Department of the Treasury
Office of Thrift Supervision

Transmittal

April 4 , 1997 Number: 169

This rescission does not change the applicability of the conveyed document. To determine the applicability of the conveyed document, refer to the original issuer of the document.

The Office of Thrift Supervision (OTS), has issued a revised rule concerning federally chartered thrift institutions use of the expanded credit card and small business lending flexibility afforded by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

EGRPRA directed OTS to define key terms in the legislation. After passage of the law on Sept. 30, 1996, OTS moved quickly to put an interim rule in place on Nov. 27, 1996. After reviewing public comments, OTS has made some modifications in the final regulation published today.

The definition of "credit card" has been changed. The final rule uses the definition in the Federal Reserve Board's Truth in Lending Regulation (Regulation Z).

A companion definition of "credit card account" includes credit card debt consolidation loans and securities backed by credit card accounts and receivables. That definition did not change from the interim rule. The rule also confirms that federal thrifts may engage in credit card lending without a percentage of assets investment limitation. OTS said, however, that it reserves the right to establish investment limits on a case-by-case basis if there is a safety and soundness concern.

The Act allows federal thrifts to expand their commercial lending authority from 10 to 20 percent of assets so long as amounts over 10 percent are solely for small business loans. OTS defines "small business" as it is defined in the regulations of the Small Business Administration. In addition, OTS added a "safe harbor" alternative by saying any business loan of $1 million or less is generally deemed a small business loan so long as the total amount of business loans to one borrower does not exceed $1 million.

Thrifts may count education loans, small business loans, credit card loans and credit card account loans (such as loans to consolidate credit card debt) without restriction in meeting their Qualified Thrift Lender (QTL) test.

OTS also removed its QTL regulations because they simply reiterate provisions in the Home Owners' Loan Act. The removal is part of OTS' program to streamline its regulations and remove duplicative requirements.

In addition, OTS has amended its acquisition of control and holding company regulations to conform to changes made by the new legislation. OTS no longer examines bank holding companies with thrift subsidiaries.

Finally, the rule permits savings associations, savings and loan holding companies, and their affiliates to offer discounts to customers who maintain a combined minimum balance in certain deposit and nondeposit accounts. This regulatory exception reflects OTS' new authority under the anti-tying statute to make exceptions that conform to exceptions granted by the Federal Reserve Board to banks.

The final rule was published in the April 3, 1997, edition of the *Federal Register*, Vol. 62, No. 64, pp. 15819–15825, and was effective on the date of publication.

For further information contact:
William J. Magrini (202) 906-5744
Ellen Sazzman (202) 906-7133

Nicolas P. Retsinas
Director
Office of Thrift Supervision

Attachment

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: April 3, 1997.

FOR FURTHER INFORMATION CONTACT: William J. Magrini, Senior Project Manager, (202) 906-5744, Supervision Policy; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906-7133, or Karen Osterloh, Assistant Chief Counsel, (202) 906-6639, Regulations and Legislation Division, Chief Counsel's Office. For information about holding company issues, contact Kevin A. Corcoran, Assistant Chief Counsel, (202) 906-6962, Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On September 30, 1996, Congress enacted the EGRPRA [1] 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 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

[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).

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 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.

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 of credit through, a credit card. The term includes loans made to consolidate credit card debt, including credit card debt held by other lenders, and participation certificates, securities and similar instruments secured by credit card receivables.

Two commenters supported including investments in loan pools that issue securities backed by credit card loans in the definition. These commenters noted that HOLA specifies that "any reference to a loan [herein] * * * includes an interest in such loan * * *"[10] and, thus, implicitly includes securities backed by credit card accounts and receivables. One commenter argued that the inclusion of securities backed by credit card loans is beyond congressional intent because such debt instruments are essentially securities rather than loans.

OTS and its predecessor agency have long authorized federal savings associations to make a loan secured by an assignment of loans to the extent that the thrift may make or purchase the underlying loans.[11] Thus, the final rule continues to provide that loans made through credit cards and credit card accounts encompass investments in loan pools that issue securities backed by credit card loans.

