Department of the Treasury

Transmittal

TR–218

Federal Register, Vol. 64, No. 27, pp. 6502-6503

Number: TR–218

In the attached final rule, the Office of Thrift Supervision (OTS) has deleted from its regulations the definitions of:

- consumer credit classified as loss
- slow consumer credit, and
- slow loans

These definitions are no longer necessary for the interpretation of any OTS regulation.

The final rule was published in the February 10, 1999, edition of the Federal Register, Vol. 64, No. 27, pp. 6502-6503, and is effective April 1, 1999.

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Office of Thrift Supervision

Attachment

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 561

[No. 98–124]

RIN 1550–AB28

Consumer Credit Classified as a Loss, Slow Consumer Credit and Slow Loans

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is removing its regulatory definitions of ''consumer credit classified as a loss,'' ''slow consumer credit,'' and ''slow loans.'' These definitions are not necessary for the interpretation of any OTS regulation.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: William Magrini, Senior Project Manager, Supervision Policy, (202/906–5744), or Vern McKinley, Senior Attorney, Regulations and Legislation Division, Office of Chief Counsel, (202/906–6241), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1998, OTS proposed to delete its regulatory definitions of ''consumer credit classified as a loss,'' ''slow consumer credit,'' and ''slow loans.'' [1]

Consumer Credit Classified as a Loss—§ 561.13

Slow Consumer Credit—§ 561.47

Consumer credit is credit extended to individuals for personal, family or household purposes.[2] ''Consumer credit classified as a loss'' is defined at 12 CFR 561.13 as closed-end consumer credit that is delinquent 120 days or more (five monthly payments or more) and open-end consumer credit that is delinquent 180 days or more (seven zero billing cycles or more). ''Slow consumer credit'' is defined at 12 CFR 561.47 as closed-end consumer credit that is delinquent for 90 to 119 days (four monthly payments) and open-end consumer credit that is delinquent for 90 to 179 days (four to six zero billing cycles). Both definitions provide that a payment of 90 percent or more of the contractual payment is considered a full payment, and state that a loan is not considered slow or a loss if an association can clearly demonstrate that repayment will occur regardless of delinquency status.

Neither of these terms is used in any other OTS regulation. The OTS, however, has issued guidance instructing examiners to follow these definitions when classifying closed-end and open-end consumer credit. Slow loans are presumed Substandard and consumer credit classified as a loss is presumed a Loss, subject to management providing documentation that such an adverse classification is not warranted.[3]

In July 1998, the Federal Financial Institutions Examination Council (FFIEC) sought public comment on a proposed Uniform Retail Credit Classification Policy (''Classification Policy''), a supervisory policy used by the federal banking agencies for the classification of retail credit loans of financial institutions.[4] The OTS definitions of consumer credit classified as a loss and slow consumer credit conflicted with one of the options under consideration in the proposed Classification Policy.

Because the terms ''consumer credit classified as a loss'' and ''slow consumer credit'' are not used in OTS regulations and could conflict with the final FFIEC Classification Policy, OTS proposed to delete these two regulatory definitions.

Slow Loans—§ 561.48

The term ''slow loans'' is defined at 12 CFR 561.48 with respect to loans that are issued on the security of a home. [5] The classification of a loan as a slow loan is based on a variety of factors, including how long the loan is contractually delinquent, how seasoned the loan is, whether taxes are due and unpaid, and whether its terms have been modified or the loan has been refinanced due to delinquency.

Because the term ''slow loan'' is not used elsewhere in OTS regulations, the OTS also proposed to delete this term. [6]

Summary of Comment and Description of the Final Rule

OTS received one comment in response to the proposed rule from a thrift trade group. The commenter supported the proposal, noting that the FFIEC proposal to amend the Uniform Classification Policy would set out consistent, constructive guidance to identify and classify consumer loans. They agreed that retaining the cited regulatory definitions may cause confusion and is not necessary to meet any regulatory requirements.

Elsewhere in today's **Federal Register**, FFIEC has published its final Uniform Retail Credit Classification Policy. While the final policy adopted by FFIEC does not conflict with the cited OTS definitions, the cited definitions remain unnecessary, as they are not used elsewhere in OTS's regulations. Accordingly, OTS is deleting §§ 561.13, 561.47, and 561.48 as proposed.

Executive Order 12866

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

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS has determined that this final rule does not have a significant economic impact on a substantial number of small entities. The rule merely deletes unnecessary definitions from OTS regulations. This change should, therefore, reduce the burden of complying with regulations for all institutions, including small institutions.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed above, this final rule reduces regulatory burden by eliminating unnecessary regulations. OTS has, therefore, determined that the effect of the rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 561

Savings associations.

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[1] 63 FR 51305 (September 25, 1998).

[2] *See* 12 CFR 561.12.

[3] Thrift Activities Handbook, Section 260, Classification of Assets.

[4] 63 FR 36406 (July 6, 1998).

[5] 12 CFR 541.14 (''Home'' means real estate comprising a single-family dwelling or dwelling unit for four or fewer families in the aggregate.)

[6] Like the two other definitions, OTS has issued guidance to its examiners indicating that all slow mortgage loans are presumed to be Substandard. Thrift Activities Handbook, Section 260, Classification of Assets.

