acquired in swap transactions and included in an institution's assets?

Regulatory Flexibility Act Analysis

The Agencies do not believe that the adoption of their interim rule will have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because of the pre-FAS 122 accounting treatment of OMSRs, no banking organizations—large or small—currently carry any OMSRs, which are the subject of the interim rule, as assets on their balance sheets or include them in capital. The Agencies' interim rule, in combination with the requirement that institutions adopt FAS 122 for regulatory reporting purposes, allows banking organizations to increase their regulatory capital by including OMSRs in assets and Tier 1 (core) capital. This interim rule would only affect those banking organizations that originate and subsequently sell or securitize mortgage loans but retain the servicing rights. In addition, FAS 122 is to be applied prospectively. As a result, OMSRs will only need to be capitalized for those transactions that occur after the date as of which an institution adopts FAS 122. Moreover, because the risk-based and leverage capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

OCC and OTS Executive Order 12866 Statement

The Comptroller of the Currency and the Director of the OTS have determined that the interim rule described in this notice is not a significant regulatory action under Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act and Regulatory Burden

The Agencies have determined that this interim rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulation that imposes additional requirements on insured depository institutions. The Agencies have found that their interim rule does not impose any additional reporting or recordkeeping burdens. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate. The Agencies have decided that their interim rule should be effective immediately because it provides institutions with information on the regulatory capital treatment for OMSRs that may begin to be reported on the June 30, 1995 Call Report and Thrift Financial Report.

Administrative Procedure Act

Pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553, the Agencies find good cause for issuing this interim rule in advance of the receipt of comments from interested parties and for waiving the 30-day delay of effectiveness provisions of the Administrative Procedures Act. This "good cause" determination is based upon institutions' immediate need to know how to treat OMSRs in computing regulatory capital. This guidance is necessary because the Financial Accounting Standards Board, on May 12, 1995, revised the treatment of OMSRs under generally accepted accounting principles by adopting Statement of Financial Accounting Standard No. 122 (FAS 122), "Accounting for Mortgage Servicing Rights," which institutions may adopt beginning in reports prepared as of June 30, 1995. Under FAS 122, OMSRs will be capitalized and included in assets with corresponding increases to an institution's capital base. Prior to the issuance of FAS 122, OMSRs were not capitalized and not recorded on the balance sheet. This interim rule allows institutions that early adopt FAS 122 in their June 30, 1995, regulatory reports to include OMSRs in assets and regulatory capital, subject to certain limitations.

OCC and OTS Unfunded Mandates Act Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this interim rule, in conjunction with FAS 122, permits OMSRs to be capitalized as balance sheet items, a treatment that was previously only permitted for PMSRs. Under the interim rule, OMSRs will be included in calculating Tier 1 (core) capital for risk-based capital and leverage capital standards subject to the same constraints that are imposed on PMSRs. Thus, no additional cost of $100 million or more, to State, local, or tribal governments or to the private sector will result from this rule. Accordingly, the OCC and the OTS have not prepared a budgetary impact statement nor specifically addressed any regulatory alternatives.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 6

Capital, National banks.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons set out in the joint preamble, the Office of the Comptroller