

BILLING CODE: 6720-01 P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 561

[No. 98-95]

RIN 1550-AB28

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to delete 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 and may conflict with proposed guidance recently issued by the Federal Financial Institutions Examination Council (FFIEC).

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER 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, DC 20552, Attention Docket No. 98-95. Hand deliver comments to 1700 G Street, NW. from 9:00 A.M. to 5:00 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906-7755 or (202) 906-6956 (if the comment is

over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

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

SUPPLEMENTARY INFORMATION:

Introduction

The OTS is proposing to delete 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 and may conflict with proposed guidance recently issued by the Federal Financial Institutions Examination Council (FFIEC).

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. See 12 CFR 561.12. Currently, “consumer credit classified as a

loss” is defined 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). See 12 CFR 561.13. OTS regulations define “slow consumer credit” 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). See 12 CFR 561.47. Both definitions provide that a payment of 90 percent or more of the contractual payment is considered to be a full payment, and state that a loan is not considered to be 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 provisions when classifying closed-end and open-end consumer credit. Slow credits 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.¹

¹ Thrift Activities Handbook, Section 260, Classification of Assets.

Recently, the FFIEC sought public comment on its proposed Uniform Retail Credit Classification Policy (“Uniform Classification Policy”), a supervisory policy used by the federal banking agencies for the uniform classification of retail credit loans of financial institutions.² The banking agencies are considering two possible options for the classification of open-end and closed-end retail loans. Under both options, open-end and closed-end retail loans that are past due 90 days from the contractual due date would be classified as Substandard. Under the first option, open-end and closed-end retail loans would be charged off when they are past due 150 days or more. Under the second option, open-end retail loans would be charged off at 180 days, and closed-end retail loans would be charged off at 120 days. The proposed Uniform Classification Policy also addresses the treatment of partial payments. Like the OTS definition, the proposed Uniform Classification Policy would consider a payment of 90 percent or more of the contract to be a full payment. However, the proposed policy also permits an institution to aggregate payments and give credit for any partial payments received.³

As noted above, the terms “consumer credit classified as a loss” and “slow consumer credit” are not used anywhere else in OTS regulations. Moreover, if the first

² 63 FR 36403 (July 6, 1998).

³ The policy also addresses charge off policies for bankruptcies, fraud or deceased accounts, and other issues.

option of the Uniform Classification Policy is adopted as proposed, the OTS definitions of consumer credit classified as a loss and slow consumer credit would conflict with the uniform interagency guidance. Accordingly, OTS is proposing to delete §§ 561.13 and 561.47. The OTS, however, solicits comment on whether these terms should be retained but revised to conform to the final FFIEC Uniform Classification Policy.

Slow loans - § 561.48

Existing § 561.48 defines slow loans with respect to loans that are issued on the security of a home.⁴ 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.

The term slow loan is not used elsewhere in the OTS regulations. However, the OTS has issued guidance to its examiners indicating that all slow mortgage loans are presumed to be Substandard.⁵ The OTS is proposing to delete this definition from the

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

⁵ Thrift Activities Handbook, Section 260, Classification of Assets.

Code of Federal Regulations because it is not necessary to the interpretation of any other regulation.

Executive Order 12866

OTS has determined that this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would merely delete 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, Pub. L. 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 proposed rule would reduce regulatory burden by eliminating unnecessary regulations. OTS has, therefore, determined that the effect of the proposed 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.

Accordingly, the Office of Thrift Supervision proposes to amend 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: September 21, 1998

By the Office of Thrift Supervision.



Ellen Seidman
Director