

meetings held on July 1, 2004, and August 12, 2004, respectively, where this action was deliberated were public meetings widely publicized throughout the California raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on December 10, 2004 (69 FR 71753). Copies of the proposed rule were also mailed or sent via facsimile to all raisin handlers. Finally, the proposed rule was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending December 20, 2004, was provided to allow interested persons to respond to the proposal.

One comment was received in reference to the proposal. The comment did not address anything specific to the proposed rule. No changes are made to the final rule in response to the comment.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the recommendation and information submitted by the Committee and other available information, the comment received, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the marketing order requires that the rate of assessment for each crop year apply to assessable raisins handled during such period. The crop year began on August 1, 2004, and the harvest is completed. The Committee needs additional revenues to meet its ongoing expenses. Further, handlers are aware of this rule, which

was recommended at a public meeting. Also, a 10-day comment period was provided for in the proposed rule, and no comments from the California raisin industry were received.

#### List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

#### **PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA**

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 989.347 is revised to read as follows:

#### **§ 989.347 Assessment rate.**

On and after August 1, 2004, an assessment rate of \$11.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: February 1, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–2217 Filed 2–4–05; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF THE TREASURY**

### **Office of the Comptroller of the Currency**

#### **12 CFR Part 30**

[Docket No. 05–02]

**RIN 1557–AC93**

#### **OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices**

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

**ACTION:** Appendix to regulations; final guidelines.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is issuing, as an appendix to part 30 of its regulations, guidelines concerning the residential mortgage lending practices of national banks and their operating subsidiaries (Guidelines) as a further step to protect against national bank involvement in predatory, abusive, unfair, or deceptive residential mortgage lending practices. The Guidelines describe particular practices inconsistent with sound

residential mortgage lending practices. They also describe other terms and practices that may be conducive to predatory, abusive, unfair, or deceptive lending practices, depending on the circumstances, and which, accordingly, warrant a heightened degree of care by lenders. In addition, the Guidelines address the steps that banks should take to mitigate risks associated with their purchase of residential mortgage loans and use of mortgage brokers to originate loans. The Guidelines focus on the substance of activities and practices, not on the creation of policies. The standards contained in the Guidelines are enforceable pursuant to section 39 of the Federal Deposit Insurance Act and the implementing process set forth in part 30 of the OCC's regulations.

**EFFECTIVE DATE:** April 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning the Guidelines, contact Michael Bylsma, Director, Community and Consumer Law Division, (202) 874–5750, Michele Meyer, Special Counsel, Legislative & Regulatory Activities Division, (202) 874–5090, or Rick Freer, National Bank Examiner, Compliance, (202) 874–4428, 250 E Street, SW., Washington, DC 20219.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

National banks are authorized by statute to engage in real estate lending activities, subject to the requirements of Federal law,<sup>1</sup> and national banks' real estate lending is closely supervised and comprehensively regulated under a regulatory framework that includes a wide variety of Federal laws and regulations designed to ensure the protection of consumers of banks' residential mortgage products and services.<sup>2</sup>

Fair treatment of customers is fundamental to sound banking practices

<sup>1</sup> 12 U.S.C. 371(a); and see 12 CFR part 34 (OCC rules governing real estate lending and appraisals implementing 12 U.S.C. 1828(o)).

<sup>2</sup> Federal consumer protection laws and regulations that apply with respect to the residential real estate lending activities of national banks and their operating subsidiaries include: the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*; the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*; the Home Ownership and Equity Protection Act, 15 U.S.C. 1639 *et seq.*; the Fair Housing Act, 42 U.S.C. 3601 *et seq.*; the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*; the Real Estate Settlement Procedures Act, 12 U.S.C. 1261 *et seq.*; the Flood Disaster Protection Act, 42 U.S.C. 4001 *et seq.*; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, as recently amended by the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 111 Stat. 1952; the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.*; and the privacy provisions of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 *et seq.*

and the OCC has taken a number of measures in recent years to assure that the lending practices of national banks reflect that standard. In particular, in February, 2003, we issued two advisory letters alerting national banks to practices that may be considered predatory or abusive and advising national banks on measures to avoid such practices. The advisories addressed national banks' mortgage origination activity, as well as purchases of loans and use of third-party brokers to conduct mortgage lending.<sup>3</sup> In January, 2004, we added to our rules an express prohibition on making mortgage loans based predominantly on the bank's realization of foreclosure or liquidation value of the collateral, without regard to the borrower's ability to repay the loan according to its terms, a prohibition that goes to the heart of predatory lending. In that same rulemaking, we also added provisions prohibiting banks from engaging in unfair or deceptive practices within the meaning of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.<sup>4</sup> In addition to establishing standards by regulation and in guidance, our overall approach includes taking prompt enforcement action to remedy abusive practices if we find that they have occurred.<sup>5</sup>

