

OCC 96-64

Subject: Economic Growth and Regulatory Paperwork Reduction Act of 1996

Description: Summary

TO: Chief Executive Officers and Compliance Personnel of all National Banks

The attached summary highlights the major provisions of the "Economic Growth and Regulatory Paperwork Reduction Act of 1996," which was signed into law on September 30, 1996. This legislation amends many laws that affect national banks, consumers, and the Office of the Comptroller of the Currency (OCC). Many of its provisions were effective on the date of enactment.

This document briefly describes only the highlights of the legislation. A more detailed section-by-section analysis is available through the OCC's Internet site, <http://www.occ.treas.gov>. This section-by-section analysis also may be obtained through the OCC's Communications Division, 250 E Street, SW, Washington, DC 20219, 202-874-4700, and through the OCC's District Offices.

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Chief Counsel

Attachment

"Economic Growth And Regulatory Paperwork Reduction Act
of 1996"

Signed into Law on September 30, 1996
(As Reprinted in the Congressional Record, H11749-H11775, Sept. 28, 1996)

HIGHLIGHTS [Note: This document discusses only the highlights of the "Economic Growth and Regulatory Paperwork Reduction Act of 1996." For more detail and information about the Act, please refer to the summary of the legislation that was prepared by the OCC's Law Department, which is available through the OCC's Internet cite, <http://www.occ.treas.gov>. A copy of this summary may also be obtained through the OCC's Communications Division, 250 E Street, SW, Washington, DC 20219, 202-874-4700, or the OCC's District Offices.]

I. Regulatory Burden Relief
(Generally Effective Upon Enactment)

A. Supervisory Provisions

- o Eliminates the per branch capital requirement. [2204][Note: Section numbers in brackets refer to the section numbers in the enacted legislation.]
- o Excludes ATMs or remote service units from the definition of "branch" for purposes of prior approval requirements and geographic restrictions, as well as any other requirements applicable to "branches." [2205]
- o Permits well-capitalized banks rated CAMEL 1 or 2 to invest in bank premises in amounts up to 150% of the bank's capital and surplus with only a 30-day after-the-fact notice. [2206]
- o Establishes expedited procedures to permit certain bank holding companies to engage in permissible nonbanking activities, except for acquisitions of thrifts. [2208]
- o Eliminates new director or senior executive officer notices (914 notices) currently required for banks chartered within the past two years or that have undergone a change in control within the past 2 years; retains 914 notices for undercapitalized and troubled banks and gives the Federal banking agencies discretion to require prior notice if deemed appropriate in connection with review of a prompt corrective action plan or otherwise; gives the Federal banking agencies 90 days to disapprove an officer or director based on a 914 notice, instead of the current 30 days. [2209]
- o Makes a number of changes to the Depository Institution Management Interlocks Act (DIMIA): increases the amount of the asset-size test that prohibits nationwide interlocks involving large nonaffiliated institutions -- banks with assets of up to \$2.5 billion (increased from \$1 billion) can now have interlocking management with nonaffiliated institutions with assets of up to \$1.5 billion (increased from \$500 million); permits grandfathered interlocks to continue indefinitely; and restores the Federal banking agencies' authority to make exemptions to DIMIA, subject to certain

conditions. [2210]

- o Permits the Federal Reserve Board (Fed) under certain conditions to exempt from insider lending restrictions preferential loans to executive officers and directors of certain affiliates if the officer or director does not participate in major policy-making functions of the bank. [2211]

- o Exempts from the insider lending restrictions a bank's company-wide benefit or compensation plans that are widely available to employees of the bank and that do not give preference to any officer, director, or principal shareholder (or related interests) over other employees of the bank. [2211]

- o Exempts ATMs, certain branch relocations or consolidations within an immediate neighborhood, and branches closed in connection with an emergency acquisition from the prior notice requirement for branch closures. [2213]

- o Permits the Federal banking agencies to raise the asset limit for an 18-month examination cycle from \$175,000,000 to \$250,000,000 for banks with a CAMEL 2 rating. [2221]

- o Increases the number of depository institutions that are exempt under the Home Mortgage Disclosure Act (HMDA) by indexing the current exemption limit of \$10 million to inflation retroactive to 1975; as a result, institutions with approximately \$28 million in assets are now exempt from HMDA. [2225]

- o Permits the OCC to waive the State residency requirement for directors of national banks. There is a technical drafting error in this amendment. As drafted, the amendment inadvertently deleted the OCC's current authority to waive the citizenship requirement for up to a minority of a national bank's directors if the bank is affiliated with a foreign bank. A colloquy on the Floor of the Senate between Chairman D'Amato of the Senate Banking Committee and Sens. Mack and Graham (142 Cong. Rec. S11919 (daily ed. Sept. 30, 1996)) clarifies that no change in the OCC's citizenship waiver authority was intended by Congress and instructs the OCC to treat

the authority as continuing in effect and not to require any national banks that have citizenship waivers to restructure their boards of directors. [2241]

