Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

FINANCIAL STABILITY OVERSIGHT COUNCIL

Recommendations Regarding Modifications to the Concentration Limit on Large Financial Companies

AGENCY: Financial Stability Oversight Council.

ACTION: Notice and request for comment.

SUMMARY: Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act" or "Dodd-Frank Act") establishes a financial sector concentration limit that generally prohibits a financial company [1] from merging or consolidating with, acquiring all or substantially all of the assets of, or otherwise acquiring control of, another company if the resulting company's consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies.[2] This concentration limit is intended, along with a number of other provisions in the Dodd-Frank Act, to promote financial stability and address the perception that large financial institutions are "too big to fail." Section 622 of the Act also requires the Financial Stability Oversight Council (the "Council") to: (i) Complete a study of the extent to which the concentration limit would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of United States financial firms and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States; and (ii) make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement section 622.[3] On January 18, 2011, the Council approved and issued its concentration limit study and the recommendations on how to effectively implement section 622. The Council seeks public comment on the Council recommendations described below. The Council will review and, if appropriate, revise its recommendations in response to the public comments it receives.

DATES: Comments must be received on or before March 10, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this notice according to the instructions below. All submissions must refer to the document title. The Council encourages the early submission of comments.

Electronic Submission of Comments. Interested persons must submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail: Send comments to Financial Stability Oversight Council, *Attn:* Amias Gerety, 1500 Pennsylvania Avenue, NW., Washington DC 20220.

Note: To receive consideration as public comments, comments must be submitted through the methods specified above. Again, all submissions must refer to the title of the notice.

Public Inspection of Public Comments. All properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

Additional Instructions. In general comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: For further information regarding this Notice and Request for Comment contact Amias Gerety, Office of Domestic Finance, Treasury, at (202) 622–8716 or Jeff King, Office of the General Counsel, Treasury, at (202) 622–1978. All responses to this Notice and Request for Comment should be submitted via *http://www.regulations.gov* to ensure consideration.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 622 of the Dodd-Frank Act, on January 18, 2011, the Council approved and issued the concentration limit study including recommendations on how to effectively implement section 622. The full text of the concentration limit study and recommendations can be viewed at *http://www.treasury.gov/initiatives/Documents/Study%20on%20Concentration%20Limits%20on%20Large%20Firms%2001-17-11.pdf.*

The Council believes that the concentration limit will have a positive impact on U.S. financial stability. Specifically, the Council believes that the concentration limit will reduce the risks to U.S. financial stability created by increased concentration arising from mergers, consolidations or acquisitions involving the largest U.S. financial companies. In addition, restrictions on future growth through acquisition by the largest financial companies ultimately will prevent acquisitions that could make these firms harder for their officers and directors to manage, for the financial markets to understand and discipline, and for regulators to supervise. The concentration limit, as structured, could also have the beneficial effect of causing the largest financial companies to either shed risk or raise capital to reduce their liabilities so as to permit additional acquisitions under the concentration limit. Such actions, other things equal, would tend

[1] Section 622's concentration limit applies only to a "financial company," which is defined as: (i) An insured depository institution; (ii) a bank holding company; (iii) a savings and loan holding company; (iv) a company that controls an insured depository institution; (v) a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under title I of the Dodd-Frank Act; and (vi) a foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act.

[2] Public Law 111–203, 124 Stat. 1376 (2010). We refer to the limit established by section 622 generally as the "concentration limit." This concentration limit was adopted as a new section 14 to the Bank Holding Company Act of 1956 (the "BHC Act") (to be codified at 12 U.S.C. 1852).

[3] *See* 12 U.S.C. 1852(e).

to reduce the chance that the firm would fail. Moreover, the concentration limit should provide a more comprehensive limitation on growth through acquisition than the 10 percent nationwide deposit cap imposed by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 [4] because it also takes into account non-deposit liabilities and off-balance sheet exposures, limiting incentives to shift liabilities from deposits to potentially more volatile on and off-balance-sheet liabilities.