In order to enhance our ability to apply the guidance described in our February, 2003 advisory letters, we are now adopting the core elements of that guidance in the form of guidelines for residential mortgage lending standards, in a new Appendix C to part 30 of our regulations. These standards further the OCC's goal of ensuring that national banks and their operating subsidiaries are not involved directly or indirectly through loans that they purchase or make through intermediaries, in predatory or abusive residential mortgage lending practices. The Guidelines incorporate and implement the principles of, but do not replace, the February, 2003 advisory letters. The advisories remain in effect as

<sup>3</sup> OCC Advisory Letter 2003-2, "Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices" (Feb. 21, 2003) and OCC Advisory Letter 2003-3, "Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans" (Feb. 21, 2003).

<sup>4</sup> 69 FR at 1917 (to be codified at 12 CFR 34.3). Through amendments to other provisions of our rules, both the anti-predatory lending standard and the prohibition against unfair or deceptive practices also apply to national banks' non-real estate lending. A number of commenters on these amendments lauded the content of the Advisory Letters but questioned their enforceability.

<sup>5</sup> A listing of enforcement actions taken recently by the OCC is available on our Web site in the "Popular FOIA Requests" section at <http://www.occ.treas.gov/foia/foiadocs.htm>.

supervisory guidance that provides supplemental context and explanation of the issues addressed in these Guidelines. Like the advisories, the Guidelines apply to national banks and, pursuant to OCC regulations, to their operating subsidiaries.<sup>6</sup> The Guidelines focus on the substance of activities and practices, not on the creation of policies. The Guidelines are enforceable pursuant to the process provided in Section 39 of the Federal Deposit Insurance Act (FDIA) and part 30.

#### Enforcement of the Guidelines

The OCC is issuing these Guidelines pursuant to Section 39 of the FDIA.<sup>7</sup> Section 39 authorizes the OCC to prescribe safety and soundness standards in the form either of a regulation or guidelines. These standards currently include, among others, operational and managerial standards for insured depository institutions that relate to internal controls, information systems, and audit systems; loan documentation; credit underwriting; interest rate exposure; and asset growth. Section 39 also provides, without qualification, that "each appropriate Federal banking agency" may prescribe "such other operational and managerial standards" as it "determines to be appropriate."

Section 39 prescribes different consequences depending on whether the standards it authorizes are issued by regulation or guidelines. Pursuant to Section 39, if a national bank fails to meet a standard prescribed by *regulation*, the OCC *must* require it to submit a plan specifying the steps it will take to comply with the standard. If a national bank fails to meet a standard prescribed by *guideline*, the OCC has the discretion to decide whether to require the submission of such a plan.<sup>8</sup> Issuing these residential mortgage lending practices standards by guideline rather than regulation provides the OCC with the flexibility to pursue the course of action that is most appropriate, taking into consideration the specific circumstances of a national bank's noncompliance with one or more

<sup>6</sup> 12 CFR 5.34(e) (operating subsidiaries may conduct only those activities permissible for the parent national bank; operating subsidiaries' authorized activities are subject to the same terms and conditions as apply to the parent bank).

<sup>7</sup> 12 U.S.C. 1831p-1. Section 39 was enacted as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, section 132(a), 105 Stat. 2236, 2267-70 (Dec. 19, 1991) (FDICIA).

<sup>8</sup> See 12 U.S.C. 1831p-1(e)(1)(A)(i) and (ii). In either case, however, the statute authorizes the issuance of an order and the subsequent enforcement of that order in court, independent of any other enforcement action that may be available in a particular case.

standards, and the bank's self-corrective and remedial responses.

The Guidelines incorporate key provisions of the February, 2003 advisory letters and describe certain practices the OCC believes are inconsistent with sound residential mortgage lending practices. They also describe other terms and practices that may be conducive to predatory, abusive, unfair, or deceptive lending, and which, accordingly, warrant a heightened degree of care by lenders. The Guidelines thus incorporate the central principles and considerations contained in the February, 2003 advisories into a framework that specifically provides for their enforcement on a case-by-case basis under the framework provided by Section 39 and part 30 of our regulations.

