Department of the Treasury
Office of Thrift Supervision

RESCINDED

# Transmittal

December 2, 1996 Number: 163



With the a[illegible] tered thrift institutions may take advantage immediately of the expanded credit card and small business lending flexibility afforded by the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

The new law confirms and clarifies that thrifts may engage in credit card lending without a percentage of assets investment limitation. It also expands federal thrifts' commercial lending authority from 10 to 20 percent of assets so long as amounts over 10 percent are solely for small business loans. To implement the law, Congress requires OTS to define "small business" and "credit card." OTS will use the same definitions of these terms for both lending and qualified thrift lender (QTL) purposes.

For "credit card," the Office of Thrift Supervision (OTS) based its definition on the plain meaning of the term as defined in sources such as Black's Law Dictionary. OTS' definition also includes credit card debt consolidation loans and securities backed by credit-card accounts and receivables. OTS reserves the right to establish investment limits on a case-by-case basis if there is a safety and soundness concern.

For "small business" and "small business loan," the OTS rule ties its definition to those found in the regulations of the Small Business Administration. Thrifts may now count both small business loans and credit cards in meeting their QTL test without restriction. Education loans also count without restriction.

[illegible] trol and holding company regulations to conform to changes made by the new legislation. OTS will no longer examine dual bank/thrift holding companies.

Finally, the rule permits savings associations and their affiliates to offer discounts to customers who maintain a combined minimum balance in certain 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.

Although the regulation is effective immediately, OTS invites comments for the next 60 days. The agency specifically asked for comment on whether to include a simple, minimum qualification that a loan to any business with annual sales of less than a specified amount is deemed a small business loan.

The interim final rule was published in the November 27, 1996, edition of the *Federal Register*, Vol. 61, No. 230, pp. 60179–60185. Written comments must be received on or before January 27, 1997, and should be addressed to: Manager, Dissemination Branch, Records Management and Information Policy Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

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Attachment

**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.

**DATES:** This interim rule is effective on November 27, 1996. Comments must be received by January 27, 1997.

**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 A.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 EGRPRA [1] amended section 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 section 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 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 HOLA [6] 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

[1] Pub. 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).

[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.

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 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 section 5(q) [10] to authorize the OTS Director to issue regulations or orders permitting exceptions to the antitying prohibitions established in section 5(q) so long as such exceptions are consistent with the purposes of section 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 section 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 section 10 [12] to eliminate OTS supervision of holding companies that control both a bank and a savings association and are registered as bank holding companies 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 section 5(r)(1) [14] to give federal thrifts greater flexibility in branching by allowing federal associations that are not excepted from the requirements of section 5(r)(1) pursuant to section 5(r)(2) to meet either the Internal Revenue Service's (IRS's) domestic building and loan association (DBLA) test [15] 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 operate out-of-state branches. Section 2303(f) also clarifies the scope of the exemption from the foregoing requirements, set forth at section 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 section 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 credit card accounts" pursuant to HOLA section 5(c). As noted above, this provision authorizes federal thrifts to engage in credit card lending without any percentage of assets investment limitation.[17] It is a well settled principle of statutory construction that generally "each part or section [of a statute] should be construed with every other part or section so as to produce a harmonious whole." [18] Accordingly, it is appropriate for OTS to consistently define "credit card" and "credit card account" for both section 5(c) and section 10(m) of the HOLA.

According to Black's Law Dictionary, a "credit card" is "[a]ny card, plate, or other like credit device existing for the purpose of obtaining money, property, labor or services on credit." [19] The regulatory definition of credit card established in today's interim rule is based on this plain language definition. OTS seeks comment on whether a different definition would be more appropriate.

OTS has already received some questions regarding whether securities backed by credit card accounts and products such as credit card debt consolidation loans would fall within

[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 section 5 now imposes a 20%-of-assets cap on small business loans. HOLA section 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).

[11] 12 U.S.C. 1972.

[12] 12 U.S.C. 1467a.

[13] 12 U.S.C. 1841 *et seq.*

[14] 12 U.S.C. 1464(r).

[15] 26 U.S.C. 7701(a)(19).

[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.

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

[18] 2A Sutherland Statutory Construction section 46.05 (5th ed. 1992).