Two commenters agreed with OTS's inclusion of credit card debt consolidation loans in the definition of "credit card account." These commenters argued that such loans are, in economic substance, credit card loans. One commenter requested OTS to clarify that consolidation loans include other consumer debt such as personal or automobile loans. Another commenter argued against the inclusion of credit card debt consolidation loans, asserting that credit card debt consolidation loans, in essence, are consumer installment loans that may include non-credit card debt.

OTS believes that, in enacting EGRPRA, Congress intended to give thrifts the flexibility for innovation with respect to the terms and conditions of particular credit card products. Accordingly, OTS believes that a broad definition of credit card account within the limits of safety and soundness is consistent with congressional intent of EGRPRA and HOLA. Additionally, OTS does not consider loans that are used to consolidate other consumer debt such as personal or automobile loans to be credit card debt consolidation loans and would object to a thrift's treatment of loans consolidating both credit card and non-credit card related debt as a credit card account loan. Accordingly, the definition of credit card account is unchanged in the final rule.

OTS reiterates that § 560.30 of OTS's regulations, which implements the statutory credit card authority, permits

[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).

[7] *See* 12 U.S.C. 1467a(m).

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

[9] Black's Law Dictionary 357 (6th ed. 1990).

[10] 12 U.S.C. 1464(c)(6)(B).

[11] 12 CFR 560.31(r), as added 61 FR 50951, 50974 (September 30, 1996).

federal thrifts to engage in the full range of credit card operations authorized by HOLA. Under this regulation, however, OTS reserves the right to establish investment limits on a case-by-case basis if an institution's concentration in credit-card-related loans presents a safety and soundness concern.[12] As with any expansion of a line of business, institutions that expand their credit card lending pursuant to today's rule must do so in a safe and sound manner. Institutions planning any significant increase in these types of loans should prepare thorough business plans, acquire the necessary personnel and expertise, and establish adequate systems to identify and control risks associated with these products. OTS will monitor these lending activities, utilizing off-site surveillance and the on-site examination process.

Section 560.3—Definitions of Small Business and Small Business Loans

Section 2303(g) of EGRPRA requires the OTS Director to issue regulations defining "small business" for the purposes of the newly modified QTL test, which permits savings association to count small business loans as QTI without restriction under section 10(m) of the HOLA. Section 2303(c) of EGRPRA also directs the OTS Director to define "small business loans" in connection with the newly amended section 5(c) of the HOLA, which expands federal thrifts' commercial lending authority from 10% to 20% of assets, provided the amount in excess of 10% of assets is used solely for small business loans.[13]

To promote a harmonious interpretation of the statute, the interim final regulation defined "small business" and "small business loan" once for purposes of both HOLA provisions. OTS tied these regulatory definitions to the eligibility criteria established by the Small Business Administration (SBA) under section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as implemented by SBA's regulations at 13 CFR Part 121. OTS specifically solicited comment whether these SBA standards were the most appropriate basis for the definitions of small business or small business loans under the HOLA. The OTS also solicited comment on whether the agency should, for the sake of simplicity, include in its definition a *de minimis* safe harbor based on annual sales or some other criteria.[14]

Of the seven commenters addressing the small business definitions, four supported the use of SBA's regulatory definitions (either alone or in combination with a *de minimis* safe harbor). These commenters indicated that most lenders and small businesses are familiar with SBA's size eligibility standards, and asserted that the use of SBA's standards would promote regulatory uniformity among the agencies and would reduce regulatory compliance burdens.

Three other commenters contended that thrifts are unfamiliar with SBA's size eligibility standards. These commenters also asserted that the SBA definitions are too complex to apply in day-to-day commercial lending decisions since the SBA's criteria require knowledge of the borrower's precise line of business, as categorized and subcategorized by SBA's regulations. For some businesses, SBA's regulations rely on a firm's number of employees. For other businesses, the SBA definitions are based on the company's asset size or annual receipts. These commenters contended that the application of SBA definitions would require thrifts to gather additional data unrelated to lending decisions, and to make time-consuming determinations of SBA industrial classifications. They concluded that the use of the SBA definitions would impose additional burdens on thrifts' commercial lending activities, and would limit thrifts' incentive to pursue small business lending, contrary to the spirit of EGRPRA.

