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On September 30, 1996, the provisions were effective immediately upon enactment, unless otherwise noted.

While significantly restrained in comparison to earlier, more aggressive regulatory relief proposals, EGRPRA does provide some reforms of significance to consumers and consumer financial services providers. This article will highlight some of these provisions, with a focus on those affecting consumer financial services.

II. Resolving the BIF/SAIF Premium Disparity

A. Overview

For much of 1996 the overriding issue for many in the thrift industry was the poor financial condition of the Savings Association Insurance Fund (SAIF) and the prospect of continuing high deposit insurance premiums, in contrast to the minimal premiums being paid by banks to the Bank Insurance Fund (BIF).

EGRPRA largely resolves this disparity but may also pave the way for elimination of the federally insured savings and loan charter.

EGRPRA Subtitle G (Deposit Insurance Funds), entitled the Deposit Insurance Funds Act of 1996, resolves the BIF/SAIF deposit insurance premium disparity by imposing a special assessment on SAIF-insured institutions to recapitalize SAIF, imposing part of the burden for repaying the Financing Corporation (FICO) bonds (issued to address the insolvency of the Federal Savings and Loan Insurance Corporation in the 1980s) on banks, and conditionally providing for merger of the BIF and SAIF no earlier than January 1, 1999.

B. Special Assessment

EGRPRA provides for a one-time assessment on SAIF-assessable institutions to recapitalize the SAIF. The assessment was based on the amount of SAIF-assessable deposits held by each institution as of March 31, 1995 (with certain exceptions). The assessment is effective as of September 30, 1996 and is payable on the later of October 1, 1996 or such date within 60 days as the Federal Deposit Insurance Corporation (FDIC) shall decide.

EGRPRA does not specify a total assessment in dollar terms but states that the total assessment will be equal to the amount necessary to recapitalize the SAIF as of October 1, 1996. A recent report from America’s Community Bankers estimated the assessment at approximately 65.7 basis points per $100 of SAIF-assessable deposits as of March 31, 1995. EGRPRA also provides a 20% reduction in the assessment for “Oakar” and “Sasser” institutions. EGRPRA provides

I. Introduction

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) was signed into law on September 30, 1996. This summary is based on the Congressional Record - House, Sept 28, 1996, at II 11749-11775.

Your author would like to acknowledge the assistance of Steven L. Millett of Matovino, Spick, Shoen & Rich, P.C., Washington, D.C., in the preparation of this section.

See, e.g., Alvin C. Harrell Commentary: The 1996 Banking Law Institute—Quest Before the Street? In this Issue.

2. Your author would like to acknowledge the assistance of Steven L. Millett of Matovino, Spick, Shoen & Rich, P.C., Washington, D.C., in the preparation of this section.
4. EGRPRA § 2702(d).
5. Id. §§ 2701(c), 2703(b), 2703(g), 2703(h).
6. Id. § 2702(d).
7. Id. § 2703(d).
8. Id. §§ 2703(b), 2703(h).
that the amount of the special assessment is deductible under section 162 of the In
ternal Revenue Code (the "Code") in the year in which the assessment is paid.

EGRFRA Title II (Eliminating Unnecessary Regulatory Burden) provides for an increase in the Home Mortgage Disclosure Act (HMDA) exemption threshold. The re
targets to increase the asset-size which triggers the HMDA requirements, from the current $10 million to an amount based on the consumer price index (CPI) adjustments since 1975 (resulting in a current trigger level of approximately $28 million). This also provides for future adjustments based on the CPI. This represents significant regulatory rel
relief for small community banking instit
stitutions.

EGRFRA also provides that an instit
ution may comply with the public availability requirement by maintaining the information at the home office with notices at branch offices disclosing that the information is available on request.

IV. The Real Estate Settlement Procedures Act (RESPA)

A. Uniform Disclosures

RESPA section 310(a)(1) directs the Federal Reserve Board and the U.S. Department of Housing and Urban Development (HUD) to simplify and improve the required RESPA and Truth in Lending disclosures and their timing, within six months. EGRFRA section 310(a)(2) directs the FRB and HUD to provide a uniform disclosure format (also within six months).