Although the Council expects the impact of the concentration limit on moral hazard, competition, and the availability of credit in the U.S. financial system to be generally neutral over the short- to medium-term, over the long term the Council expects the concentration limit to enhance the competitiveness of U.S. financial markets by preventing an increased dominance of those markets by a very small number of firms.

The Act specifically provides that the concentration limit set forth in section 622 is "subject to," and thus may be modified by, the recommendations made by the Council.[5] The Board of Governors of the Federal Reserve System (the "Board") is thus required to adopt regulations that reflect and are in accordance with the Council's recommendations to implement section 622.[6] The Board must prescribe these rules no later than 9 months after completion of the Council's study. The Board also is authorized to issue interpretations or guidance regarding application of the concentration limit to an individual financial company or financial companies generally.

To more effectively implement section 622, the Council has recommended: (i) Modifying the statutory definition of "liabilities" for certain companies that do not currently calculate or report risk-weighted assets; (ii) modifying the calculation of aggregate financial sector liabilities to use a two-year rolling average instead of a single year for purposes of calculating the denominator of the limit and requiring the Board to publicly report, on an annual basis and no later than July 1 of any calendar year, a final calculation of the aggregate consolidated liabilities of all financial companies as of the end of the preceding calendar year; and (iii) extending the exception provided in the statute for the acquisition of failing banks to other failing insured depository institutions. The specific recommendations made by the Council are set forth below. For further information on the recommendations, please see the full text of the concentration limit study and recommendations at *http://www.treasury.gov/initiatives/Documents/Study%20on%20Concentration%20Limits%20on%20Large%20Firms%2001-17-11.pdf*. As noted above, the Council will review and, if appropriate, revise its recommendations in response to the public comments it receives.

II. Solicitation for Public Comments on the Concentration Limit Recommendations

The Council seeks public comment on the Council recommendations as follows:

1. Definition of "Liabilities" for Certain Companies

Council Recommendation: The concentration limit under Section 622 should be modified so that the liabilities of any financial company (other than an insurance company, a nonbank financial company supervised by the Board, or a foreign bank or a foreign-based financial company that is or is treated as a bank holding company) that is not subject to consolidated risk-based capital rules that are substantially similar to those applicable to bank holding companies shall be calculated for purposes of the concentration limit pursuant to GAAP or other appropriate accounting standards applicable to such company, until such time that these companies may be subject to risk-based capital rules or are required to report risk-weighted assets and regulatory capital.

2. Collection, Aggregation and Public Dissemination of Concentration Limit Data

Council Recommendation: The concentration limit under Section 622 should be modified to provide that a transaction covered by section 622 shall be considered to have violated the concentration limit if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the average amount of aggregate consolidated liabilities of all financial companies as reported by the Board as of the end of the two most recent calendar years. For this purpose, rules issued under section 622 shall provide for the Board to publicly report, on an annual basis and no later than July 1 of any calendar year, a final calculation of the aggregate consolidated liabilities of all financial companies as of the end of the preceding calendar year.

3. Acquisition of Failing Insured Depository Institutions

Council Recommendation: The concentration limit under section 622 should be modified to provide that, with the prior written consent of the Board, the concentration limit shall not apply to an acquisition of any type of insured depository institution in default or in danger of default.

Dated: January 31, 2011.

Alastair Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

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[4] Public Law 103–328, 108 Stat. 2338 (1994). Currently, the Riegle-Neal Act deposit cap prohibits a depository institution, bank holding company or savings and loan holding company from acquiring or merging with an insured depository institution in another state if, after consummation of the acquisition, the applicant would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. *See* 12 U.S.C. 1828(c), 1843(i), and 1467a(e)(2).

[5] *See* 12 U.S.C. 1852(b).

[6] *See* 12 U.S.C. 1852(d).

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 3, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received