The enforcement remedies prescribed by Section 39 are implemented in procedural rules contained in part 30 of the OCC's rules. Under these provisions, the OCC may initiate the part 30 process when we determine, by examination or otherwise, that a national bank has failed to meet the standards set forth in the Guidelines.<sup>9</sup> Upon making that determination, we may request, through a supervisory letter or in a report of examination, that the national bank submit a compliance plan to the OCC detailing the steps the bank will take to correct the deficiencies and the time within which it will take those steps. This request is termed a Notice of Deficiency. Upon receiving a Notice of Deficiency from the OCC, the national bank must submit a compliance plan to the OCC for approval within 30 days.

If a national bank fails to submit an acceptable compliance plan, or fails materially to comply with a compliance plan approved by the OCC, the OCC may issue a Notice of Intent to Issue an Order pursuant to Section 39 (Notice of Intent). The bank then has 14 days to respond to the Notice of Intent. After considering the bank's response, the OCC may issue the order, decide not to issue the order, or seek additional information from the bank before making a final decision. Alternatively, the OCC may issue an order without providing the bank with a Notice of Intent. In such a case, the bank may appeal after-the-fact to the OCC and the OCC has 60 days to consider the appeal and render a final decision. When the OCC issues an order, a bank is deemed to be in non-compliance with part 30.

<sup>9</sup> The procedures governing the determination and notification of failure to satisfy a standard prescribed pursuant to Section 39, the filing and review of compliance plans, and the issuance, if necessary, of orders appear in our regulations at 12 CFR 30.3, 30.4, and 30.5, respectively.

Orders are formal, public documents, and they may be enforced in district court or through the assessment of civil money penalties under 12 U.S.C. 1818.

### **Description of the OCC's Residential Mortgage Lending Practices Guidelines**

The Guidelines consist of three parts. Part I provides an introduction to the Guidelines and explains their scope and application. Part II sets forth general standards for residential mortgage lending practices. Part III describes the implementation of those standards. We have also made technical conforming amendments to the part 30 regulations to add references to new Appendix C, which contains the Guidelines, where appropriate.

#### *Part I: Introduction*

Part I describes the purpose of the Guidelines, which is to protect against involvement by national banks and their operating subsidiaries, either directly or through loans that they purchase or make through intermediaries, in predatory or abusive residential mortgage lending practices that are injurious to bank customers and that expose the bank to credit, compliance, reputation, and other risks associated with abusive lending practices. The Guidelines apply to residential mortgage lending by national banks, federal branches and agencies of foreign banks, and operating subsidiaries of such entities, except for brokers, dealers, persons providing insurance, investment companies, and investment advisers, all of which are functionally regulated pursuant to various provisions of law. For purposes of the Guidelines, a residential mortgage loan is any loan or other extension of credit made to one or more individuals for personal, family, or household purposes and secured by an owner-occupied, 1–4 family residential dwelling, including a cooperative unit or mobile home.

The Guidelines are enforceable, pursuant to Section 39 of the FDIA and part 30 of our rules, as we have described. However, as set forth in Part I, nothing in the Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices or conditions, unfair or deceptive practices, or other violations of law. Thus, for example, a bank's failure to comply with the standards set forth in these Guidelines also may be actionable under section 8 of the FDIA if the failure constitutes an unsafe or unsound practice, or under section 5 of the Federal Trade Commission Act if it is an unfair or deceptive practice.

#### *Part II: Standards for Residential Mortgage Lending Practices*

Part II of the Guidelines describes two overarching objectives that should inform a bank's residential mortgage lending activities. First, the bank must be able effectively to manage the various risks—including credit, legal, compliance, and reputation risks—associated with those activities. Second, the bank must not become engaged in abusive, predatory, unfair, or deceptive practices, directly, indirectly through mortgage brokers or other intermediaries, or through purchased loans. These objectives reflect expectations that are fundamental to sound banking practices. Different banks may achieve these objectives using different methods, however, and the Guidelines expressly recognize that the practices a bank follows in its residential mortgage lending activities need to be consistent with, and appropriate to, its size and complexity and the nature and scope of those activities.

