TITLE III: Termination of OTS and Transfer of its Powers to the OCC, the FDIC, and the Fed

A. Introduction

Under current law, the Office of Thrift Supervision ("OTS") is the Federal bank regulator and overseer of all federal and most state-chartered thrift institutions, as well as their holding companies. Title III abolishes the OTS and transfers its functions to the Fed, the OCC, and the FDIC. The stated purpose of such changes are: (1) to provide for the safe and sound operation of the U.S. banking system; (2) to preserve and protect the dual system of federal and state-chartered depository institutions; (3) to ensure the fair and appropriate supervision of each depository institution; and (4) to streamline and rationalize the supervision of depository institutions and their holding companies. **Sec. 301 (p. 148)**.

Under Title III, the OCC assumes all former responsibilities and authorities of the OTS other than those with respect to SLHCs and state savings associations. The Fed is responsible for all former OTS authorities (including rulemaking) related to SLHCs, while the FDIC assumes functions related to the regulation of state savings associations. **Sec. 312 (pp. 149-151)**.

The transfer date is one year after enactment, unless extended for up to 180 days. **Sec. 311 (p. 149)**. To satisfy statutory "PAY-GO" requirements, Title III amends the formula for FDIC assessments of depository institutions, as added during the reconvening of the House-Senate Conference, in order to replace a portion of a $19 billion bank tax that created political difficulties for the entire bill. In general, Title III takes effect on the transfer date. The OTS is abolished 90 days after the transfer date. **Sec. 313 (p. 151)**. The FDIC deposit insurance reforms are effective one day after the date of enactment.

B. Transfer of OTS's Functions Related to SLHCs

Title III transfers all the functions of the OTS related to the supervision of any SLHC and any subsidiary (other than a depository institution) of a SLHC to the Fed. **Sec. 312(b) (pp. 149-150)**.

The Fed inherits the rulemaking authority of the OTS with respect to all SLHCs. The Fed also assumes OTS's rulemaking authority under Section 11 of the Home Owner's Loan Act (12 U.S.C. § 1468) relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders. **Sec. 312(b) (pp. 149-150)**.

C. Transfer of OTS' Functions Related to Savings Associations

All functions of the OTS and the Director of the OTS related to federal savings associations are transferred to the OCC. The FDIC assumes all functions of the OTS and the Director of the OTS relating to state savings associations. **Sec. 312(b) (p. 150)**.

OTS' rulemaking authority relating to savings associations is transferred to the OCC. **Sec. 312(b) (p. 150)**.

D. Appropriate Federal Banking Agency

1. The OCC

Title III amends Section 3 of the FDI Act (12 U.S.C. 1813), Subsection (q) making the OCC the "appropriate federal banking agency" in the case of any national banking association, any federal branch or agency of a foreign bank, and any federal savings association. **Sec. 312(c) (p. 150)**.

2. The FDIC

Additional changes to Section 3, Subsection (q) of the FDI Act, make the FDIC the "appropriate federal banking agency" in the case of any insured State bank, any foreign bank having an insured branch, and any State savings association. **Sec. 312(c) (p. 151)**.

3. The Fed

Further amendments to the FDI Act provide that the Fed is the "appropriate federal banking agency" in the case of any State member bank, any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act ("FR Act") which is made applicable under the International Banking Act of 1978, any foreign bank which does not operate an insured branch; any agency or commercial lending company other than a Federal agency, supervisory, or regulatory proceedings arising from the authority given to the Fed under Section 7(c)(1) of the International Banking Act, any bank holding company and its subsidiaries (other than depository institutions), and any savings and loan holding and its subsidiaries. **Sec. 312(c) (p. 151)**.

E. Transfer Date of the Functions of the OTS

The date for the transfer of functions to the OCC, the FDIC, and the Fed is one year after the date of enactment of the Act. **Sec. 311(a) (p. 149)**.

An extension is permitted if the Secretary, in consultation with the Comptroller and the Director of the OTS, transmits a request for such an extension to the Senate Banking Committee and House Financial Services Committee. The request must include a written determination that "orderly implementation" of this subtitle is not feasible within the established time frame, an explanation of why the extension is necessary, and a description of the steps that will be taken to effect the implementation of the power transfer within the extended time period. In no case is the date for power transfer later than 18 months after the title's enactment. **Sec. 311(b) (p. 149)**.

F. The OCC as Successor to OTS

1. Abolishment of OTS

Title III abolishes the OTS and the position of Director of OTS and is effective 90 days after the transfer date. **Sec. 313 (p. 151)**.