[19] Black's Law Dictionary 367 (6th ed. 1990).

the confines of "loans made through credit cards or credit card accounts." As for securities backed by credit cards, the HOLA itself specifies that "any reference to a loan [herein] * * * includes an interest in such a loan. * * *"[20] Thus, the authorization to invest in "loans made through credit cards" encompasses investments in loan pools that issue securities backed by credit card loans.[21] As for credit card debt consolidation loans, OTS believes that, because these loans are made for the purpose of funding credit card receivables, they are in economic substance "credit card loans." Today's definition of "credit card account" therefore includes credit card debt consolidation loans and securities backed by credit-card accounts and receivables.

We note that § 560.30 of OTS's regulations, which implements the statutory credit card authority, permits federal thrifts to engage in the full range of credit card operations authorized by HOLA, but provides that 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.[22]

Institutions that expand their credit card lending (or their consumer, small business, or agricultural 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, Small Business Loans*

Section 2303(g) of EGRPRA requires the OTS Director to issue regulations defining the term "small business" in order to enable savings associations to apply the newly modified QTL test which permits small business loans to be counted as QTI without restriction pursuant to HOLA section 10(m). Section 2303(c) of EGRPRA also directs the OTS Director to define the term "small business loans" in connection with newly amended HOLA section 5(c) which expands federal thrifts' commercial lending authority from 10% to 20% of assets so long as the amount in excess of 10% of assets is used solely for small business loans. Once again, OTS believes that a consistent definition of small business for application of both sections of the HOLA is appropriate to promote a harmonious interpretation of the statute.

In this interim final regulation, OTS is tying its definitions of small business and small business loans 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. Most lenders and small businesses are already familiar with SBA's size eligibility standards. However, OTS specifically solicits comment as to whether these SBA standards are the most appropriate basis for OTS's definition of small business or small business loans for HOLA purposes. OTS specifically solicits comment on whether it should, for the sake of simplicity, include a *de minimis* safe harbor providing that any loan to a business with annual sales of less than a specified amount will be deemed a small business loan, regardless what line of business the borrower conducts.[23]

*Sections 563.50, 563.51, 563.52 Revisions to the QTL Test.*

As discussed above, section 2303 (e) and (g) of EGRPRA amended the QTL test in a number of ways to give thrifts greater lending flexibility. Investments in educational loans, small business loans, and loans made through credit cards and credit card accounts are includable as QTI without limit. Consumer loans now count as QTI in an amount up to 20% of portfolio assets.

Rather than codifying these amendments in the existing QTL regulations, OTS is removing the QTL provisions from its regulations at 12 CFR 563.50–52 and relying directly on the provisions of HOLA section 10(m) to govern this area, except for the two definitions described above. These definitions will appear at 12 CFR 560.3.

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] The QTL provisions of HOLA section 10(m) are very detailed, and OTS provides additional QTL guidance in its Thrift Activities Handbook (Handbook). OTS believes it is unnecessary to reiterate HOLA's statutory QTL provisions in a regulatory format, because the combination of HOLA's statutory requirements and relevant handbook guidance provide adequate direction to the thrift industry and OTS examination staff with respect to QTL compliance. Thus, the only regulatory provisions that address QTL will be the two definitions described above.

*Section 563.36 Tying Restrictions*

Section 2216 of EGRPRA authorizes the OTS Director to issue regulations or orders permitting exceptions to the anti-tying prohibitions established in HOLA section 5(q) provided that such exceptions are not contrary to the purposes of that section and conform to exceptions granted by the FRB to banks pursuant to section 106(b) of the BHCA Amendments. The FRB, by regulation, has created four exceptions from the anti-tying provisions of the BHCA Amendments.

The first FRB regulatory exception provides that a bank holding company, bank, or nonbank subsidiary thereof, may 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.[25] HOLA section 5(q) excepts this type of activity for savings associations, savings and loan holding companies, and their affiliates.[26] Accordingly, OTS has determined that a regulatory exception for traditional bank products would be duplicative of the HOLA and is unnecessary.

The second FRB regulatory exception provides that a bank holding company, bank or nonbank subsidiary may vary the consideration charged for securities brokerage services on the condition or requirement that a customer also obtain a traditional bank product from that

[20] 12 U.S.C. 1464(c)(6)(B).

[21] *Cf.* 12 CFR 560.31(c).

[22] 12 CFR 560.30, n. 5, 61 FR 50951, 50973 (September 30, 1996).

[23] The SBA Reauthorization Act of 1994, 15 U.S.C. 632(a)(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 solicits comment regarding whether EGRPRA section 2303(g) constitutes a specific authorization within the meaning of 15 U.S.C. 632(a)(C).

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

[25] 12 CFR 225.7(b)(1) (1996).