Six of the seven commenters suggested that OTS adopt a safe harbor in place of or as an alternative to the SBA definitions. These commenters reasoned that a safe harbor threshold would provide additional flexibility in qualifying businesses as eligible for small business loan categorization. The commenters suggested a variety of safe harbor standards, expressed in terms of annual receipts, number of employees, and/or loan amount of a business borrower.

One commenter noted that savings associations are required to report the aggregate number of loans made to businesses with gross annual revenues of $1 million or less pursuant to the OTS's Community Reinvestment Act (CRA) regulations.[15] This commenter also asserted that FRB Regulation B,[16] which implements the Women's Business Ownership Act of 1988, also uses the $1 million annual receipts standard to determine whether a business constitutes a small business. For consistency, the commenter suggested that OTS adopt the same standard. A second commenter, a bank trade association, did not support the safe harbor, but also recommended that if OTS decided to establish a threshold, it should use the $1 million sales standard to be consistent with the CRA and FRB regulations.

A third commenter preferred a safe harbor of $20 million in annual sales. This commenter represented that this amount was within the range of dollar amounts that SBA currently uses in its definitions. The commenter also observed that small businesses with $20 million or less in annual sales typically employed fewer employees and borrowed smaller amounts.

Two commenters suggested that OTS adopt a safe harbor based on annual receipts *or* the number of employees of a business. In other words, if a business has $5 million or less in annual receipts or 500 or fewer employees, it should automatically be deemed a small business regardless of its line of business. These commenters indicated that these thresholds were predominant among the myriad business types included in SBA regulations.

Finally, one commenter suggested that OTS define small business loans as business loans of $1 million or less that are made to borrowers that do not have more than 1,000 employees at the time such loans were made. This commenter explained that large and medium sized businesses are unlikely to negotiate

[12] 12 CFR 560.30, n. 5. 61 FR 50951, 50973 (September 30, 1996).

[13] Federal thrifts have long been authorized to make loans secured by business or agricultural real estate in amounts up to 400% of capital, 12 U.S.C. 1464(c)(2)(B). Prior to EGRPRA, federal thrifts could only make additional secured and unsecured loans to businesses and farms in amounts up to 10% of total assets. 12 U.S.C. 1464(c)(2)(A).

[14] The SBA Reauthorization Act of 1994, 15 U.S.C. 632(a)(2)(C), provides that unless specifically authorized by statute, no federal agency may prescribe a size standard for categorizing a business concern as a small business unless such size standard is made subject to public notice and comment, makes certain size determinations, and is approved by the SBA Administrator. OTS solicited comment regarding whether EGRPRA § 2303(g) constitutes a specific authorization within the meaning of 15 U.S.C. 632(a)(2)(C). Commenters addressing this issue believed that EGRPRA gave OTS authorization to define "small business" for purposes of the HOLA. Section 2303(g) of EGRPRA requires the Director to "issue such regulations as may be necessary to define the term 'small business'" for the purposes of the QTL requirements at section 10(m) of the HOLA. Similarly, under section 5(c)(2)(A) of the HOLA, as amended by section 2303(c) of EGRPRA, savings associations are authorized to invest in "small business loans, as that term is defined by the Director." OTS believes that these statutes constitute specific authorizations to define "small business" within the meaning of 15 U.S.C. 632(a)(2)(C).

[15] 12 CFR 563e.42(b)(1)(iv). Small business loans for purposes of the CRA regulations, however, are defined by reference to the Thrift Financial Report, which is based on the amount of the loan. *See* 12 CFR 563e.12(t).

[16] 12 CFR 202.9(a)(3).

loans of $1 million or less and described the 1,000-employee level as the most representative level of employment in SBA regulations.