2. The OCC

Section 324 of the Revised Statutes of the United States (12 U.S.C. 1) is restated to reflect the transfer of OTS authority to the OCC. The OCC remains a bureau in the Department of the Treasury. It is charged "with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers, by the institutions and other persons subject to its jurisdiction." As it is now, the chief officer of the OCC is the Comptroller, who performs his/her duties under the general direction of the Secretary. Upon the transfer date, the Comptroller is vested with the same authority as was previously vested in the Director of OTS. **Sec. 314(a) (pp. 151-152)**.

Additionally, the Comptroller must appoint a Deputy Comptroller responsible for the supervision and examination of federal savings associations. **Sec. 314(b) (p. 152)**.

3. Savings Provisions

a) Existing Rights, Duties, and Obligations of OTS Not Affected

The transfer of powers away from OTS does not affect the validity of any right, duty, or obligation of the United States, the Director of OTS, the OTS, or any other person that existed on the day before the transfer. **Sec. 316(a)(1) (p. 152)**.

Furthermore, the subtitle transferring powers does not abate any action or proceeding commenced by or against the OTS or its Director. However, for any action or proceeding arising out of a function of the OTS Director that is transferred to the Comptroller, the Comptroller needs to be substituted for the OTS or its Director as a party to the action or proceeding as of the transfer date. The same is said for the FDIC and the Fed related to those powers which it assumes from OTS—if there is an action or proceeding related to these powers, the Chairperson of the FDIC or the Chairman of the Fed would have to be substituted for the Director of the OTS as a party to the action. **Sec. 316(a)(2) (pp. 152-153)**.

b) Continuation of Existing Orders, Resolutions, Determinations, and Agreements

All orders, resolutions, determinations, agreements, regulations, interpretative rules, guidelines, procedures, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the OTS or the Fed (or by a court of competent jurisdiction) and that relate to the functions transferred by Title III and are in effect on the day before the transfer date continue in effect according to their terms. Further, such actions are enforceable by and against the OCC, the Fed, and the FDIC (with respect to the OTS powers transferred to each of these entities) until modified, terminated, set aside, or superseded in accordance with applicable law by the OCC, the Fed, the FDCI, a court of competent jurisdiction, or the operation of law. **Sec. 316(b) (pp. 153)**.

c) Continuation of Regulations

Before the transfer date, the Comptroller, after consulting with the Chairperson of the FDIC, is required to identify the regulations that will continue to be enforced by the OCC and publish a list of such regulations. Likewise, the FDIC and the Fed are required, in consultation with the Comptroller, to identify those regulations that will be enforced by the FDIC and the Fed and publish a list of such regulations. **Sec. 316(c) (pp. 153-154)**.

Regulations that have been proposed by the OTS before the transfer date, but have not yet been published as final regulation, will be deemed to be a proposed regulation of the OCC, the FDIC, or the Fed, as appropriate. With respect to interim or final regulations that the OTS has published before the transfer date but have not yet become effective, they become effective as a regulation of the OCC or the FDIC, as appropriate. **Sec. 316(d) (p. 154)**.

d) References in Federal Law to Federal Banking Agencies

Any reference in federal law to the Director of the OTS or the OTS is deemed a reference to the Comptroller of the Currency, the OCC, the Chairperson of the FDIC, the FDIC, the Chairman of the Fed, or the Fed, as appropriate, except as provided in Section 213(d)(2) as to changes in the BHC Act. **Sec. 317 (p. 154)**.

4. Funding and Assessments

Title III amends current law to allow the Comptroller to collect an assessment, fee, or other charge from any entity described in Section 3(q)(1) of the FDI Act, as the Comptroller determines necessary or appropriate to carry out the responsibilities of the OCC. In establishing the amount of such an assessment, the Comptroller can take into account the funds transferred to the OCC under this section, the nature and scope of activities of the entity, the amount and type of assets that entity holds, the financial and managerial condition of the entity, and any other factor, as the Comptroller determines appropriate. The Comptroller alone has the authority to determine the manner in which the obligations of the Office will be incurred and its disbursements and expenses allowed to be paid. **Sec. 318(b) (p. 155)**.

Title III also amends the FR Act, directing the Fed to collect the total amount of assessments, fees, or other charges from: (1) BHCs with total consolidated assets of $50 billion or more; (2) SLHCs with $50 billion or more; and (3) all NBFCs supervised by the Fed under Section 113 of this Act. **Sec. 318(c) (pp. 155-156)**.

The cost of conducting any regular or special examination of any depository institution may be assessed by the FDIC against the institution to meet the FDIC's expenses, or as the FDIC determines is necessary or appropriate to carry out its responsibilities. **Sec. 318(d) (p. 156)**.

These amendments take effect on the transfer date. **Sec. 318(e) (p. 156)**.

