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DEPARTMENT OF THE TREASURY

Office Of Thrift Supervision

12 CFR Parts 560, 563, 574, 575, 583, 584

[No. 96-113]

RIN 1550-AB05

**Amendments Implementing Economic Growth and Regulatory Paperwork
Reduction Act**

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim Final Rule.

SUMMARY: The Office of Thrift Supervision (OTS or Office) is issuing this interim final rule to implement 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 antitying exceptions to savings associations that conform to those 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 interim final rule implements these statutory changes. OTS is making today's rule effective immediately to enable thrifts to

take advantage of the expanded flexibility and burden reduction afforded by EGRPRA. However, OTS will be accepting comment on any issues raised by these newly implemented regulations for the next sixty days.

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

Comments must be received by [Insert date 60 days from date of publication in the Federal Register.]

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552. Attention Docket No. 96-113. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments will be available for inspection at 1700 G Street, NW., from 9:00 P.M. until 4:00 P.M. on business days.

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 Deborah Dakin, Assistant Chief Counsel, (202) 906-6445, Regulations and Legislation Division, Chief

Counsel's Office. For information about holding company or branching 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

Summary of Relevant Statutory Changes

Credit card and education lending: Section 2303(b) of the EGRPRA¹ amended § 5 of the Home Owners' Loan Act (HOLA),² to confirm and clarify that federal savings associations may engage in credit card lending without a percentage of assets investment limitation, as OTS has long maintained. Section 2303(b) also amended HOLA § 5 to permit federal thrifts to make education loans without investment restriction. Previously, education loans were limited to 5% of a thrift's total assets.³

Commercial lending: Section 2303(c) of EGRPRA also expanded the small business and agricultural lending authority of federal thrifts. Federal thrifts

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

² 12 U.S.C. 1464(c)(1).

³ 12 U.S.C. 1464(c)(3)(A). Federal thrifts continue to be authorized to make other consumer loans in an amount up to 35% of total assets. Credit card loans and education loans do not count against this 35% cap. 12 U.S.C. 1464(c)(2)(D).

have long been authorized to make loans secured by business or agricultural real estate in amounts up to 400% of capital,⁴ and to make additional secured and unsecured loans to businesses and farms in amounts up to 10% of total assets.⁵ EGRPRA left the 400% non-residential real estate lending cap intact, but increased the 10% of assets limit to 20% of assets, provided that amounts in excess of 10% of assets may only be used for “small business loans” as that term is defined by the Director of OTS.

Qualified Thrift Lender test: Section 2303(e) and (g) of EGRPRA amended the QTL test in section 10(m) of the HOLA⁶ to provide that investments in educational, small business, credit card, and credit card account loans are includable without limit for purposes of satisfying the QTL test. Under the QTL test, savings associations must hold “qualified thrift investments” equal to at least 65% of their “portfolio assets” as defined by statute.⁷ Before EGRPRA, “qualified thrift investments” (QTI) were defined in a manner that required every savings association to hold a substantial percentage of its assets in mortgage loans and mortgage-related securities. Section 2303 of EGRPRA expanded the definition of QTI. Small business loans, credit card loans, and

⁴ 12 U.S.C. 1464(c)(2)(B).

⁵ 12 U.S.C. 1464(c)(2)(A).

⁶ 12 U.S.C. 1467a(m).

⁷ Id., and 12 CFR 563.50 - 563.52.

education loans now count as QTI without restriction.⁸ Consumer loans (other than credit cards and education loans) now count as QTI in an amount up to 20% of portfolio assets.⁹

Section 2303(e) of EGRPRA also amended the QTL test to give savings associations the option of substituting compliance with the tax code “domestic building and loan association” (DBLA) test for compliance with the amended QTL requirements. (The DBLA test appears to be much more stringent than the amended QTL test.)

As a result of the foregoing statutory reforms, savings associations will now be able to engage in substantial small business, agricultural, credit card, educational, and other consumer lending and remain in QTL compliance. In order to implement these changes, section 2303 of EGRPRA requires the Director of OTS to issue regulations defining the terms “credit card” and “small business.”

Anti-tying exceptions: Section 2216 of EGRPRA amends HOLA § 5(q)¹⁰

⁸ Previously, small business loans counted as QTI only if originated in areas where the credit needs of low and moderate income persons were not being met. As discussed above, HOLA § 5 now imposes a 20%-of-assets cap on small business loans. HOLA § 5 does not limit a federal savings association's credit card and education loans.