After reviewing these comments, OTS has determined to adopt alternative standards for determining when an extension of credit qualifies as a "small business loan" for purposes of thrifts' small business lending authority and the QTL test. OTS believes that this alternative approach will afford thrifts maximum flexibility to participate in small business lending activities consistent with safety and soundness.

First, OTS will continue to tie its definition of "small business" to the eligibility criteria established by SBA and implemented by SBA's regulations at 13 CFR Part 121. A loan to a business qualifying as a "small business" under SBA's regulations will qualify as a "small business loan" for purposes of HOLA § 5(c) lending authority and as a "loan to a small business" for purposes of the QTL test at HOLA § 10(m). For lenders and small businesses familiar with SBA's size eligibility standards, this alternative will provide a well-established mechanism for thrifts to expand their small business lending. By relying on SBA's definition, OTS also will promote regulatory uniformity among the agencies and will lessen the regulatory compliance burden on the small business community.

As an alternative mechanism, OTS is adopting a safe harbor threshold based on loan amount. Under the final rule, a loan of $1 million or less will generally be deemed a small business loan (or a loan to a small business) for purposes of thrifts' small business lending authority and the QTL test. This safe harbor provides thrifts with a simple, easy to apply, mechanism for qualifying loans as small business loans. This standard should enhance small business lending without adding an unnecessary layer of complexity to day-to-day commercial lending.

OTS believes that a threshold loan amount would be an appropriate safe harbor. OTS already uses a $1 million loan amount to define small business loan for purposes of its CRA regulations.[17] OTS also relies on a $1 million loan threshold for purposes of reporting small business loans to Congress pursuant to requirements of the Federal Deposit Insurance Corporation Improvement Act (FDICIA).[18] OTS's Thrift Financial Report (TFR) currently requires thrifts to annually report "Loans to Small Businesses and Small Farms" described in the TFR instructions as business loans in the amount of $1 million or less.[19] Furthermore, as noted by at least one commenter, large and medium sized businesses are unlikely to negotiate loans of $1 million or less. Indeed, a recently issued FRB report states that "[s]urvey data indicates a high correlation between loan size and borrower size, and most small loans likely are to small businesses."[20]

Accordingly, the final rule defines small business loans and loans to small businesses, in part, by cross-reference to the TFR instructions. The use of these loan thresholds is consistent with OTS regulatory and reporting requirements and, additionally, does not pose any threat to safety and soundness.[21]

The final rule defines small business loans and loans to small businesses to include a loan (including a group of loans to one borrower) that meets the original amount restrictions and other criteria for loans to small businesses and small farms under the TFR. Savings associations must combine and report multiple loans to one borrower on an aggregate basis, rather than as separate loans in determining whether the loans fall within the threshold. Accordingly, multiple loans made by a savings association to the same borrower would not qualify as small business loans or loans to small businesses, if the aggregated loans would exceed the TFR threshold amounts.

OTS determined not to base the safe harbor threshold on annual receipts or sales. Unlike loan amount, which information is readily available to thrifts, the concept of annual receipts or sales may require some careful and potentially complex determinations with regard to the amount and timing of income.[22] OTS also determined not to base the safe harbor threshold on employee level. Unlike loan amount, thrifts do not necessarily obtain data regarding employee level as part of the typical loan underwriting process. Nor is this information readily available to thrifts. Employee levels are also subject to greater fluctuation and more difficult to substantiate than loan amount.

OTS believes that the alternative mechanisms for qualifying borrowers for small business loans will provide thrifts with the flexibility needed to pursue small business lending. This approach should also increase available credit to small businesses by creating incentives for thrifts to expand small business lending in a safe and sound manner.

Sections 563.50, 563.51, 563.52—Revisions to the QTL Test

Section 2303 (e) and (g) of EGRPRA substantially amended the QTL test. As a result of these statutory reforms, savings associations can now engage in substantial small business, agricultural, credit card, educational, and other consumer lending and remain in QTL compliance.[23]

The interim final rule did not codify the statutory amendments in OTS regulations. Instead, OTS removed all QTL provisions from its regulations and chose to rely directly on section 10(m) of the HOLA to govern this area. OTS believed that HOLA's detailed QTL requirements, combined with relevant handbook guidance and the new regulatory definitions discussed above, provide adequate direction to the thrift industry and OTS examination staff with respect to QTL compliance. This approach is consistent with OTS's effort to streamline its regulations and remove duplicative requirements pursuant to section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA).[24]

No commenter addressed this issue. Accordingly, OTS is adopting its final rule without change.