[26] HOLA section 5(q)(1)(A) explicitly provides that the tying restriction does not apply where the tied product is a traditional bank product of the savings association, a service corporation, or an affiliate. Section 10(n) of HOLA makes that anti-tying exclusion applicable to savings and loan holding companies and affiliates thereof. In contrast, the BHCA Amendments provide an exception in the case of traditional bank products offered by the bank, but do not address traditional bank products offered by bank holding companies or nonbank affiliates. *See*, 12 U.S.C. 1972(1)(B).

bank holding company or bank or nonbank subsidiary, or from any affiliate of such company.[27] Once again, HOLA section 5(q) does not prohibit this type of activity under any circumstances for savings associations, savings and loan holding companies, and their affiliates.[28] Accordingly, OTS has determined that it is unnecessary to adopt this second regulatory exception.

The third FRB regulatory exception relates to tying arrangements that do not involve banks. The exception permits bank holding companies or nonbank subsidiaries 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] This provision is an exception not from any statutory requirement but from the FRB's regulation that generally applies the tying restrictions applicable to banks to bank holding companies and other affiliates. The language applying tying restrictions to savings and loan holding companies and their non-thrift affiliates, which appears in HOLA section 10(n), differs somewhat from the wording of the FRB's tying regulation for bank holding companies and their nonbank affiliates. Section 10(n) of the HOLA applies only when a tying arrangement involves products of a savings and loan holding company or affiliate, *and* those of an affiliated savings association. Accordingly, tying arrangements involving savings and loan holding companies and/or non-thrift affiliates, but not a savings association, are not restricted under HOLA section 10(n). Therefore, OTS has determined that there is no need to adopt a regulatory exception that is comparable to the third FRB exception.

The fourth FRB regulatory exception permits banks, bank holding companies, or nonbank affiliates 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 company varying the consideration (defined as "eligible products'), if (i) that company (if it is a bank) or a bank affiliate of the company 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 fourth FRB 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 are currently prohibited for savings associations, because the tied products would not necessarily be traditional bank products. In addition, savings and loan holding companies or affiliates thereof would be prohibited from offering such arrangements where one of the products involved was a savings association product (other than a traditional bank product).

Having reviewed this fourth FRB exception, OTS has determined that it should promulgate a regulation adopting a comparable "safe harbor" for savings associations, savings and loan holding companies, and affiliates.[31] OTS believes that this exception is not contrary to the purposes of HOLA section 5(q), because it would not present the anti-competitive effects which the HOLA's antitying provisions were intended to eliminate. Rather, this safe harbor would enable savings associations and their affiliates to offer a greater variety of banking products and services to their customers and could potentially enhance competition in the market place. Such an exception would also ensure parity between savings associations and banks, enabling savings associations and banks to offer a comparable range of products and services and further enhance competition among financial institutions consistent with the purposes of HOLA section 5(q) and the BHCA Amendments.

Accordingly OTS is adding a new regulatory antitying exception at 12 CFR 563.36 that 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.[32] In addition to this exception, OTS may permit other exceptions under HOLA section 5(q) on a case-by-case basis upon determination that the exception is not contrary to the purposes of HOLA section 5(q), it conforms to an exception granted by the FRB, and it is consistent with safe and sound practices.

OTS also solicits comment as to whether the agency should adopt regulatory revisions parallel to those proposed, but not yet adopted, by the FRB on September 6, 1996.[33] The FRB proposal would rescind the provision in its current regulations that extends the tying prohibitions to bank holding companies and their nonbank affiliates.[34] As noted above, the FRB already permits bank holding companies and their nonbank affiliates to offer discounts on products conditioned on a customer's purchase of another product, provided none of the tied products are those of a bank affiliate. The FRB proposal would, in effect, rescind this proviso, allowing bank holding companies to tie their discounts to the purchase of bank products, provided no anti-trust violations result. The proposal would also enable bank holding companies and their nonbank affiliates to engage in tying practices other than discounting. For example, the availability of a product could be conditioned on the purchase of another product, again provided no anti-trust violation occurs.

OTS requests 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 requests comment on whether it would have legal authority to grant a complete exemption from HOLA section 10(n).

*Sections 574.1, 574.2, 574.3, 575.2, 583.20, 584.2a Holding Company Regulatory Revisions*

Section 2203 of EGRPRA exempts bank holding companies that control savings associations from HOLA section 10, thereby eliminating OTS supervision of holding companies that control both

[27] 12 CFR 225.7(b)(2) (1996).

