

Rules and Regulations

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 04-15]

RIN 1557-AC83

Lending Limits Pilot Program

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing this interim rule extending for three months, until September 11, 2004, an OCC lending limits pilot program (pilot program) that authorizes special lending limits for 1–4 family residential real estate loans and small business loans. Under the pilot program, which originated in 2001, eligible national banks with main offices located in states that prescribe a higher lending limit for residential real estate loans or small business loans than the current Federal limit may apply to take part in the program and use the higher limits. This interim rule allows the program to continue uninterrupted while the OCC reviews comments received on a proposal to extend the program for three years, until June 11, 2007.

EFFECTIVE DATE: June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Tom O'Dea, National Bank Examiner, Credit Risk, (202) 874-5170; Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090, Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874-5090, or Jonathan Fink, Senior Attorney, Bank Activities and Structure, (202) 874-5300.

SUPPLEMENTARY INFORMATION:

Background

Federal law permits a national bank to make loans to one borrower in an amount up to 15 percent of its unimpaired capital and surplus.¹ A national bank may extend credit up to an additional 10 percent of unimpaired capital and surplus to the same borrower if the amount of the loan that exceeds the 15 percent limit is secured by "readily marketable collateral."² Together, the 15 percent and 10 percent provisions comprise the "combined general limit." The statute and regulation also provide exemptions from the combined general limit for various types of loans and extensions of credit.

Federal law at 12 U.S.C. 84 authorizes the OCC to establish lending limits "for particular classes or categories of loans" that are different from those expressly provided by the statute's terms.³ In 2001, the OCC established a pilot program, using this authority, with special lending limits for residential real estate loans and small business loans.⁴ These special limits are separate from amounts that banks may lend to a single borrower under the existing combined general limit and the special limits authorized by other provisions of part 32.⁵ The purpose of the program is to enable community banks to remain competitive in states that provide their state-chartered institutions with a higher lending limit for these types of loans while, at the same time, maintaining the safety and soundness of national banks.

Temporary Extension of the Pilot Program

On April 23, 2004, the OCC proposed to extend the pilot program for three years beyond its current expiration date of June 11, 2004.⁶ The comment period for the proposal closed on May 24, 2004. We received a number of comments that not only addressed the proposed program, but also recommended various modifications to it. In order to allow adequate time to evaluate these comments without causing unnecessary disruption in the operation of the program in its current form, we are

¹ 12 U.S.C. 84; 12 CFR 32 (implementing section 84).

² 12 U.S.C. 84(a)(2); 12 CFR 32.3(a).

³ 12 U.S.C. 84(d)(1).

⁴ 66 FR 31114 (June 11, 2001); 12 CFR 32.7.

⁵ See, e.g., 12 CFR 32.3(b).

⁶ 69 FR 21978 (April 23, 2004).

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issuing this interim rule. The interim rule extends the duration of the lending limits pilot program for three months, until September 11, 2004. The OCC will issue a final rule addressing the continuation of the program before that date.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires Federal agencies either to certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or to prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. On the basis of the information currently available, the OCC certifies that this interim rule will not have a significant impact on a substantial number of small entities within the meaning of those terms as used in the RFA.

Executive Order 12866

The OCC has determined that this interim rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the 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 the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC has determined that this interim rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Administrative Procedure Act

The OCC finds that there is good cause to dispense with prior notice and

public comment on this interim rule and with the 30-day delay of effective date generally prescribed by the Administrative Procedure Act (APA). 5 U.S.C 553.

Under section 553(b) of the APA, the OCC is not required to provide notice and an opportunity for public comment on a rule if we find, for good cause, that notice and comment are “impracticable, unnecessary or contrary to the public interest.” The OCC finds that notice and public comment on this interim rule are unnecessary because we have already given the public an opportunity to comment on whether to extend the lending limits pilot program, through the rule we proposed on April 23, 2004. All commenters favored extending the program. This extension of the effective date of the pilot program merely provides additional time for the OCC to consider the comments and reach a decision on whether to extend, modify, or terminate the program. Further, the OCC finds that further notice and public comment are not in the public interest because a failure to extend the June 11, 2004 sunset date for the pilot program would cause unnecessary disruption in the operation of the program in its current form.

Under section 553(d) of the APA, the OCC must generally provide a 30-day delayed effective date for final rules. The OCC may dispense with the 30-day delayed effective date requirement “for good cause found and published with the rule.” Similarly, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), requires a banking agency to make a rule effective on the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form, unless the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1). The OCC finds that there is good cause to dispense with the two effective date requirements because a failure to extend the June 11, 2004 sunset date would cause unnecessary disruption in the operation of the program in its current form. In addition, the purpose of the APA and CDRI delayed effective date provisions is to afford affected persons a reasonable time to comply with rule changes. The interim rule makes no substantive changes to the existing lending limits pilot program.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has reviewed and approved the collection of information requirements contained in the pilot program under control number 1557–0221, in accordance with the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is amended to read as follows:

PART 32—LENDING LIMITS

- 1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 84, and 93a.

- 2. In § 32.7, paragraph (e) is revised to read as follows:

§ 32.7 Pilot program for residential real estate and small business loans.

* * * * *

(e) Duration of pilot program. The pilot program will terminate on September 11, 2004, unless it is terminated sooner by the OCC.

* * * * *

Dated: June 8, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 04–13314 Filed 6–9–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1b, 4, 11, 12, 33, 34, 35, 36, 154, 157, 292, 300, 365, 375, 385, 388

[Docket No. RM04–10–000; Order No. 647]

Notice Format and Technical Corrections

June 3, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations to simplify the formats it requires for various types of notices. This change will make it easier for the Commission to take advantage of technological upgrades without the necessity of revising its regulations repeatedly. In addition, this Final Rule revises a number of outdated informational references in the Commission's regulations.

EFFECTIVE DATE: The rule will become effective July 12, 2004.

FOR FURTHER INFORMATION CONTACT:

Wilbur Miller, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8953.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. This Final Rule revises the Federal Energy Regulatory Commission's (Commission's) regulations to simplify the format requirements specified for various notices that are submitted to the Commission. It also contains a number of corrections to information references in various regulations.

2. Currently, several of the Commission's regulations require the inclusion of a form of notice with the filing and require that such forms of notice employ specified formats. These formats include headings, informational content, and similar, non-substantive matters. As the Commission continues to rely more heavily on electronic systems for document submission, detailed format requirements may interfere with its ability to employ upgrades and other improvements. Consequently, the Commission is deleting the format requirements listed below and replacing them with a reference to a new subsection, 18 CFR 385.203(d). That provision, in turn, refers to the Commission's Web site or Public Reference Room for instructions on form of notice formats. The Secretary will issue instructions that will be placed in both locations. This revision will provide for more uniform formatting and make it easier for the Commission to update form of notice formatting by eliminating the need for a rulemaking with every change.

3. The affected provisions of Title 18 of the Code of Federal Regulations are as follows:

- § 33.6—Notices of applications to authorize disposition of jurisdictional facilities.
- § 34.3(k)—Applications for issuance of securities.
- § 35.8(b)—Protests or interventions relating to electric service tariff filings.
- § 36.1(b)(1)—Applications for transmission service under section 211 of the Federal Power Act.
- § 154.209—Notice of proposed changes in gas tariff or of compliance filing.
- § 157.6(b)(7)—Applications for certificates of public convenience and necessity and for orders approving abandonment.
- § 157.205(b)(5)—Prior notice of activity pursuant to blanket certificate under section 7 of the Natural Gas Act.