Section 563.36—Tying Restrictions

Section 5(q) of the HOLA prohibits a savings association from, *inter alia*, varying the price charged for a product or service (the tying product) based on whether the customer obtains an additional product or service (the tied product) offered by the association or its service corporation or affiliate, unless the additional product or service is a loan, discount, deposit or trust service ("traditional bank products"). The Bank Holding Company Act Amendments of 1970 (BHCA Amendments) contain a similar anti-tying provision applicable

[17] 12 CFR 563e.12(t). The CRA regulations of the other federal banking agencies contain the same definition.

[18] FDICIA § 122, 12 USC 1817 note, requires the federal banking agencies to collect annually from insured institutions information on small business and small farm lending as the agencies may need to assess the availability of credit to these sectors of the economy. The Bank Call Report contains the same $1 million loan threshold for bank reporting purposes.

[19] Pursuant to TFR instructions, loans to small farms are considered to be farm loans with "original amounts" of $500,000 or less.

[20] "Information on Depository Credit for Small Businesses and Small Farms" (October 1996) p. 1. FDICIA § 477, 12 USC 251, requires the FRB to collect and publish annually information on the availability of credit to small businesses and small farms.

[21] OTS may reevaluate this threshold after thrifts have had some experience with its application.

[22] *See* 13 CFR 121.104, which defines "annual receipts" for SBA purposes.

[23] For a more complete discussion of EGRPRA's amendments to the QTL test as well as the federal thrifts' branching authority, refer to the preamble to the interim final rule, 61 FR 60179–60180.

[24] 12 U.S.C. 4803.

to banks and authorizes the FRB to grant exemptions by regulation or order from such provisions.[25] Prior to EGRPRA, the HOLA did not grant exemptive authority to OTS.

Section 2216 of EGRPRA amended section 5(q) of the HOLA to authorize the OTS Director to issue regulations or orders permitting exceptions to the anti-tying prohibitions. These exceptions must not be contrary to the purposes of section 5(q) of the HOLA, and must conform to exceptions granted by the FRB to banks under the BCHA Amendments.

When the interim rule was issued, the FRB had promulgated four regulatory exceptions. For the reasons discussed in the interim rule, the OTS determined that there was no need to issue regulatory exceptions comparable to three of these exceptions.[26] These included FRB exceptions permitting: (1) a bank holding company, bank, or nonbank subsidiary to vary the consideration charged for a traditional bank product on the condition or requirement that a customer also obtain a traditional bank product from an affiliate;[27] (2) a bank holding company, bank or nonbank subsidiary to vary the consideration charged for securities brokerage services on the condition or requirement that a customer also obtain a traditional bank product from that bank holding company or bank or nonbank subsidiary, or from any affiliate of such company;[28] and (3) a bank holding company or nonbank subsidiary to vary the consideration for any extension of credit, lease or sale of property of any kind, or service, on the condition or requirement that the customer obtain some additional credit, property or service from itself or a nonbank affiliate.[29] Four commenters addressed the three FRB exemptions. All agreed that comparable OTS exceptions were unnecessary. The final rule is unchanged on this point.

The fourth FRB exception permits banks to vary the consideration for any product or package of products based on a customer's maintenance of a combined minimum balance in certain products specified by the bank varying the consideration (defined as "eligible products"), if (i) that bank offers deposits, and all such deposits are eligible products, and (ii) balances in deposits count at least as much as non-deposit products toward the minimum balance.[30]

This regulatory exception permits banks to offer discounts to customers maintaining a combined minimum balance in deposit and non-deposit accounts, including brokerage and mutual fund accounts. As such, this regulatory "safe harbor" authorizes tying arrangements that, absent an exception, would be prohibited for savings associations, because the tied products would not necessarily be traditional bank products. In addition, savings and loan holding companies or affiliates are prohibited from offering such arrangements where one of the products involved is a savings association product (other than a traditional bank product).