[28] As noted in the discussion of the first FRB exception, a tying arrangement is not prohibited under HOLA section 5(q) or 10(n) where the tied product is a traditional bank product. There is no requirement that the tying product be a traditional bank product.

[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 section 5(q) is indirectly applicable to savings and loan holding companies and affiliates, because HOLA section 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, section 5(q) shall apply to savings and loan holding companies and their affiliates in the same manner as if they were a savings association.

[32] The interim final rule does *not* require that all products offered pursuant to the safe harbor must be separately available for purchase. Although this condition currently appears in the FRB safe harbor, 12 CFR 225.7(c)(1)(1996), the FRB has specifically proposed to eliminate this condition. 61 FR at 47264. OTS will reexamine this issue if the FRB's final rule does not eliminate the condition.

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

[34] Other aspects of the FRB's proposal need not be discussed here because they concern practices not prohibited for savings associations and their affiliates.

a bank and a thrift and are registered as a bank holding company with the FRB under the BHCA of 1956. OTS is making technical changes to its acquisition of control and holding company regulations to conform to EGRPRA's amendments to the Savings and Loan Holding Company Act. OTS has added an exception to its acquisition of control regulations to clarify that where 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. In addition, OTS is making minor revisions to the Mutual Holding Company regulations to reflect its position that section 2203 of EGRPRA does not affect OTS's authority to regulate mutual holding companies, including mutual holding companies that have acquired a bank. OTS has reached this conclusion for two reasons. First, although section 2203 of EGRPRA excepts bank holding companies from the definition of "savings and loan holding company" in section 10 of HOLA, section 10(o) of the HOLA, pertaining to mutual holding companies, refers to "mutual holding companies" rather than mutual savings and loan holding companies. Second, OTS is the chartering authority for federal mutual holding companies under section 10(o), and section 10(o) provides for a unique relationship between depositors of the subsidiary association and the mutual holding company.

### III. Administrative Procedure Act

OTS has determined that advance notice and comment ordinarily mandated by the Administrative Procedure Act (APA), 5 U.S.C. 553(b), are not required in this interim final rulemaking. The APA authorizes agencies to waive notice and comment procedures when the agency "for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[35] OTS for good cause finds that notice and comment procedures for this rulemaking are impracticable and contrary to the public interest because they would delay implementation of EGRPRA's expanded lending, investment, and other authorities for thrifts. In addition, advance public notice and comment are unnecessary and contrary to the public interest because the interim rule substantially restates the provisions of the statute or makes technical revisions to OTS regulations and reduces regulatory burden.

OTS also has determined that the 30-day delay of effectiveness provisions of the APA 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 for the same reasons stated above. OTS further finds that the 30-day delayed effective date requirement may be waived because this interim final rule relieves various lending, investment, and tying restrictions for thrifts and merely conforms OTS regulations to EGRPRA's statutory changes.

Accordingly, the interim final rule will be immediately effective upon publication in the **Federal Register**. Nevertheless, OTS seeks the benefit of public comment. Accordingly, OTS invites interested persons to submit comments during the 60-day comment period. OTS will revise the interim final rule as appropriate based on these comments.

### IV. Paperwork Reduction Act of 1995

This interim final rule does not impose any collections of information on savings associations. As such, the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) does not apply.

### V. Executive Order 12866

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

### VI. Regulatory Flexibility Act Analysis

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 interim 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. Accordingly, a regulatory flexibility analysis is not required.

### VII. Unfunded Mandates Act of 1995

OTS has determined that the requirements of this interim 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).

### VIII. 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 an immediate effective date is appropriate since the interim rule relieves regulatory burden on savings associations. This immediate effective date will permit savings associations to begin exercising their expanding lending, investment, and other authorities pursuant to the amended HOLA. OTS does not anticipate that the immediate application of the rules will present a hardship to institutions. Indeed OTS believes that CDRIA does not apply to this interim rule because it imposes no new burden on thrifts. For these reasons, OTS has determined that an immediate effective date is appropriate for this interim final rule.

### List of Subjects

*12 CFR Part 560*

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

*12 CFR Part 563*

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

*12 CFR Part 574*

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

*12 CFR Part 575*

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

*12 CFR Part 583*

Holding companies, Savings associations.

[35] 5 U.S.C. 553(b)(B).

*12 CFR Part 584*

Administrative practice and procedure, holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V of the Code of Federal Regulations as set forth below.