Accordingly, the Office of Thrift Supervision amends part 561, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 561—DEFINITIONS

1. The authority citation for part 561 continues to read as follows:

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

§§ 561.13, 561.47, 561.48 [Removed]

2. Sections 561.13, 561.47 and 561.48 are removed.

Dated: December 18, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 99–2865 Filed 2–9–99; 8:45 am]

BILLING CODE 6720–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Programs

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is promulgating a final rule to allow all participating Lenders to securitize the unguaranteed portion of, sell, sell a participating interest in, or pledge 7(a) loans. The rule has two components: securitizations; and pledges, sales of participations, and sales other than for the purpose of securitizing. In the first component, SBA establishes a three level unified approach to regulating securitizations. In the second component, SBA sets out rules to govern all pledges of, sales of a participating interest in, and sales of, other than for the purpose of securitizing, 7(a) loans. The components apply equally to all depository and nondepository Lenders, leveling the playing field for all SBA Lenders. Both components were drafted to protect the safety and soundness of SBA's 7(a) loan program.

DATES: Effective Date: This rule is effective April 12, 1999.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Director, Secondary Market Sales, (202) 205–6490.

SUPPLEMENTARY INFORMATION:

Background

SBA is promulgating a final rule to govern the securitization of the unguaranteed portion of and the sale, sale of a participating interest in, or pledge of 7(a) loans. The rule has two components. The first component governs securitizations (''securitization component''). For purposes of this regulation, a securitization is the pooling and sale of the unguaranteed portion of 7(a) loans, usually to a trust or special purpose vehicle, and the issuance of securities backed by those loans to investors in either a private placement or a public offering (''securitization''). In the securitizations of 7(a) loans to date, each investor has received an undivided ownership interest in the right to receive the principal of the unguaranteed portion of the pooled 7(a) loans, together with interest.

The second component of this final rule governs pledges of, sales of participating interests in, and sales of, other than for the purpose of securitizing, 7(a) loans (''other conveyances'').

I. Securitization Component

Regulatory History

Congress and SBA have examined extensively whether and under what conditions SBA should permit Lenders to securitize the unguaranteed portion of 7(a) loans. Because Small Business Lending Companies (''SBLCs''), Business and Industrial Development Companies (''BIDCOs'') and other nondepository institutions (collectively the ''nondepository Lenders'') do not have customer deposits to fund 7(a) lending, SBA, in 1992, permitted nondepository Lenders to securitize. Recognizing that securitization may benefit all Lenders, in 1996, SBA and Congress considered extending the securitization option to depository Lenders. On September 29, 1996, Congress enacted legislation requiring SBA to either promulgate regulations allowing both depository and nondepository Lenders to securitize or cease approving any securitizations.

Because securitization and, more particularly, securitization of the unguaranteed portion of 7(a) loans is relatively new and involves significant risk, SBA officials went to great lengths to fashion this final rule responsibly. On November 29, 1996, SBA published the first of a series of **Federal Register** notices designed to elicit public participation in SBA's development of the securitization regulation (61 FR 60649). SBA hoped to receive comments to assist SBA to craft a regulation allowing all Lenders to reap securitizations' benefits without compromising the safety and soundness of the 7(a) program.

On February 26, 1997, SBA published its first proposed securitization regulation (62 FR 8640). The proposed regulation required all securitizations to include a 5 percent retention. SBA received approximately 25 comments. The commenters were divided almost equally on the proposal. Mindful of Congress' mandate to promulgate a regulation or cease approving all securitizations, on April 2, 1997, SBA promulgated an interim final rule (62 FR 15601) to govern securitizations. The regulation allowed all SBA Lenders to securitize while SBA continued its thorough review of securitization issues. Under the interim final rule, SBA would review each proposed securitization on a case-by-case basis for safety and soundness concerns.

Following SBA's promulgation of the proposed regulation, SBA held a public hearing, met with banking experts, and consulted with bank regulators from the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Department of Treasury, the Federal Reserve Board, the Office of Federal Housing Enterprise Oversight, and the Office of Thrift Supervision (''bank regulators''). SBA carefully considered the comments provided by the experts, the bank regulators, and the industry before drafting another proposed regulation. SBA tested the economics of the current proposal. A Big Six accounting firm then validated all calculations.

On May 18, 1998, SBA published the current proposed securitization regulation (63 FR 27219). It linked SBA securitization approval to a securitizer's credit quality and incorporated incentives for securitizers to safely securitize and service loans effectively. It provided a three level unified regulatory approach to securitizations. The three levels included: (1) a minimum capital requirement consistent with that imposed by bank regulators; (2) a retention requirement in the form of a subordinated tranche; and (3) a monitoring component whereby a decline in a securitizer's Currency Rate (as defined in the rule) would trigger PLP loan approval and securitization approval suspension. The multi-faceted rule: (1) conditioned a securitizer's ability to securitize on the securitizer's financial strength; (2) set the required retention based on the individual securitizer's credit quality history; and (3) invoked PLP benefits as an incentive for a securitizer to continue underwriting and servicing loans properly. The rule rewarded securitizers responsibly for past performance, current performance, and future performance, measuring current performance against past and that of the industry.