Proposed regulations are to be pub
lished in the Federal Register within six months of enactment of EGRFRA. Legis
lative recommendations are to be made as needed to unify the FRB and HUD disclosure requirements.

B. Exemption Authority

The Truth in Lending Act (TILA) sections 104(a) and 105(a) are amended to
allow the FRB to exempt any class of loans other than TILA section 103(a) loans ("Section 32 loans") from the TILA where the TILA does not provide a "reasonable basis to expect costs in the form of useful information or protec
tion." Relevant factors for the FRB to consider are listed.

C. Reduction of RESPA Regulatory Burden

RESPA section 606(a) is amended to require originators of federally related mortgage loans to disclose to loan applicants (at the time of application) only "whether the servicing of the loan may be assigned, sold, or transferred to any other person...

Previously RESPA section 606(a) req
quired an elaborate system of disclosures regarding the lender's past loan sales practices, providing for model disclosure statements to be created by HUD and re
quiring a signature by the loan applicant. These requirements have been deleted from the statute, which now requires only the simple disclosure quoted above, though it is possible that additional re
quirements could be imposed by regulation.

D. Business, Commercial, and Agricultural Loans

RESPA section 7(b) is amended to re
quire HUD to develop the exemption for business, commercial and agricultural loans in RESPA section 7(a) to conform to the exemption at TILA section 104(b).

E. Controlled Business Arrangements/Affiliated Business Arrangements

RESPA section 3(7) was amended to substitute the term "affiliated business arrangement" (ABA) for the old term "controlled business arrangement" (CBA). Similar changes were made to RESPA sections 8(c)(4) and 10(b).

RESPA section 8(c)(3) is amended by deleting old subsection 8(c)(4)(A) and substituting new language. RESPA section 8(c)(4)(A) generally prohibits certain "kickbacks" in the form of fees, salaries, compensation or other payments for ref
erral of settlement services relating to mortgage loan originations. RESPA sec
section 8(c)(4) provides for certain exceptions. Old section 8(c)(4)(A) permitted referrals and payments pursuant to a controlled business arrangement (now called an affiliated business arrangement, or ABA) if disclosure of the arrangement was made to the consumer at or prior to the referral and a written estimate of the charges to be made was also disclosed (subject to a limited qualification).

Under EGRFRA, new RESPA section 8(c)(4)(A) continues to provide an exception for referral payment definition where the arrangement and an estimate of the charges are disclosed in writing to the consumer. However, the required tim
ing is now changed. These written disclo
sures are now to be made as follows:

1. In a face-to-face referral or a re
ferred made in writing or by electronic media, the written disclosures must be given at or before the referral and an announce
nance may be evidenced by noti
nination in a written, electronic or sim
little records system main
maintained in the ordinary course of business;

2. In the case of a telephone refer
ral, the written disclosures may be made within three business days after the referral, but the telephone referral must be an abbreviated verbal disclosure and notice that written disclo
sures will be provided within three business days; or

3. In the case of a referral by a lender to a potential borrower (another lender), the written ABA disclosures are given at the time the Good Faith Esti
mation required under RESPA section 8(c)(3) is provided.

4. In addition, any required writ
written receipt of the ABA disclo
receives may be obtained at settle
closing or closing, except that a person making a written disclo
sure in a face-to-face referral must "attempt" to obtain any required written receipt of the disclosures at that time. If the person receiving such a disclo
sure declines to sign a receipt,
that shall be noted in a written, electronic, or similar system of records maintained in the ordinary course of business.34

F. Private Right of Action

RESPA section 166a was amended to include RESPA section 6(b) (covering servicing and administration of escrow accounts) in those RESPA sections subject to a private right of action, with a three-year statute of limitations. Actions for violations can also be brought by certain public officials within three years of the violation.35 RESPA sections 8 and 9 remain unaltered in this provision but now with a one-year limitation for private actions and a three-year limit for public officials.