- o Requires each Federal banking agency to ensure that its examiners consult with each other regarding examination activities of a national bank and resolve any inconsistencies in their recommendations, and consider appointing an examiner-in-charge for each national bank. [2244]

- o Eliminates the independent auditor attestation requirement for compliance with safety and soundness laws. [2301]

- o Authorizes the Federal banking agencies to permit a bank's independent audit committee to include some inside directors if the bank is unable to find competent outside directors, provided a majority of the committee is still made up of outside directors (prior to the enactment of this amendment, all members of the audit committee had to be outside directors). [2301]

- o Removes the 7-percent asset growth cap for non-bank banks. [2304]

- o Permits national banks to invest in Edge and Agreement Act corporations in an aggregate amount that exceeds 10% of capital (which was the maximum permitted under prior law) if the total investment does not exceed 20% and the Fed determines that the additional investment would not be unsafe or unsound. [2307]

- o Makes it a Federal crime to produce, possess, or sell a fictitious financial instrument, e.g., so-called "Comptroller's Warrants," which purports to be a financial instrument of the United States (or any subdivision thereof), a foreign country, or a private organization. [2603]

- o Provides that tax deferred annuities sold by an insured depository institution ("retirement CDS") are not deposits and, therefore, are not insured, but does not otherwise affect the authority of national banks to sell insurance. [2614]

B. Consumer Provisions

- o Requires the Fed and HUD, within 6 months of enactment, to simplify and improve RESPA and TILA disclosures and provide a single format for such disclosures. [2101]
- o Makes a number of changes to RESPA's disclosure requirements. [2103]
- o Generally provides that, if a bank or a third party self-tests for compliance under the Equal Credit Opportunity Act and the Fair Housing Act, the test results will not be used against the bank if the bank identifies possible violations and is taking appropriate corrective actions, and if the bank is not using the results in its defense. [2302]
- o After six months from the date of enactment, gives the FTC regulatory authority over credit repair organizations and imposes disclosure requirements and civil liability for violations. [2451]
- o Prevents the Fed from finalizing for at least nine months its proposed Electronic Funds Transfer Act (EFTA) regulations that would regulate stored value cards and requires the Fed to study whether the EFTA could be applied to electronic stored value products without adversely impacting their cost, development, and operation. [2601]
- o Sunsets the Truth-in-Savings Act's civil liability provision in five years. [2604]

II. Recapitalization of SAIF (Effective October 1, 1996)

- o Recapitalizes the Savings Association Insurance Fund (SAIF) as of October 1, 1996. [2702]
- o Requires banks after December 31, 1996 to pay 20% of the interest on the bonds that funded the initial capitalization of SAIF ("FICA bonds") but banks would be required to pay a full pro-rata share of the interest obligation beginning after the earlier of December 31, 1999 or the date on which the last savings association ceases to exist. [2703]

- o Requires the Federal banking agencies to take appropriate actions, including enforcement actions, to prevent insured depository institutions and their holding companies from facilitating or encouraging the shifting of deposits from SAIF to the Bank Insurance Fund (BIF) for the purpose of evading SAIF assessments but would not prohibit a depository institution from taking actions that are in the ordinary course of business and not directed towards the depositors of an affiliate. [2703]
- o Merges SAIF and BIF on January 1, 1999 but only if no insured depository institution is a savings association on that date. [2704]
- o Requires the Department of Treasury to conduct a study by March 31, 1997 on the development of a common charter for all insured depository institutions. [2709]

III. Amendments to FCRA (Generally Effective One Year After Enactment)

- o Substantially amends the Fair Credit Reporting Act (FCRA). [2401-2422]
- o Prohibits the Federal banking agencies from examining for compliance with FCRA unless there has been a complaint about a violation or the agency otherwise has knowledge of a violation. [2416]

IV. Amendments to Lender Liability (Generally Effective Upon Enactment)

- o Amends the Comprehensive Environmental Response, Compensation, and Liability Act to clarify that a lender is not liable for environmental cleanups of property securing a loan unless the lender, among other things, participates in day-to-day decision making over the operations of the property or has control over environmental compliance. [2501-2505]
- o Provides that lenders that foreclose on property may take certain post-foreclosure actions (including, for instance, the sale, liquidation, or re-lease (in the case of a lease financing transaction) of the property and the maintaining or winding up of business

activities involving the property) without incurring liability for environmental cleanup

if the lender did not participate in management of the property prior to foreclosure

and the lender seeks to dispose of the property as soon as it is commercially

reasonable. [2502]

o Puts into place the Environmental Protection Agency's 1992 regulation clarifying

lender liability that was invalidated by a court decision and prohibits judicial review

of this regulation. [2504]

o Changes made by the legislation apply to any claim that has not been finally

adjudicated as of the date of enactment, i.e., September 30, 1996. [2505]