#### *Part III: Implementation of Residential Mortgage Lending Practices*

Part III describes standards for the implementation of the objectives described in Part II. It comprises six components. First, Part III lists and briefly describes specific lending practices inconsistent with sound residential mortgage lending practices, including practices known as equity stripping, fee packing, and loan flipping, refinancing of a special subsidized mortgage on terms adverse to the consumer, and encouraging a borrower to breach a contract and default on an existing loan in connection with a refinancing of that loan. The features of these practices are widely recognized as abusive and were addressed by the OCC in our February, 2003 advisory letters.

Second, Part III describes certain loan terms, conditions and features—such as financing single premium insurance, negative amortization and mandatory arbitration—that may, under particular circumstances, be susceptible to abusive, predatory, unfair or deceptive practices, yet may be acceptable and may benefit customers under other circumstances. Part III cautions banks to exercise care when they offer loans containing these terms, conditions, and features, particularly in connection with subprime lending.

Third, banks that decide to offer loans with the types of features just described should take particular account of the circumstances of the consumers to whom the loans are offered. Banks

should exercise heightened diligence if they offer such loans to consumers who are elderly, substantially indebted, not financially sophisticated, have language barriers, have limited or poor credit histories, or have other characteristics that limit their credit choices. In addition, banks should apply heightened internal controls and monitoring with regard to this type of lending.

Fourth, banks should provide timely, sufficient, and accurate information to consumers concerning the terms and the relative costs, risks, and benefits of the loan.

Fifth, with respect to consumer residential mortgage loans that a bank purchases, or makes through a mortgage broker or other intermediary, the bank's residential mortgage lending activities also should include appropriate measures to mitigate risks. Part III provides a number of examples of such measures, including criteria for entering into and continuing relationships with intermediaries and originators, methods through which the bank may retain appropriate controls over mortgage origination functions, and criteria and procedures for the bank to take appropriate corrective action if necessary.

Finally, Part III makes clear that a bank's responsibilities for maintaining appropriate consumer residential mortgage lending practices are ongoing. For example, on a continuing basis, a bank should monitor its compliance with applicable law and its internal lending standards, and monitor and evaluate its handling of customer complaints. The bank's activities also should include appropriate steps for taking corrective action in response to failure to adhere to the requirements of the law or its internal lending standards, and for making adjustments to the bank's activities to enhance their effectiveness or to reflect changes in business practices, market conditions, or the bank's lines of business, residential mortgage loan programs, or customer base.

#### **Effective Date**

These Guidelines take effect April 8, 2005. The Administrative Procedure Act<sup>10</sup> (APA) requirements for notice and opportunity for comment do not apply to the Guidelines. The APA excepts from its notice and comment requirements, among other types of issuances, "general statements of policy."<sup>11</sup> General statements of policy

<sup>10</sup> 5 U.S.C. 551 *et seq.*

<sup>11</sup> 5 U.S.C. 553(b)(A).

are “statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.”<sup>12</sup>

Consistent with this definition, courts have found that an issuance is a general statement of policy if it applies prospectively and “leaves the [agency] free to exercise [its] informed discretion in the situations that arise.”<sup>13</sup>

Although these residential mortgage lending standards build on the standards in our 2003 Advisory Letters, their placement within the enforcement framework established by Section 39 of the FDIA applies prospectively only. Moreover, we are issuing the Guidelines in a form that, by the express terms of Section 39, preserves the OCC’s discretion to require a compliance plan, and, thus, whether to initiate the part 30 process in any particular case. For these reasons, we conclude that the Guidelines fall within the APA exception for general statements of policy and that notice and comment procedures are, accordingly, not required.

#### Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) does not apply to a rule for which an agency is not required to publish a notice of proposed rulemaking. 5 U.S.C. 603.

#### Executive Order 12866

The OCC has determined that the Guidelines are not a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMA), Public Law 104–4, applies only when an agency is required to promulgate 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 earlier, the OCC has determined that a notice of proposed

rulemaking was not required for these Guidelines. Accordingly, the OCC concludes that the UMA does not require an unfunded mandates analysis of the Guidelines.

Moreover, the OCC believes that the Guidelines will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### List of Subjects in 12 CFR Part 30

Banks, banking, Consumer protection, National banks, Privacy, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, part 30 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

#### PART 30—SAFETY AND SOUNDNESS STANDARDS

■ 1. The authority citation for part 30 is revised to read as follows:

**Authority:** 12 U.S.C. 93a, 371, 1818, 1831p, 3102(b); 15 U.S.C. 1681S, 1681W, 6801, 6805(b)(1).

##### § 30.1 [Amended]

■ 2. Section 30.1(a) is amended by removing “appendices A and B” and adding in its place “appendices A, B, and C”.