The interim final rule included a comparable "safe harbor" exception for savings associations, savings and loan holding companies, and affiliates.[31] OTS concluded that this exception was not contrary to the purposes of section 5(q) of the HOLA because it did not present the anti-competitive effects that the HOLA's anti-tying provisions were intended to eliminate. Rather, the safe harbor enabled savings associations and their affiliates to offer a greater variety of banking products and services to their customers, and could enhance competition in the market place. This exception also ensured parity between savings associations and banks by enabling these institutions to offer a comparable range of products and services and, thus, enhanced competition among financial institutions consistent with the purposes of section 5(q) and the BHCA Amendments.

The OTS anti-tying exception at 12 CFR 563.36 conforms to the FRB's "safe harbor" for combined balance discounts. This safe harbor permits savings associations and their affiliates to offer discounts to customers maintaining certain combined minimum balance accounts. OTS also indicated that it may permit other exceptions under section 5(q) on a case-by-case basis upon determination that the exception is not contrary to the purposes of section 5(q), conforms to an exception granted by the FRB, and is consistent with safe and sound practices.

Three commenters supported OTS's adoption of this safe harbor exception. These commenters also agreed with OTS's decision to permit other exceptions on a case-by-case basis. Commenters believed that this flexible approach could expand the variety of products offered to customers in a rapidly changing marketplace and would enable thrifts to take full advantage of their holding company structure.

OTS's interim final rule did not require that all products offered pursuant to the safe harbor must be separately available for purchase. Although this condition applied to the FRB safe harbor,[32] the FRB had proposed to eliminate the condition in a proposed rule issued September 6, 1996.[33] OTS indicated it would reexamine this issue if the FRB's final rule did not eliminate the condition.

At least one commenter, a bank trade association, criticized the safe harbor for combined minimum balance accounts because it did not require that all products be offered separately for sale, contrary to the FRB safe harbor. Another commenter contended that there was no need for all items in a combined balance to be separately offered because there may be a rational economic need to offer certain products and services in a package form and that not offering each product separately does not necessarily raise anticompetitive issues.

In its final rule issued on February 28, 1997, the FRB in fact eliminated the separate availability requirement for combined balance discounts.[34] Accordingly the OTS is adopting the antitying safe harbor in its interim rule without change.

In the interim rule, OTS also solicited comment as to whether the agency should adopt regulatory amendments parallel to additional revisions proposed by the FRB. The FRB had proposed to rescind the provision in its regulation that extended the tying prohibitions to bank holding companies and their nonbank affiliates,[35] and had proposed that bank holding companies and their nonbank affiliates could engage in tying practices other than discounting, such as conditioning the availability of a

[25] 12 U.S.C. 1972.

[26] For a more detailed discussion of the three FRB exemptions and the OTS decision not to promulgate similar regulatory exemptions, *see* 61 FR 60181–82.

[27] 12 CFR 225.7(b)(1) (1996).

[28] 12 CFR 225.7(b)(2) (1996).

[29] 12 CFR 225.7(b)(3) (1996).

[30] 12 CFR 225.7(b)(4) (1996).

[31] The exception authority granted to OTS by amended HOLA § 5(q) is indirectly applicable to savings and loan holding companies and affiliates, because HOLA § 10(n) provides that, in connection with transactions involving the products or services of a savings and loan holding company or affiliate and those of an affiliated savings association, § 5(q) shall apply to savings and loan holding companies and their affiliates in the same manner as if they were savings associations.

[32] 12 CFR 225.7(c)(1)(1996).

[33] 61 FR 47242 (September 6, 1996).

[34] 62 FR 9290, 9323 (February 28, 1997).

