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DEPARTMENT OF THE TREASURY

Office Of Thrift Supervision

12 CFR Part 560

[No. 97-28]

RIN 1550-AB05

Amendments Implementing Economic Growth and Regulatory Paperwork Reduction Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final Rule.

SUMMARY: The Office of Thrift Supervision (OTS) today is issuing a final rule implementing provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Among other actions, EGRPRA: expanded and clarified federal thrifts' lending and investment authority; amended the Qualified Thrift Lender (QTL) test; authorized OTS to grant anti-tying exceptions conforming to exceptions granted to banks by the Board of Governors of the Federal Reserve System (FRB); and modified OTS's oversight authority over bank holding companies that own savings associations. Today's rule implements these statutory changes in final form and enables thrifts to take advantage of the expanded flexibility and burden reduction afforded by EGRPRA.

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

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SUPPLEMENTARY INFORMATION:

I. Background

On September 30, 1996, Congress enacted the EGRPRA¹ which amended and clarified thrifts' lending and investment powers under sections 5 and 10 of the Home Owners' Loan Act (HOLA).² EGRPRA confirmed that federal savings associations may engage in credit card lending without limitation; enabled federal savings associations to engage in education lending without investment restrictions;³ increased the 10% of assets limitation on

¹ P.L. 104-208, tit. 12, 110 Stat. 3009 (September 30, 1996).

² 12 U.S.C. 1464, 1467a, respectively.

³ HOLA, §5, previously limited education loans to 5% of a thrift's total assets. 12 U.S.C. 1464(c)(3)(A).

federal savings associations' commercial lending to 20% of assets, provided that amounts in excess of 10% are used for small business loans as defined by the OTS Director; and amended the QTL test to provide that investments in education, small business, credit card, and credit card account loans are includable without limit for purposes of satisfying the QTL test.⁴

EGRPRA also authorized the OTS Director to issue regulations granting exceptions to anti-tying provisions in section 5(q) of the HOLA,⁵ provided the exceptions are consistent with the HOLA and conform to exceptions granted by the FRB to banks. Finally, EGRPRA eliminated OTS supervision of holding companies that control both a bank and a savings association and that are registered as bank holding companies with the FRB.

On November 27, 1996, OTS issued an interim final rule enabling thrifts to take immediate advantage of the expanded flexibility and burden reduction afforded by EGRPRA.⁶ The interim final rule included definitions of credit card, credit card account, small business, and small business loans. These

⁴ EGRPRA also permitted savings associations to substitute the tax code's "domestic building and loan association" test for compliance with the amended QTL test. See Section 2303(e) of EGRPRA.

⁵ 12 U.S.C. 1464(q).

⁶ 61 FR 60179 (November 27, 1996).

definitions enabled thrifts to apply the newly modified QTL test and to exercise new investment authorities. OTS also streamlined its regulations by removing certain unnecessary QTL provisions from the Code of Federal Regulations, and added a new regulatory anti-tying exception that conformed to the FRB's safe harbor for combined balance accounts. OTS requested comment on any issues raised by the newly implemented regulations.

II. Summary of Comments and Description of the Final Rule

A. General Discussion of the Comments

The public comment period on the interim final rule closed on January 27, 1997. Nine commenters, including five financial institution trade associations and four federal savings associations, responded to the request for comment. Commenters generally supported OTS's efforts to implement expeditiously EGRPRA's new provisions. Several commenters suggested that OTS modify some provisions, including adopting a safe harbor for loans to small businesses. Specific comments addressing various sections are discussed where appropriate in the section by section analysis below.

B. Section-by-section Analysis

Section 560.3 -- Definitions of credit card and credit card account.

Section 2303(g) of EGRPRA requires the OTS Director to issue regulations defining the term "credit card" in order to enable thrifts to apply the newly modified QTL test.⁷ This modified QTL test permits loans "made through credit cards or credit card accounts" to be counted as qualified thrift investments (QTI) without restriction. The definition of "credit card" and "credit card account" also provides federal thrifts with guidance in exercising their authority to "invest in, sell, or otherwise deal in . . . loans made through credit cards or credit card accounts" under section 5(c) of the HOLA. As revised by section 2303(b) of EGRPRA, section 5(c) authorizes federal thrifts to engage in credit card lending without any percentage of assets investment limitation.⁸ Commenters generally agreed that it was appropriate for OTS to consistently define "credit card" and "credit card account" for both section 5(c) and section 10(m) of the HOLA.

⁷ See 12 USC 1467a(m).

⁸ EGRPRA, section 2303(b), amending HOLA § 5(c), to be codified at 12 U.S.C. 1464(c)(1)(T).

Credit card. OTS based the regulatory definition of "credit card" on the plain language definition of "credit card" in Black's Law Dictionary.⁹ Four commenters addressed the substance of this definition. Two commenters supported the use of the Black's Law Dictionary definition. These commenters asserted that this definition is easy to understand and consistent with EGRPRA's goal of providing thrifts greater investment flexibility. Two other commenters suggested that OTS employ the similar, but not identical, definition of "credit card" in the FRB's Truth in Lending Regulation at 12 CFR Part 226 (Regulation Z). Regulation Z defines credit card as "any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit." 12 CFR 226.2(a)(15). These commenters noted that the banking industry is familiar with Regulation Z and that uniform regulations would reduce the complexity of Federal regulation of the banking industry.

To enhance uniformity and consistency among the federal banking agencies, the OTS has adopted the definition of "credit card" in Regulation Z for purposes of the final EGRPRA amendments.

Credit Card Account. The interim rule defined "credit card account" as a credit account established in conjunction with the issuance of, or the extension

⁹ Black's Law Dictionary 367 (6th ed. 1990).

ATTACHMENT IS AVAILABLE UPON REQUEST

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