##### § 30.2 [Amended]

■ 3. In § 30.2, add a final sentence to read as follows: “The OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices are set forth in appendix C to this part.”

##### § 30.3 [Amended]

■ 4. Section 30.3(a) is amended by removing “and the Interagency Guidelines Establishing Standards for Safeguarding Customer Information set forth in appendix B to this part” and adding in its place “the Interagency Guidelines Establishing Standards for Safeguarding Customer Information set forth in appendix B to this part, or the OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices set forth in appendix C to this part”.

■ 5. A new Appendix C is added to part 30 to read as follows:

#### Appendix C to Part 30—OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices

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#### I. Introduction

i. These OCC Guidelines for Residential Mortgage Lending Practices (Guidelines) set forth standards pursuant to Section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p–1 (Section 39). The Guidelines are designed to protect against involvement by national banks and their operating subsidiaries, either directly or through loans that they purchase or make through intermediaries, in predatory or abusive residential mortgage lending practices that are injurious to bank customers and that expose the bank to credit, legal, compliance, reputation, and other risks. The Guidelines focus on the substance of activities and practices, not the creation of policies. The Guidelines are enforceable under Section 39 in accordance with the procedures prescribed by the regulations in 12 CFR part 30.

ii. As the OCC has previously indicated in guidance to national banks and in rulemaking proceedings (OCC Advisory Letters 2003–2 and 2003–3 (Feb. 21, 2003)), many of the abusive practices commonly associated with predatory mortgage lending, such as loan flipping and equity stripping, will involve conduct that likely violates the Federal Trade Commission Act’s (FTC Act) prohibition against unfair or deceptive acts or practices. 15 U.S.C. 45. In addition, loans that involve violations of the FTC Act, or mortgage loans based predominantly on the foreclosure or liquidation value of the borrower’s collateral without regard to the borrower’s ability to repay the loan according to its terms, will involve violations of OCC regulations governing real estate lending activities, 12 CFR 34.3 (Lending Rules).

iii. In addition, national banks and their operating subsidiaries must comply with the requirements and Guidelines affecting appraisals of

<sup>12</sup> U.S. Department of Justice, Attorney General’s Manual on the Administrative Procedure Act, at 30 n.3 (1947).

<sup>13</sup> *Guardian Federal Savings and Loan Ass’n v. Federal Savings and Loan Insurance Corp.*, 589 F.2d 658, 666–67 (D.C. Cir. 1978) (concluding that an FSLIC bulletin that used “directive” language to specify the criteria necessary for a satisfactory audit of a savings association was nonetheless a “general statement of policy” within the meaning of the APA because it preserved the FSLIC’s discretion to accept a non-conforming audit report or to prescribe additional requirements in a particular case). See also *Chen Zhon Chai v. Carroll*, 48 F.3d 1331, 1341 (4th Cir. 1995) (“A rule is a general statement of policy if it does not establish a binding norm and leaves agency officials free to exercise their discretion.”)

residential mortgage loans and appraiser independence. 12 CFR part 34, subpart C, and the Interagency Appraisal and Evaluation Guidelines (OCC Advisory Letter 2003-9 (October 28, 2003)). For example, engaging in a practice of influencing the independent judgment of an appraiser with respect to a valuation of real estate that is to be security for a residential mortgage loan would violate applicable standards.

iv. Targeting inappropriate credit products and unfair loan terms to certain borrowers also may entail conduct that violates the FTC Act, as well as the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA). 15 U.S.C. 1691 *et seq.* 42 U.S.C. 3601 *et seq.* For example, "steering" a consumer to a loan with higher costs rather than to a comparable loan offered by the bank with lower costs for which the consumer could qualify, on a prohibited basis such as the borrower's race, national origin, age, gender, or marital status, would be unlawful.

v. OCC regulations also prohibit national banks and their operating subsidiaries from providing lump sum, single premium fees for debt cancellation contracts and debt suspension agreements in connection with residential mortgage loans. 12 CFR 37.3(c)(2). Some lending practices and loan terms, including financing single premium credit insurance and the use of mandatory arbitration clauses, also may significantly impair the eligibility of a residential mortgage loan for purchase in the secondary market.

vi. Finally, OCC regulations and supervisory guidance on fiduciary activities and asset management address the need for national banks to perform due diligence and exercise appropriate control with regard to trustee activities. See 12 CFR 9.6 (a) and Comptroller's Handbook on Asset Management. For example, national banks should exercise appropriate diligence to minimize potential reputation risks when they undertake to act as trustees in mortgage securitizations.