## PART 560—LENDING AND INVESTMENT

1. The authority citation for part 560 is revised 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 by adding four definitions in alphabetical order to read as follows:

**§ 560.3 Definitions.**

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

* * * * *

*Credit card* is a card, plate or other credit device that allows the holder to purchase goods or obtain services or cash by charging them to a previously established line of credit with the issuer of the card, plate or device.

*Credit card account* is a credit account established in conjunction with the issuance of, or the extension of credit through, a credit card. This 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.

* * * * *

*Small business* includes a small business concern or entity as defined by section 3(a) of the Small Business Act, 15 U.S.C. 632(a), and implemented by the regulations of the Small Business Administration at 13 CFR Part 121.

*Small business loans* includes any loan to a small business concern or entity as defined by section 3(a) of the Small Business Act, 15 U.S.C. 632(a), and implemented by the regulations of the Small Business Administration at 13 CFR Part 121.

## PART 563—OPERATIONS

3. The authority citation for part 563 continues to read as follows:

**Authority:** 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806.

4. Section 563.36 is added to read as follows:

**§ 563.36 Tying restriction exception.**

(a) *Safe harbor for combined-balance discounts.* A savings and loan holding company or any savings association or any affiliate of either may vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the company varying the consideration (eligible products), if:

(1) That company (if it is a savings association) or a savings association affiliate of that company (if it is not a savings association) offers deposits, and all such deposits are eligible products; and

(2) Balances in deposits count at least as much as non-deposit products toward the minimum balance.

(b) *Limitations on exception.* This exception shall terminate upon a finding by the OTS that the arrangement is resulting in anti-competitive practices. The eligibility of a savings and loan holding company or savings association or affiliate of either to operate under this exception shall terminate upon a finding by the OTS that its exercise of this authority is resulting in anti-competitive practices.

**§§ 563.50, 563.51, 563.52 [Removed]**

5. Sections 563.50, 563.51, and 563.52 are removed.

## PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

6. The authority citation for part 574 continues to read as follows:

**Authority:** 12 U.S.C. 1467a, 1817, 1831i.

7. Section 574.1 is revised to read as follows:

**§ 574.1 Scope of part.**

The purpose of this part is to implement the provisions of the Change in Bank Control Act, 12 U.S.C.1817(j) ("Control Act"), and the Savings and Loan Holding Company Act, 12 U.S.C. 1467a ("Holding Company Act"), relating to acquisitions and changes in control of savings associations that are organized in stock form and savings and loan holding companies thereof.

**§ 574.2 [Amended]**

8. Section 574.2 is amended by revising paragraph (q)(2)(ii) and by adding paragraph (q)(3) to read as follows:

**§ 574.2 Definitions.**

* * * * *

(q) * * *

(2) * * *

(ii) Is a testamentary trust; and

(3) A bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company (other than a savings association).

* * * * *

9. Section 574.3 is amended by:

a. In paragraph (c)(1)(ii), removing the period at the end of the paragraph and adding a semicolon in its place;

b. Redesignating paragraphs (c)(1)(iii) through (c)(1)(vii) as paragraphs (c)(1)(iv) through (c)(1)(viii);

c. Adding paragraph (c)(1)(iii);

d. Revising paragraph (c)(2)(i);

e. Redesignating paragraphs (c)(2)(iv) and (c)(2)(v) as paragraphs (c)(2)(v) and (c)(2)(vi) and by adding a new paragraph (c)(2)(iv); and

f. In newly designated paragraph (c)(2)(v), removing the period at the end of the paragraph and adding "; and" in its place.

The additions and revisions read as follows:

**§ 574.3 Acquisition of control of savings associations.**

* * * * *

(c) *Exempt transactions.* (1) * * *

(iii) Control of a savings association acquired by a bank holding company that is registered under and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company;

* * * * *

(2) * * *

(i) Transactions which are exempt pursuant to paragraphs (c)(1)(iii), (c)(1)(iv), (c)(1)(v), and (c)(1)(vi) of this section;

* * * * *

(iv) Transactions for which a change of control notice must be submitted to the Board of Governors of the Federal Reserve System pursuant to the Change in Bank Control Act, 12 U.S.C. 1817(j);

* * * * *

## PART 575—MUTUAL HOLDING COMPANIES

10. The heading for part 575 is revised as set forth above.

11. The authority citation for part 575 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

12. Section 575.2 is amended by revising paragraph (h) to read as follows:

**§ 575.2 Definitions.**

* * * * *

(h) The term *mutual holding company* means a mutual holding company organized under this part.