[35] 12 CFR 225.7(a)(1996). Other aspects of the FRB's new rule need not be discussed here because they concern practices not prohibited for savings associations and their affiliates.

product on the purchase of another product.[36]

OTS requested comment on whether savings and loan holding companies and their non-bank affiliates should also be completely exempted from the tying restrictions. As noted above, the provision of law applying the tying restriction to savings and loan holding companies is statutory, not regulatory (as is the case for bank holding companies). Thus, OTS also requested comment on whether it would have legal authority to grant a complete exemption from section 10(n) of the HOLA.

Several commenters addressed this issue. Commenters generally agreed that OTS does not have authority to eliminate entirely restrictions on tying by savings and loan holding companies, because OTS does not have authority to grant exemptions from section 10(n) of the HOLA. However, none of the commenters disputed that OTS has authority to grant exceptions to savings associations pursuant to OTS's authority under section 5(q) of the HOLA to savings and loan holding companies.

The FRB, in its final rule, adopted its proposal to rescind that agency's regulatory extension of the tying prohibitions to bank holding companies and their nonbank affiliates.[37] Pursuant to section 10(n) of the HOLA, OTS does not presently appear to have the authority to except savings and loan holding companies and their affiliates entirely from all tying restrictions. Because OTS cannot completely except savings associations and their affiliates from tying prohibitions, OTS cannot adopt an exception precisely conforming to the FRB's elimination of regulatory restrictions on tying by bank holding companies. Nevertheless, the effects of OTS's inability to grant exceptions from section 10(n) are limited for two reasons. First, as previously noted, the section 10(n) restrictions do not apply unless the tying arrangement involves a savings association. Second, the exceptions promulgated under new section 5(q)(6) apply to savings and loan holding companies (and affiliates) as if they were savings associations.

As a final matter, one commenter noted that OTS has published no policies or guidance concerning the tying restrictions applicable to savings associations and their holding companies. This commenter recommended that OTS issue such a policy statement or guidance. This commenter suggested that the guidance should reflect OTS's position that section 5(q) permits the arrangements addressed in the first three FRB exceptions set forth at 12 CFR 225.7, and should contain examples of permissible practices under these exceptions. This commenter also suggested that FRB orders on tying arrangements could be used by thrifts as guidance.

OTS will consider these suggestions, particularly if thrifts indicate a need for such assistance after implementation of this final rule. In light of the differences between anti-tying statutes applicable to savings associations and banks, OTS does not believe it appropriate to adopt automatically orders issued by the FRB.

Sections 574.1, 574.2, 574.3, 575.2, 583.20, 584.2a—Regulation of Holding Companies

Section 2203 of EGRPRA eliminated OTS supervision of holding companies that control both a bank and a thrift, and are registered as a bank holding company with the FRB under the BHCA of 1956.[38] Accordingly, the interim final rule included: (1) revisions to OTS acquisition of control and holding company regulations to conform to EGRPRA's amendments to the Savings and Loan Holding Company Act; (2) an exception to the acquisition of control regulations clarifying that when a person acquires control of a bank holding company and the person is required to file a change of control notice with the FRB, no change of control notice is required to be filed with OTS; and (3) minor revisions to the Mutual Holding Company regulations to reflect the OTS position that section 2203 of EGRPRA does not affect its authority to regulate mutual holding companies, including mutual holding companies that have acquired a bank.

The one commenter addressing the issue concurred with OTS's implementation of EGRPRA. Accordingly, OTS adopts the described modifications without change.

III. Administrative Procedure Act

OTS has determined that the 30-day delay of effectiveness provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, may be waived in this rulemaking. Section 553(d) of the APA permits waiver of the 30 day delayed effective date requirement for, *inter alia*, good cause or where a rule relieves a restriction. OTS finds that good cause exists because the rule is substantially identical to the interim final rule that has been in effect since November 1996. The rule relieves various lending, investment, and tying restrictions for thrifts and merely conforms OTS regulations to EGRPRA's statutory changes. Accordingly, the final rule will be immediately effective upon publication in the **Federal Register**.

