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Rules and Regulations

Federal Register
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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 14

[Docket No. 00-26]
RIN 1557--AB81

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R-1079]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 343

RIN 3064--AC37

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 536

[Docket No. 2001-16]
RIN 1550--AB34

Consumer Protections for Depository Institution Sales of
Insurance; Change in Effective Date

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of
Governors of the Federal Reserve System; Federal Deposit Insurance
Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: This final rule delays the effective date for the final
consumer protection rules for sales of insurance by depository
institutions published by the Office of the Comptroller of the
Currency, the Board of Governors of the Federal Reserve System, the
Federal Deposit Insurance Corporation, and the Office of Thrift
Supervision (collectively, the Agencies) in the Federal Register of
December 4, 2000 (65 FR 75822). These rules were published pursuant to
section 47 of the Federal Deposit Insurance Act (FDIA), which was added
by section 305 of the Gramm-Leach-Bliley Act. Due to the need to
complete significant information system changes and modifications to
documentation and sales processes and to satisfy training demands with
respect to compliance by depository institutions and other entities
with the final rules, the Agencies are delaying the effective date of
the final rules from April 1, 2001, to October 1, 2001.

EFFECTIVE DATE: This amendment delays the effective date of the final
rules published December 4, 2000, at 65 FR 75822, until October 1,
2001.

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SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 2000, the Agencies published final rules (65 FR 75822) implementing section 47 of the FDIA, which was added by section 305 of the Gramm-Leach-Bliley Act. Section 47 of the FDIA directs the Agencies jointly to prescribe and publish consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product or annuity by a depository institution or any person at an office of the institution or on behalf of the institution. The final rules apply to retail sales, solicitations, advertising, or offers of insurance products or annuities made by an insured depository institution, by any person at an office of the institution, or by any person off of the institution's premises if the transaction is made on behalf of the institution. The rules require, among other things, various consumer disclosures, consumer acknowledgements, and segregation of deposit taking and insurance sales areas.

II. Justification for Amendment of the Effective Date

The final rules included an effective date of April 1, 2001. In establishing that effective date for the final rules, the Agencies recognized that a certain lead time would be necessary for depository institutions and other entities acting ``on behalf of'' those institutions to adjust their internal systems and sales practices to comply with the disclosure, consumer acknowledgments, and other requirements of the final rules. Based on information available as of the promulgation of the final rules, the Agencies established the effective date for the final rules as April 1, 2001.

Since December 4, 2000, the Agencies have received written comments describing various difficulties that depository institutions are experiencing in complying with the final rules. During February, 2001, several depository institutions and financial services trade associations requested that the effective date for the final rules be extended from April 1, 2001 to January 1, 2002. One of the comment letters, signed jointly by four trade associations, advised that financial institutions need to receive guidance ``as soon as possible'' from the Agencies that the effective date will be significantly delayed. The commenters indicated that otherwise, many institutions will need to temporarily terminate certain insurance sales programs, especially credit insurance sales programs, for which the

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institutions would not be able to comply by April 1, 2001.

The commenters stated that the following implementation problems support a significant delay in the effective date of the final rules:

Many of the larger depository institutions underestimated the magnitude of the compliance demands required by the final rules, including the training of a significant number of individuals who currently sell insurance ``on behalf of'' those institutions as ``dual employees'' or nonaffiliated insurance agents who sell from an institution's premises.

With respect to the credit disclosure requirements in the final rules, institutions must check every loan application document pertaining to all lending lines of credit, including revising, inventorying, and restocking all credit card applications at each location of the institutions.

Many institutions have relationships with insurance underwriters under which the institutions use an application form prepared by the underwriters. As a result of the final rules, those institutions must request that the underwriters revise their application documents to incorporate the disclosures and consumer acknowledgments required in the final rules.

Since changes to the application documents of insurance underwriters that are prepared for depository institutions must be approved by state insurance commissioners (in certain situations, by state insurance commissioners in all 50 states), significant additional time will be necessary for compliance with the final rules.

The marketing of certain insurance products, such as credit insurance products, by depository institutions was significantly impacted by the final rules. New marketing formats are under development but will not be available by April 1, 2001, for implementation by third parties acting ``on behalf of'' depository institutions.

The Agencies have determined that the reasons submitted by the commenters after the publication of the final rules are sufficient to support a significant delay of the effective date of the final rules. The delay will provide depository institutions and other entities subject to the final rules with sufficient time to become familiar with the requirements and bring their operations into compliance, thus avoiding the need to curtail the availability of insurance products and annuities to the public.

The Agencies believe that a six-month extension of the effective date to October 1, 2001, should provide a sufficient time for depository institutions and other entities to comply with the disclosure, customer acknowledgment, and other requirements in the final rules. This period will provide sufficient opportunity for analysis and training without unreasonably delaying important consumer protections.

Under the Administrative Procedure Act (APA), an agency may suspend general notice-and-comment rulemaking procedures if the agency ``for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B). The Agencies find that they have good cause to delay the effective date without first soliciting comment concerning this action. Because the effective date of the final rules (April 1, 2001) is fast approaching, it is impracticable to seek further public comment before issuing this amendment to the final rules delaying the effective date of those rules. In addition, such a delay is in the public interest for the reasons explaining above.

For similar reasons, the Agencies also find that this action delaying the effective date of the final rules must take effect on April 1, 2001, which is less than 30 days after publication of this amendment to the final rules. As a result, depository institutions and other entities subject to the final rules will not be required to comply with the new insurance consumer protection requirements for a brief period at the beginning of April 2001, as they would in the event that a 30-day, delayed effective date were used.

III. Regulatory Analysis

A. Regulatory Flexibility Act

Under section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604), a final regulatory flexibility analysis is required only for notice-and-comment rulemakings conducted under section 553 of the APA. Since the Agencies find that there is ``good cause'' under the APA for not proceeding with notice-and-comment rulemaking for this amendment to the effective date for the final rules, the RFA does not require that a final regulatory flexibility analysis be provided for this amendment.

The Agencies provided regulatory flexibility analyses in the preamble to the final rules published on December 4, 2000 (65 FR 75830--75837). In those regulatory flexibility analyses, the Agencies considered the likely impact of the final rules on small entities and determined that the final rules will not have a significant impact on a substantial number of small entities.

B. Executive Order 12866

The determinations made by the OCC and OTS that the final rules did not constitute a ``significant regulatory action'' (65 FR 75837) apply to the rules as amended by this effective date revision.

C. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMA) applies only when an agency is required to issue a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted above, the OCC and OTS have determined, for good cause, that this amendment to the final rules may be issued without prior notice and comment. Accordingly, the OCC and OTS have concluded that the UMA does not require an unfunded mandates analysis of this amendment to the final rules. The UMA finding made when the related final rules were published is found in the preamble of those rules (65 FR 75837-75838).

D. Executive Order 13132--Federalism

As described by the OCC and OTS in the preamble to the final rules (65 FR 75838), there are consultation requirements imposed on them by section 6(c) of Executive Order 13132. In accordance with those requirements and of section 47(a)(3) of the FDIA, the Agencies have consulted with the National Association of Insurance Commissioners concerning this amendment to delay the effective date of the rules.

Dated: March 9, 2001.

John D. Hawke, Jr.,
Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve
System, March 12, 2001.

Jennifer J. Johnson,
Secretary of the Board.

By order of the Board of Directors, Federal Deposit Insurance
Corporation.

Dated at Washington, DC, this 13th day of March, 2001.
Robert E. Feldman,
Executive Secretary.

By the Office of Thrift Supervision.

Dated: March 12, 2001.
Ellen Seidman,
Director.
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