* * * * *

## PART 583—DEFINITIONS

13. The authority citation for part 583 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

14. Section 583.20 is amended by revising paragraph (b)(2) and by adding paragraph (c) to read as follows:

**§ 583.20 Savings and loan holding company.**

* * * * *

(b) * * *

(2) Is a testamentary trust; and

(c) A bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company (other than a savings association).

## PART 584—REGULATED ACTIVITIES

15. The authority citation for part 584 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

**§ 584.2a [Amended]**

16. Section 584.2a is amended by removing paragraph (e).

Dated: November 20, 1996.

By the Office of Thrift Supervision.

**Nicolas P. Retsinas,**

*Director.*

[FR Doc. 96–30112 Filed 11–26–96; 8:45 am]

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## NATIONAL CREDIT UNION ADMINISTRATION

**12 CFR Part 745**

**Share Insurance and Appendix**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** Currently, the NCUA Rules and Regulations include dividends accrued and posted to share accounts for any prior accounting period as principal for determining the amount of share insurance on insured accounts. To provide equitable treatment, the NCUA Board is amending the regulations to provide authority for the liquidating agent to include dividends earned or accrued in the normal course of business but not posted in the determination of the amount of share insurance on insured accounts. An outdated reference in the Regulations regarding time computation is updated.

**DATES:** The rule is effective on November 27, 1996.

**ADDRESSES:** National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Courson, Special Assistant to the President, Asset Management and Assistance Center, National Credit Union Administration, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759 or telephone (512) 795–0999 or Allan H. Meltzer, Associate General Counsel, National Credit Union Administration, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### Background

Subpart B of Part 745 of the NCUA Rules and Regulations deals with the payment of share insurance and appeals. Specifically, § 745.200(b) provides that in determining the amount of share insurance, no dividends shall be paid on shares if sufficient undivided and current earnings are not available for such purpose. However, dividends accrued and posted to share accounts for prior accounting periods are considered as principal (regardless of earnings).

In a small number of liquidations, it has been necessary to reconstruct and correct the credit union records. In these liquidation cases, the reconstruction process disclosed situations where dividends were posted to some member accounts and not posted to other member accounts. Under the current regulation, to properly reconstruct these accounts and the dividends that were miscalculated or omitted, the liquidating agent obtained authority from the NCUA Board.

On July 9, 1996, the NCUA Board issued a Notice of Proposed Rulemaking, 61 FR 36663 (July 12, 1996), proposing to amend § 745.200(b) to provide the liquidating agent authority to record unposted dividends to provide for a more equitable treatment of all members. The proposed rule provides discretion for the liquidating agent to correct share accounts by recording dividend payments that were not posted or were incorrectly posted by credit union personnel due to fraud, embezzlement, or accounting errors. Under the proposed rule, dividends not earned in the normal course of business, would not be included in the determination of insured shares. In addition, the proposed rule provides flexibility in dealing with sufficient earnings. Under the current regulation, dividend payments cannot be considered as principal for insurance purposes if sufficient earnings were not available. The proposed rule is silent on sufficient earnings, but a credit union's earnings could be a factor used by the liquidating agent in determining insured shares.

Under the proposed rule, decisions on unposted dividends can be made without specific NCUA Board action.

In addition to the issue of unposted dividends, the proposed rule also noted a needed change to the reference in § 745.200(d) to § 747.119 of the NCUA Rules and Regulations. This is a reference to the Section in the Regulations on time computation. Section 747.119 no longer exists and the reference is updated to read § 747.12(a).

The Notice of Proposed Rulemaking included a Request for Comments seeking public comment on the proposed changes to Part 745 of the NCUA Rules and Regulations. Five comment letters were received, one from a federal credit union and four from national and state credit union leagues. All commenters expressed unqualified support for the proposed regulation.

### Analysis

The final rule is unchanged from the proposed rule that was published on July 12, 1996.

### Immediate Effective Date

Since the rule relieves a restriction in that the liquidating agent can pay certain unposted dividends without specific NCUA Board action, the thirty day delay in effective date is not applicable. 5 U.S.C. 553(d)(1).

### Regulatory Procedures

*Regulatory Flexibility Act*

The NCUA Board certifies that this rule will not have a significant economic impact on a substantial number of small credit unions (those under $1 million in assets). Accordingly, a Regulatory Flexibility Act analysis is not required.

*Paperwork Reduction Act*

The rule does not impose any new paperwork requirements.

*Executive Order 12612*

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The changes to § 745.200 will apply to both federal credit unions and federally-insured, state chartered credit unions. The