IV. Executive Order 12866

OTS has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

V. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* do not apply. The final rule does not impose any additional burdens or requirements upon small entities and reduces burdens on all savings associations. The regulatory amendments implement statutory changes to the HOLA that relieve various lending, investment, and tying restrictions on thrifts and otherwise conform OTS regulations to EGRPRA.

VI. Unfunded Mandates Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Act of 1995, Pub. L. 104–4, 109 Stat. 48 (1995).

VII. Effective Date

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), 12 U.S.C. 4802, requires that new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements take effect on the first date of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulations should become effective on a day other than the first day of the next quarter. OTS believes that CDRIA does not apply to this final rule because it imposes no new burden on thrifts. For these reasons, OTS has determined that an immediate effective date is appropriate for this final rule.

List of Subjects 12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping

[36] The FRB noted that any tying arrangements permitted under these changes would be subject to the general provisions of the antitrust laws.

[37] 62 FR at 9312–9315, 9323.

[38] 12 U.S.C. 1841 *et seq.*

requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V of the Code of Federal Regulations by adopting as final the interim rule published at 61 FR 60179 (November 27, 1996), with the following changes.

PART 560—LENDING AND INVESTMENT

1. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

2. Section 560.3 is amended by revising the introductory text and the definitions for *credit card* and *small business loans* and *loans to small businesses* to read as follows:

§ 560.3 Definitions.

For purposes of this part and any determination under 12 U.S.C. 1467a(m):

* * * * *

Credit card is any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit.

* * * * *

Small business loans and *loans to small businesses* include any loan to a small business as defined in this section; or a loan (including a group of loans to one borrower) that meets the original amount restrictions and other criteria for "loans to small businesses and small farms" as defined in the instructions for preparation of the Thrift Financial Report.

Dated: March 24, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–8011 Filed 4–2–97; 8:45 am]

BILLING CODE 6720–01–P

(lat. 44°15'10" N, long. 121 °18'13" W)

That airspace extending upward from the surface within 1.4 miles each side of the Deschutes VORTAC 269° and 089° radials extending from the 5.1-mile radius of Roberts Field to .9 mile west of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM OR E2 Redmond, OR [Revised]

Redmond, Roberts Field, OR
(lat. 44°15'14" N, long. 121°09'00" W)
Deschutes VORTAC
(lat. 44°15'10" N, long. 121°18'13" W)

That airspace within a 5.1-mile radius of Roberts Field, and within 1.4 miles each side of the Deschutes VORTAC 269° and 089° radials extending from the 5.1-mile radius of the airport to .9 mile west of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on March 21, 1997.

Richard E. Prang,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97-8501 Filed 4-2-97; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 96-AWP-23]

Establishment of Class E Airspace; Atwater, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Atwater, CA. The development of a VHF Omnidirectional Range (VOR) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 at Castle Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace to accommodate for the VOR SIAP to RWY 13 and other Instrument Flights Rules (IFR) operations at Castle Airport, Atwater, CA.

EFFECTIVE DATE: 0901 UTC May 22, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6556.

SUPPLEMENTARY INFORMATION:

History

On January 31, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Atwater, CA (62 FR 4668). This action will provide adequate controlled airspace to accommodate a VOR SIAP to RWY 13 and other IFR operations to Castle Airport, Atwater, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Atwater, CA. The development of a GPS SIAP to RWY 13 has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the VOR RWY 13 SIAP and other IFR operations at Castle Airport, Atwater, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Atwater, CA [New]

Castle Airport, CA
(Lat. 37°22'04" N, long. 120°33'30" W).

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Castle Airport and within 7 miles each side of the 310° bearing from the Castle Airport, extending from the Castle Airport to 23 miles northwest of the airport, excluding the Merced, CA, Modesto, CA, and Oakdale, CA Class E airspace areas.

* * * * *

Issued in Los Angeles, California, on March 4, 1997.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97-8497 Filed 4-2-97; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 96-AWP-35]

Establishment of Class E Airspace; Fallbrook, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Fallbrook, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 18 to Fallbrook Community Airpark has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Fallbrook Community Airpark, Fallbrook, CA.