A. *Scope.* These Guidelines apply to the residential mortgage lending activities of national banks, federal branches and agencies of foreign banks, and operating subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

B. *Preservation of Existing Authority.* Neither Section 39 nor these Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices or conditions, unfair or deceptive practices, or other violations of law. The OCC may take action under Section 39 and these Guidelines

independently of, in conjunction with, or in addition to any other enforcement action available to the OCC.

C. *Relationship to Other Legal Requirements.* Actions by a bank in connection with residential mortgage lending that are inconsistent with these Guidelines or Appendix A to this Part 30 may also constitute unsafe or unsound practices for purposes of section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818, unfair or deceptive practices for purposes of section 5 of the FTC Act, 15 U.S.C. 45, and the OCC Lending Rules, 12 CFR 34.3, or violations of the ECOA and FHA.

#### D. *Definitions.*

1. Except as modified in these Guidelines, or unless the context otherwise requires, the terms used in these Guidelines have the same meanings as set forth in sections 3 and 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1813 and 1831p-1.

2. For purposes of these Guidelines, the following definitions apply:

a. *Residential mortgage loan* means any loan or other extension of credit made to one or more individuals for personal, family, or household purposes secured by an owner-occupied 1-4 family residential dwelling, including a cooperative unit or mobile home.

b. *Bank* means any national bank, federal branch or agency of a foreign bank, and any operating subsidiary thereof that is subject to these Guidelines.

## II. Standards for Residential Mortgage Lending Practices

A. *General.* A bank's residential mortgage lending activities should reflect standards and practices consistent with and appropriate to the size and complexity of the bank and the nature and scope of its lending activities.

B. *Objectives.* A bank's residential mortgage lending activities should reflect standards and practices that:

1. Enable the bank to effectively manage the credit, legal, compliance, reputation, and other risks associated with the bank's consumer residential mortgage lending activities.

2. Effectively prevent the bank from becoming engaged in abusive, predatory, unfair, or deceptive practices, directly, indirectly through mortgage brokers or other intermediaries, or through purchased loans.

## III. Implementation of Residential Mortgage Lending Standards

A. *Avoidance of Particular Loan Terms, Conditions, and Features.* A bank should not become involved,

directly or indirectly in residential mortgage lending activities involving abusive, predatory, unfair or deceptive lending practices, including, but not limited to:

1. *Equity Stripping and Fee Packing.* Repeat refinancings where a borrower's equity is depleted as a result of financing excessive fees for the loan or ancillary products.

2. *Loan Flipping.* Repeat refinancings under circumstances where the relative terms of the new and refinanced loan and the cost of the new loan do not provide a tangible economic benefit to the borrower.

3. *Refinancing of Special Mortgages.* Refinancing of a special subsidized mortgage that contains terms favorable to the borrower with a loan that does not provide a tangible economic benefit to the borrower relative to the refinanced loan.

4. *Encouragement of Default.* Encouraging a borrower to breach a contract and default on an existing loan prior to and in connection with the consummation of a loan that refinances all or part of the existing loan.

B. *Prudent Consideration of Certain Loan Terms, Conditions and Features.* Certain loan terms, conditions and features, may, under particular circumstances, be susceptible to abusive, predatory, unfair or deceptive practices, yet may be appropriate and acceptable risk mitigation measures, consistent with safe and sound lending, and benefit customers under other circumstances. A bank should prudently consider the circumstances, including the characteristics of a targeted market and applicable consumer and safety and soundness safeguards, under which the bank will engage directly or indirectly in making residential mortgage loans with the following loan terms, conditions and features:

1. Financing single premium credit life, disability or unemployment insurance.

2. Negative amortization, involving a payment schedule in which regular periodic payments cause the principal balance to increase.

