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July 13, 2010

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of the Treasury, Office of Thrift Supervision: Unfair or Deceptive Acts or Practices; Amendment*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Office of Thrift Supervision (OTS), entitled “Unfair or Deceptive Acts or Practices; Amendment” (RIN: 1550-AC38). We received the rule on June 29, 2010. It was published in the *Federal Register* as a final rule on May 4, 2010. 75 Fed. Reg. 23,565.

The final rule amends the regulations at 12 C.F.R. part 535 titled “Prohibited Consumer Credit Practices,” published in January 2009 (January 2009 UDAP rule), to avoid duplication and inconsistency with the Credit Card Accountability Responsibility and Disclosure Act of 2009 and the rules of the Board of Governors of the Federal Reserve implementing that statute.

The January 2009 UDAP rule contained three subparts to part 535 and an Appendix to part 535 containing an Official Staff Commentary. Subparts A and B addressed general provisions and credit practices, respectively. Subpart C addressed unfair consumer credit card account practices. The Supplementary Information to the January 2009 UDAP rule described all these changes in detail.

The Credit Card Act and the Board’s implementing rule do not affect the provisions of subparts A and B and the corresponding portion of the Appendix in the January 2009 UDAP rule. Accordingly, this final rule repromulgates those provisions, subject

only to necessary conforming amendments. These provisions will take effect on July 1, 2010, as previously scheduled.

In contrast, the practices addressed in subpart C and the corresponding portion of the Appendix in the January 2009 UDAP rule, as proposed to be revised by the May 2009 proposed amendments are subsumed within, though not identical to, the practices addressed by Credit Card Act and the Board's implementing rule. In some respects, the Credit Card Act and the Board's implementing rule address the same practices addressed in the January 2009 UDAP rule, but in somewhat different ways that afford greater consumer protection. In order to avoid duplication and inconsistency, OTS is removing subpart C and the corresponding portion of the Appendix. For procedural reasons, OTS is making these changes effective July 1, 2010. Consequently, subpart C and the corresponding portion of the Appendix will not take effect. Likewise, OTS does not intend to finalize the May 2009 proposed amendments.

The final rule has an effective date of July 1, 2010. The Congressional Review Act (CRA) generally requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. §§ 553(d)(3), 808(2). OTS found good cause to waive the Administrative Procedure Act's (APA) notice and comment rulemaking and delay in effective date requirements because the substance of subparts A and B was previously subject to notice and comment and the removal of subpart C is necessary to avoid duplication and inconsistency. Therefore, OTS determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

Enclosed is our assessment of OTS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that OTS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Ira L. Mills
OTS Paperwork Clearance Officer
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
OFFICE OF THRIFT SUPERVISION
ENTITLED
"UNFAIR OR DECEPTIVE ACTS
OR PRACTICES; AMENDMENT"
(RIN: 1550-AC38)

(i) Cost-benefit analysis

In its current submission to the Comptroller General, OTS did not include any analysis of the final regulations.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. § 601), OTS certifies that these amendments to 12 C.F.R. part 535 will not have a significant economic impact on a substantial number of small entities. OTS previously certified that the January 2009 UDAP rule would not have a significant economic impact on a substantial number of small entities. *See* 74 Fed. Reg. at 5549-50. Since this final rule removes subpart C, OTS believes any impact of the January 2009 UDAP rule will be even further reduced. Accordingly, OTS states that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

OTS has determined that the requirements of this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, OTS believes a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. OTS previously certified that the January 2009 UDAP rule would not result in expenditures by state, local, and tribal governments, of \$100 million or more in any one year, but may result in expenditures by the private sector in excess of that threshold. *See* 74 Fed. Reg. at 5558. Since this final rule removes subpart C, OTS believes any impact of the January 2009 UDAP rule will be even further reduced. Accordingly, OTS states that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

OTS states that it found “good cause” under 5 U.S.C. § 553 of the Administrative Procedure Act to waive notice of proposed rulemaking. OTS explains that the conforming amendments to subparts A and B and the corresponding portion of the Appendix are technical in nature. OTS notes that the substance of subparts A and B were previously subject to notice and comment in the January 2009 UDAP rule. According to OTS, the consumer protections contained in subpart C to part 535 as proposed to be revised by the May 2009 proposed amendments are subsumed within, though not identical to, the protections of the Credit Card Act and the Board’s implementing rule. Accordingly, OTS believes the removal of subpart C is necessary to avoid duplication and inconsistency. Therefore, OTS has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

OTS is submitting notification to the Office of Management and Budget (OMB) of revisions to an approved paperwork section. In this final rule, OTS has removed the paperwork requirements for subpart C, which were contained in section 535.24(a).

Statutory authorization for the rule

OTS states that the final rule is made under the authority set forth in 12 U.S.C. §§ 1462a, 1463, 1464; 15 U.S.C. § 57a.

Executive Order No. 12,866 (Regulatory Planning and Review)

OTS previously provided a regulatory impact analysis under Executive Order 12,866. 74 Fed. Reg. at 5551–5558. OTS notes that the analysis addressed the impact of the consumer credit card practices in subpart C to part 535. Since this final rule removes subpart C, OTS states that its impact will be eliminated.

Executive Order No. 13,132 (Federalism)

OTS previously certified that the January 2009 UDAP rule does not have any federalism implications for purposes of Executive Order 13,132. See 74 Fed. Reg. at 5558. OTS believes that determination continues to apply.