decisions to avoid the effects of SFAS No. 115 that could give associations more flexibility in the short run but might not enhance the associations' long-term viability.

The OTS considered the comments received regarding FDICIA's requirement that regulatory accounting policy be no less stringent than GAAP. Section 121 of FDICIA¹⁰ requires that policies applicable to reports and statements filed with the Federal banking agencies generally conform to GAAP. The section, however, does not require the calculation of an institution's regulatory capital or the components of regulatory capital to conform to GAAP, and the legislative history of the section indicates that was not necessarily the intent of Congress.¹¹ Furthermore, calculation of associations' risk-based capital requirements under the OTS capital rule is based on principles that are so fundamentally different from GAAP that comparing the stringency of the OTS rule with GAAP is not meaningful. Accordingly, we do not believe that Congress intended the OTS to make such a comparison.

By adopting SFAS No. 115 for regulatory reporting purposes, the OTS is complying with the requirements of section 121 and is utilizing a uniform approach with the other Agencies. Adoption of such a uniform approach also complies with FDICIA's requirement that each Federal banking agency "maintain uniform accounting standards to be used for determining compliance with statutory or regulatory requirements of depository institutions." 12 Adoption of this uniform interagency policy also is consistent with the general goal of regulatory uniformity set forth in Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA).13

The OTS did consider alternatives suggested by several commenters including counting the net unrealized holding gains and losses on availablefor-sale securities in risk-based or supplementary capital calculations, or including net unrealized holding gains and losses on available-for-sale securities in regulatory capital but excluding the adjustment from capital calculations tied to other regulations. However, the OTS believes such approaches would be too complex and burdensome and potentially could require a savings association to maintain yet another set of capital calculations. Furthermore, because SFAS No. 115 significantly increased the number of securities subject to market valuation, including the unrealized gains and losses in risk-based capital may contribute to volatility in regulatory capital levels.

The OTS has decided, therefore, to retain its current requirements that available-for-sale debt securities be valued at amortized cost and that marketable equity securities be valued at the lower of amortized cost or fair value. This is consistent with the current capital treatment of these securities by the other Federal banking agencies.

To conform the capital rule's definition of "common stockholders" equity" to the terminology and standards used in SFAS No. 115, however, this rule substitutes the phrase "net unrealized losses on available-forsale equity securities with readily determinable fair values" instead of "net unrealized losses on non-current marketable equity securities."¹⁴ The latter phrase was based on terminology included in the SFAS No. 12 accounting standard, which was superseded by SFAS No. 115. The new terminology of the revised regulation encompasses the identical types of securities as the preexisting regulation.

Finally, the OTS will continue to consider unrealized gains and losses on securities, regardless of their classification under SFAS No. 115 or this rule, as a factor in various supervisory determinations. For example, an association's unrealized gain or loss on securities would be an appropriate factor for an examiner to consider in evaluating the adequacy of the association's level of regulatory capital or in making discretionary supervisory determinations, such as the reasonableness of associations' capital distributions.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby 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. This final rule is not expected to increase the capital requirements of a substantial number of small entities. This final rule is not expected to have a disparate effect on the capital levels of small entities as opposed to larger entities; rather the effect on capital will be minimal regardless of savings association size.

Executive Order 12866

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

Unfunded Mandates Reform Act of 1995

The OTS has determined that this final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and therefore is not a significant regulatory action under Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 64 (signed into law on March 22, 1995).

Paperwork Reduction Act

The OTS has determined that this final rule will not increase the regulatory paperwork burden of savings associations pursuant to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, the Office of Thrift Supervision hereby amends part 567, chapter V, title 12, Code of Federal Regulations, as set forth below:

Subchapter D—Regulations Applicable to All Savings Associations

PART 567—[AMENDED]

1. The authority for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by revising paragraph (d) to read as follows:

§ 567.1 Definitions.

* * * * *

(d) *Common stockholders' equity.* The term *common stockholders' equity* means common stock, common stock surplus, retained earnings, and adjustments for the cumulative effect of foreign currency translation, less net unrealized losses on available-for-sale equity securities with readily determinable fair values.

Dated: August 3, 1995.

¹⁰ 12 U.S.C. 1831n(a).

¹¹ See generally H.R. Rep. No. 102–330, 102d Cong., 2d Sess. 119 (1991).

^{12 12} U.S.C. 1831n(b).

¹³ Pub. L. 103-325, 108 Stat. 2160.

¹⁴ See current version of 12 CFR 567.1(d).