5. Administrative Provisions Related to the Transfer

Title III contains a number of administrative provisions related to the transfer of power from OTS to OCC, the Fed and the FDIC. Such provisions cover the following topics:

i. Coordination of transition activities **(Sec. 321; pp. 156-157)**;

ii. Interim responsibilities **(Sec. 321; p. 157)**;

iii. Transfer of employees **(Sec. 322; pp. 157-163)**;

iv. Transfer of property **(Sec. 323; pp. 163-164)**;

v. Transfer of funds **(Sec. 324; p. 164)**;

vi. Disposition of the OTS's affairs **(Sec. 325; p. 165)**;

vii. Continuation of services provided to the OTS by other U.S. agencies or departments to the OCC **(Sec. 326; p. 165)**; and

viii. Contracting and leasing authority of Comptroller **(Sec. 319; p. 156)**.

6. Implementation Plan and Reports

Within 6 months of enactment, the Fed, FDIC, OCC, and OTS must submit a joint plan detailing the transfer of OTS authority. **Sec. 327 (pp. 165-166)**.

G. Reforms to FDIC Assessments

1. Size Distinctions

Title III eliminates Section 7(b)(2)(D) of the FDI Act, which prohibits discrimination based on size. Section 7(b)(2)(D) currently states that "no insured depository institution shall be barred from the lowest-risk category solely because of size." **Sec. 331(a) (pp. 166-167)**.

2. Assessment Base

Under Title III, the FDIC is required to amend the way in which it calculates an assessment base with regards to an insured depository institution for the purposes of Section 7(b)(2) of the FDI Act. Namely, the assessment base would be equal to the average total consolidated assets of the insured depository institution during the assessment period, minus the sum of the average tangible equity of the insured depository institution during the assessment period, and, in the case of a custodial bank (as defined by the FDIC based on factors including the percentage of total revenues generated by custodial businesses) or a banker's bank (as that term is used in 12 U.S.C. Section 24), an amount that the FDIC determines is necessary to establish assessments consistent with the definition under Section 7(b)(1) of the FDI Act of a custodial bank or banker's bank. **Sec. 331(b) (p. 167)**.

3. Elimination of Procyclical Assessments

Section 7(e) of the FDI Act is amended to allow the Board of Directors, in its discretion, to suspend or limit the payment of dividends and to require the FDIC to issue regulations that state the method for the declaration, calculation, distribution, and payment of dividends. **Sec. 332 (p. 167)**.

4. Amended Reserve Ratio Requirements

Title III amends Section 7(b)(3)(B) of the FDI Act to increase the minimum reserve ratio requirements to be "not less than 1.35 percent" of insured deposits with a target date of September 30, 2020 to reach this ratio and an offset of the increase for depository institutions with less than $10 billion in assets. **Sec. 334 (pp. 167-168)**.

5. Permanent Increase in Deposit and Share Insurance

Title III makes permanent the increase from $100,000 to $250,000 in the maximum FDIC deposit insurance and credit union share insurance, retroactive to January 1, 2008. **Sec. 335 (p. 168)**.

6. FDIC Management

Title III amends Section 2 of the FDI Act so as to replace the Director of the OTS with the Director of the Bureau on the Board of Directors of the FDIC. Further, in the event of a vacancy in the OCC, the acting Comptroller will be a member of the Board of Directors. **Sec. 336 (pp. 168-169)**.

H. Other Matters

1. Branching

Under Title III, notwithstanding the FDI Act, the BHC Act, or any other provision of federal or state law, a savings association that becomes a bank can continue to operate any branch or agency that the savings association operated immediately before the savings association became a bank. **Sec. 341 (p. 169)**.

2. Office of Minority and Women Inclusion

Title III directs each agency to establish an Office of Minority and Women Inclusion within 6 months of enactment. This office will be responsible for matters relating to diversity in management, employment, and business activities but will not have authority to enforce statutes, regulations, or executive orders pertaining to civil rights. The office will be headed by a Director who will develop standards for equal employment opportunity and workplace diversity, increased participation by minority- and women-owned businesses in the programs and contracts of the agency, and assessing the diversity policies and practices of entities regulated by the agency. **Sec. 342 (pp. 169-170)**.

The Director will also develop a procedure through which the Director will determine whether an agency contractor or subcontractor has failed to make a good faith effort to include minorities and women in the workforce. If the Director makes this determination, he/she will recommend to the agency administrator that the contract be terminated. The agency administrator may terminate the contract, refer it to the Office of Federal Contract Compliance Programs of the Department of Labor or take other appropriate action. **Sec. 342 (pp. 170-171)**.

3. Insurance of Transactions Accounts

Under an agreement reached by the Conference, the title temporarily extends, until 2013, the Transaction Account Guarantee Program, which insures noninterest bearing transaction accounts above standard FDIC limits. It also provides authority for the establishment of a similar program for credit unions. **Sec. 343 (pp. 172-174)**.