⁹ The previous limit was 10% of portfolio assets and included credit card and educational loans. When computing the new 20% cap, consumer loans must still be aggregated with certain other categories of loans and investments that are also subject to the 20% cap, *e.g.*, loans for the purchase of community service facilities, home loans sold into the secondary market, Fannie Mae and Freddie Mac stock, and so forth. 12 U.S.C. 1467a(m)(4)(C)(iii) and (iv).

¹⁰ 12 U.S.C. 1464(q).

to authorize the OTS Director to issue regulations or orders permitting exceptions to the antitying prohibitions established in § 5(q) so long as such exceptions are consistent with the purposes of § 5(q) and conform to exceptions granted by the FRB to banks pursuant to section 106(b) of the Bank Holding Company Act (BHCA) Amendments of 1970.¹¹ HOLA § 5(q) prohibits, inter alia, a savings association from 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 BHCA contains a similar anti-tying provision applicable to banks and authorizes the FRB to grant exemptions by regulation or order for commercial banks and their affiliates. The FRB has issued various regulatory exceptions in recent years. Prior to EGRPRA, the HOLA did not grant similar exemptive authority to the OTS.

Bank holding companies: Section 2203 of EGRPRA amends HOLA § 10¹² to eliminate OTS supervision of holding companies that control both a bank and a savings association and are registered as bank holding companies

¹¹ 12 U.S.C. 1972.

¹² 12 U.S.C. 1467a.

with the FRB under the BHCA of 1956.¹³ Previously bank holding companies that controlled a savings association were supervised by the FRB under the BHCA and also by the OTS under the Savings and Loan Holding Company Act. Dual holding companies are no longer required to file periodic holding company reports with OTS and are no longer subject to OTS examination. OTS, however, will continue to regulate the subsidiary savings association, and the FRB must consult with the OTS on certain specified matters including a bank holding company's acquisition of a savings association, the scope of examination of a bank holding company that controls a savings association, and the coordination of some enforcement actions.

Branching: Section 2303(f) of EGRPRA amended HOLA § 5(r)(1)¹⁴ to give federal thrifts greater flexibility in branching by allowing federal associations that are not excepted from the requirements of § 5(r)(1) pursuant to § 5(r)(2) to meet either the Internal Revenue Service's (IRS's) domestic building and loan association (DBLA) test¹⁵ or the amended QTL test in order to establish, retain, or operate out-of-state branches. Previously, non-excepted federal savings associations were required to qualify under the IRS DBLA test or at least meet the asset composition requirement of that test in order to

¹³ 12 U.S.C. 1841 et seq.

¹⁴ 12 U.S.C. 1464(r).

¹⁵ 26 U.S.C. 7701(a)(19).

operate out-of-state branches. Section 2303(f) also clarifies the scope of the exemption from the foregoing requirements, set forth at § 5(r)(2)(C), when the law of the state where the branch is located, or is to be located, would permit establishment of the branch if the association was either a savings association or savings bank chartered by the state in which its home office is located. EGRPRA's branching amendments are self-implementing and do not require any regulatory revisions.

II. Description of Final Interim Rule

Section 560.3 Definitions of credit card, credit card account.¹⁶

Section 2303 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 which permits credit card loans to be counted as QTI without restriction pursuant to HOLA § 10(m). Defining "credit card" and "credit card account" will also give thrifts guidance in exercising their authority to "invest in, sell, or otherwise deal in . . . loans made through credit cards or

¹⁶ OTS's lending and investment regulations contain a table that provides an overview of HOLA's investment authorities. 61 FR 50951, 50973 (September 30, 1996) (to be codified as 12 CFR 560.30). OTS plans to supplement the table in its subsidiaries and equity investment rulemaking, which will be published before the end of the year. The table also needs to be updated to reflect EGRPRA's amendments to the investment limits of HOLA. Rather than amending and restating the table twice in several weeks, OTS will restate the table once in the subsidiaries rulemaking. At that time, the EGRPRA amendments will be reflected in the table. The changes being made today, however, are sufficient to authorize savings associations to begin using the EGRPRA authorities. Savings associations need not await restatement of the table in Part 560.

ATTACHMENT IS AVAILABLE UPON REQUEST

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