3. Balloon payments in short-term transactions.

4. Prepayment penalties that are not limited to the early years of the loan, particularly in subprime loans.

5. Interest rate increases upon default at a level not commensurate with risk mitigation.

6. Call provisions permitting the bank to accelerate payment of the loan under circumstances other than the borrower's default under the credit agreement or to mitigate the bank's exposure to loss.

7. Absence of an appropriate assessment and documentation of the consumer's ability to repay the loan in accordance with its terms, commensurate with the type of loan, as required by Appendix A of this part.

8. Mandatory arbitration clauses or agreements, particularly if the eligibility of the loan for purchase in the secondary market is thereby impaired.

9. Pricing terms that result in the loan's being subject to the provisions of the Home Ownership and Equity Protection Act. 15 U.S.C. 1639 *et seq.*

10. Original principal balance of the loan in excess of appraised value.

11. Payment schedules that consolidate more than two periodic payments and pay them in advance from the loan proceeds.

12. Payments to home improvement contractors under a home improvement contract from the proceeds of a residential mortgage loan other than by an instrument payable to the consumer, jointly to the consumer and the contractor, or through an independent third party escrow agent.

*C. Enhanced Care to Avoid Abusive Loan Terms, Conditions, and Features in Certain Mortgages.* A bank may face heightened risks when it solicits or offers loans to consumers who are not financially sophisticated, have language barriers, or are elderly, or have limited or poor credit histories, are substantially indebted, or have other characteristics that limit their credit choices. In connection with such consumers, a bank should exercise enhanced care if it employs the residential mortgage loan terms, conditions, and features described in paragraph B of this section III, and should also apply appropriate heightened internal controls and monitoring to any line of business that does so.

*D. Avoidance of Consumer Misunderstanding.* A bank's residential mortgage lending activities should include provision of timely, sufficient, and accurate information to a consumer concerning the terms and costs, risks, and benefits of the loan. Consumers should be provided with information sufficient to draw their attention to these key terms.

*E. Purchased and Brokered Loans.* With respect to consumer residential mortgage loans that the bank purchases, or makes through a mortgage broker or other intermediary, the bank's residential mortgage lending activities should reflect standards and practices consistent with those applied by the bank in its direct lending activities and include appropriate measures to mitigate risks, such as the following:

1. Criteria for entering into and continuing relationships with intermediaries and originators, including due diligence requirements.

2. Underwriting and appraisal requirements.

3. Standards related to total loan compensation and total compensation of intermediaries, including maximum rates, points, and other charges, and the use of overages and yield-spread premiums, structured to avoid providing an incentive to originate loans with predatory or abusive characteristics.

4. Requirements for agreements with intermediaries and originators, including with respect to risks identified in the due diligence process, compliance with appropriate bank policies, procedures and practices and with applicable law (including remedies for failure to comply), protection of the bank against risk, and termination procedures.

5. Loan documentation procedures, management information systems, quality control reviews, and other methods through which the bank will verify compliance with agreements, bank policies, and applicable laws, and otherwise retain appropriate oversight of mortgage origination functions, including loan sourcing, underwriting, and loan closings.

6. Criteria and procedures for the bank to take appropriate corrective action, including modification of loan terms and termination of the relationship with the intermediary or originator in question.

*F. Monitoring and Corrective Action.* A bank's consumer residential mortgage lending activities should include appropriate monitoring of compliance with applicable law and the bank's lending standards and practices, periodic monitoring and evaluation of the nature, quantity and resolution of customer complaints, and appropriate evaluation of the effectiveness of the bank's standards and practices in accomplishing the objectives set forth in these Guidelines. The bank's activities also should include appropriate steps for taking corrective action in response to failures to comply with applicable law and the bank's lending standards, and for making adjustments to the bank's activities as may be appropriate to enhance their effectiveness or to reflect changes in business practices, market conditions, or the bank's lines of business, residential mortgage loan programs, or customer base.

Dated: January 31, 2005.

**Julie L. Williams,**

*Acting Comptroller of the Currency.*

[FR Doc. 05-2211 Filed 2-4-05; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2005-20060; Airspace Docket No. 05-ACE-2]

#### Modification of Class E Airspace; Rolla, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Rolla, MO. A review of controlled airspace for Rolla Downtown Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in FAA Orders.

**DATES:** This direct final rule is effective on 0901 UTC, May 12, 2005. Comments for inclusion in the Rules Docket must be received on or before March 2, 2005.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2005-20060/ Airspace Docket No. 05-ACE-2, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2524.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Class E airspace area extending upward