G. Delay of Effective Date Regarding Payments to Employees36

The effective date of the amendment to Title 24 of the Code of Federal Regulations section 500, published in the Federal Register on June 7, 1996, was delayed by EGRPA until at least July 31, 1997. This prospective amendment will eliminate the exemption for payments for an employee to employees for referral activities, replacing it with a more limited exemption.37 Until the effective date of this change the version of section 500.14(g)(3)(vi) in effect on May 1, 1996 will continue in effect. The Secretary of HUD is directed to publicly announce a new effective date, such announcement to be at least 90 days but not more than 180 days in advance of the new date.38

V. Other Truth in Lending Revisions

A. Waiver for Certain Borrowers

TILA section 105(a) was amended to provide an additional subsection (g) to authorize the FRB to exempt from the TILA requirements certain transactions if: (1) The exempted transaction involves a consumer with an annualized income in excess of $200,000 or net assets in excess of $1,000,000; and (2) the consumer signs and dates a handwritten waiver.39 The FRB may charge those dollar figures for inflation.40

B. Alternative Disclosures for Adjustable Rate Mortgages

TILA section 128(a) was amended to provide an additional subsection (19) providing that the variable interest rate residential mortgage transaction disclosures given at the time of application may, at the option of the creditor, contain a statement that the periodic payments may increase or decrease substantially, and the maximum interest rate and payment for a $10,000 loan originated at a recent interest rate, as determined by the FRB assuming the maximum periodic increases in rates and payments under the program, or a historic example illustrating the effects of interest rate changes implemented according to the loan program.41 This disclosure may be given in lieu of the disclosures otherwise required to be provided.42

VI. Truth in Savings Revisions

A. Civil Liability Repeal

Effective as of the end of the five-year period beginning on the date of enactment of EGRPA (September 30, 1996), section 271 of the Truth in Savings Act (TISA) was repealed. Section 271 created civil liability and provided a private right of action for actual and statutory damages from attorney fees in a "successful action" to enjoin liability.

B. Lobby Boards

Section 26(c) of the TISA43 is amended to eliminate the requirement that on-premise displays (e.g., lobby or board displays) be viewed only from inside the premises in order to qualify for the reduced disclosure requirements at TISA section 26(c). As a result, lobby or board displays may now be so displayed to evaluate the exterior of the premises.44

C. Exemption for Small Non-Automated Credit Unions

The definition of "depositary institution" for purposes of the Truth in Savings Act was amended to exclude "any nonautomated credit union that was not required to comply with the requirements of this title as of September 30, 1996 pursuant to the determination of the National Credit Union Administration (NCUA) Board."45 The term "depositary institution" is otherwise defined at TISA section 274(b) as defined in section 19(g) of the Federal Reserve Act.46 TISA generally includes any depository institution that is federally insured or eligible to become federally insured. The result of this change is to exempt from the TISA any qualifying nonautomated credit union.

The NCUA twice extended the TISA compliance date for small, underautomated credit unions, in consideration of their limited resources. Initially, compliance was extended to March 31, 1995, for credit unions with assets between $500,000 and $1,000,000 as of December 1, 1993 and that were not automated.47 At the same time the compliance date for credit unions under $500,000 was extended to June 30, 1995. Later the compliance date was extended again, to January 1, 1996 for "nonautomated or grossly under automated" credit unions with assets of $2 million or less as of December 31, 1993.48 For other credit unions compliance was required as of January 1, 1995.

In November 1995 the NCUA again delayed the TISA compliance date for small, nonautomated credit unions, to January 1, 1997, partly on grounds that EGRPA might include permanent regulatory relief for such institutions.49 Such relief was achieved with enactment of EGRPA on September 30, 1996.

D. Time Deposits Under 30 Days

TISA section 266a(c) was amended to clarify that the requirement to provide the TISA disclosures at least 30 days before maturity applies only to time deposits with a term to maturity of more than 30 days.50

On a related matter, in May 1996 the Federal Reserve Board withdrew proposed revisions to the TIS Official Staff Commentary to Regulation DD, concerning primarily TISA calculation methodologies.51 The withdrawal proposal dealt with leap year calculations, compounding and crediting practices, rounding of the APY, and the definitions of "time account" and "bonuses."52

VII. Fair Credit Reporting and Credit Repairs

EGRPA Subtitle D deals with two major areas—the Fair Credit Reporting Act (FCRA) and laws relating to credit repair organizations. FCRA amendments have been debated in the Congress and elsewhere for many years.53 A few items in the legislation are of particular note.