (including low- and moderate-income neighborhoods) and must take that assessment into account in determining whether to grant a charter.

B. Current OTS Policy Statement

Minimum Capitalization Requirement and Business and Investment Plans. The current OTS Policy Statement sets the minimum level of capitalization for de novo institutions at \$3 million, with a provision that the Office will consider approving a de novo applicant having at least \$2 million if certain criteria are met. Among those criteria are that the applicant would be located in, and intended to serve, an area with a population not exceeding 50,000, and that the applicant will be community-oriented.

The current OTS Policy Statement provides that the Office must consider certain factors in order for an applicant to obtain insurance of accounts by the FDIC. Among the factors to be considered are the association's future earnings prospects, the general character and fitness of the association's management, and the convenience and needs of the community to be served. The Office may grant a new charter only if, among other things, in the judgment of the Director a necessity exists for such association in the community to be served.

Policies Pertaining to Management Officials. The current OTS Policy Statement requires controlling shareholders to personally agree to maintain the association's required regulatory capital for a minimum of five years. It also contains provisions requiring the filing of a plan to identify areas where conflicts of interest and abuse of corporate opportunity may occur.

Standard Approval Conditions.
Currently, standard conditions on application approvals are not listed in the policy statement. Standard conditions, however, are imposed for all approvals of *de novo* applications and are contained in the OTS's Applications Processing Handbook.

III. Description of Proposed Revisions

A. Deletion of Obsolete Statutory References and Deletion of Certain Duplicative Factors

The proposal would delete obsolete statutory references. Current § 571.6(b) contains language requiring that the OTS certify to the FDIC that it has considered the factors listed under section 5(a)(2) of the FDIA.14 Since FDICIA eliminated this certification requirement from the statute, we propose a parallel deletion from the rule. These pre-FDICIA certification requirements are also contained in §§ 543.2(g)(2) and 552.2–1(b)(2), which address the organization of federal mutual and federal stock institutions, respectively. We similarly propose to delete these sections in their entirety.

The proposal would also delete current section 571.6(b)(2), which contains language regarding certain factors considered in evaluating applications to organize a federal savings association. Among others, these factors require the agency to consider whether there is a reasonable probability of the association's usefulness and success, and whether, in the judgment of the Director of the OTS, a necessity exists for the association in the community to be served. These factors are duplicative of the factors that already appear in sections 543.2(g)(1) and 552.2-1(b)(1).

B. Other Proposed Revisions

Minimum Capitalization and Business Plan Requirements. The proposal revises the minimum capitalization and business plan requirements for de novo applicants. When the Policy Statement was first adopted, since de novo applicants did not have a proven "track record" or a supervisory history, the FHLBB believed it was appropriate to set a minimum level of capitalization for de novo associations. In addition, the FHLBB

⁸¹² U.S.C.A. 1815(a)(2) (West 1989).

⁹¹² U.S.C.A. 1816 (West 1989).

^{10 12} U.S.C.A. 1815 (a)(1) (West Supp. 1994).

^{11 57} FR 12825 (April 13, 1992).

^{12 12} U.S.C.A. 1464(e) (West Supp. 1994).

¹³ Community Reinvestment Act of 1977, Pub. L. No. 95–128, tit. 8, sec. 802, 91 Stat. 1147 (*codified at* 12 U.S.C. 2901, *et seq.* (1980)).

^{14 12} U.S.C.A. 1815(a)(2) (West 1989).