

RESCINDED

Transmittal



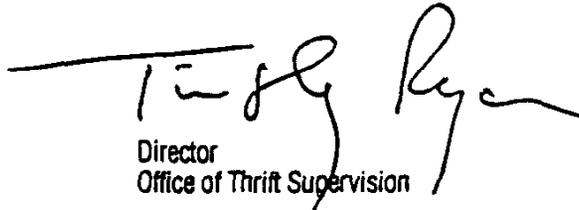
September 17, 1990

Number 008

This rescission does not change the applicability of the conveyed document. To determine the applicability of the conveyed document, refer to the original issuer of the document.

The Office of Thrift Supervision has withdrawn its rule governing the release of customer information records by federally chartered savings associations.

Unless and until a new regulation is adopted, the release of customer information by savings institutions will be governed by applicable state laws.



Director
Office of Thrift Supervision

Office of Thrift Supervision

12 CFR Part 545

(No. 90-1343)

RIN 1550-AA29

Release of Customer Financial Records by Federal Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("OTS" or "Office") is removing its rule governing the release of customer financial records by Federal associations and announcing its intention to propose a new regulation on the same subject. The rule was adopted by the Office's predecessor agency, the Federal Home Loan Bank Board ("Bank Board") and became effective on December 15, 1989, 54 FR 33859 (Aug. 17, 1989). The Office has determined that removal and reproposal of the rule is necessary because of the significant changes in thrift industry structure and regulation made by the Financial Institutions Reform, Recovery and Enforcement Act, Public Law No. 101-73, 103 Stat. 183 (Aug. 9, 1989) ("FIRREA"), and because of issues identified during implementation of the rule.

EFFECTIVE DATE: August 24, 1990.

FOR FURTHER INFORMATION CONTACT: Karen Solomon, Associate Chief Counsel, Regulations and Legislation Division, Chief Counsel's Office, (202) 906-7240; or Ben F. Dixon, Policy Analyst, Supervision, (202) 906-5748, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

On August 8, 1989, the Bank Board adopted a final regulation governing the release of customer financial records by Federal savings associations, 54 FR 33859 (Aug. 17, 1989). This rule took effect on December 15, 1989. The Office is today removing the rule in order to reevaluate its policies on disclosure of customer financial records in light of several factors including the changed circumstances resulting from the passage of the FIRREA, and clarification of issues raised following implementation of the rule. The Office wishes to emphasize that it has not determined to abandon its policy of ensuring adequate protection of customer rights when information about customers is disclosed.

President Bush signed the FIRREA into law on the day after the customer lists regulation was adopted. The FIRREA extensively amended the Home Owners' Loan Act, the Federal Deposit Insurance Act, and the Federal Home Loan Bank Act, and it repealed the National Housing Act. As a result, it has significantly changed the way savings associations operate and are regulated.

The Office wishes to reconsider, in light of the FIRREA, the effects of implementing policies on disclosure of customer financial information for Federal savings associations when similar policies are not in place for state-chartered savings associations or commercial banks. During the previous rulemaking, commenters "argued that the proposed rule puts Federal associations on an 'unequal playing field' as a result of the restrictions placed on the ability of service corporations to market products and services to their parent's customers." *Id.* at 33864. The Board noted that it has, since 1975, regulated Federal savings associations' release of customer information, see 40 FR 12853 (1975), and, thus, the final rule was "not a new or sudden concern of the Board." 54 FR 33864.

Nonetheless, the Bank Board responded to these comments, for example, by modifying the proposal to expand Federal associations' ability to disclose information without prior approval. Now that the implications of the FIRREA are clearer, the Office wishes to evaluate whether this modification was an adequate response, or whether the provisions of the rule should be extended to other financial institutions.

The Office also wishes to consider whether adequate justification exists for the rule's distinction, for purposes of releasing customer information, between wholly-owned service corporations, and affiliates in a holding company structure. The rule imposed more stringent restraints on release of information to an affiliate than to a wholly-owned service corporation. See *id.* at 33868-69. The Board's rationale for this distinction was that the products and services that may be provided by a wholly-owned service corporation have previously been determined by the Bank Board to be thrift-business related, see 12 CFR 545.74 (1989), thus, customer information release to "[such] service corporations [would] not breach the privacy expectations of depositors or borrowers[.]" 54 FR 33863. The Office believes it is important to examine

whether affiliates engaged in businesses similar to those of wholly-owned service corporations should have this distinction apply to them also. In addition, the Office is also interested in examining whether this distinction could exert a discouraging influence on companies outside the thrift industry that may wish to acquire a savings association and, hence, to infuse new capital into the thrift industry.

Finally, the Office has concluded, based on the scope and volume of the inquiries it has received since the regulation was published, that savings associations do not fully understand what the rule's requirements are or how to implement them. The Office, therefore, to clarify the rule's provisions, is determined to remove the rule and to repropose it in clarified form.

The Office intends to propose for public comment a new regulation on disclosure of customer financial information. The Office expects to take this action within 60 days from the effective date of this removal of the rule. At the same time the Office is considering raising the issue in a multi-agency forum such as the Federal Financial Institutions Examination Council. Discussion in such a forum is one way to explore the "competitive equality" issue mentioned above. The Office notes that a new rulemaking will provide an opportunity for it to consider interested parties' comments afresh. The Office is particularly interested in hearing from consumer groups and thrift-holding companies, or their representatives.

As a consequence of today's action, savings associations are no longer under a legal requirement to comply with OTS' Release of Customer Financial Records rule. Nor is the Office taking any action that would reinstitute the regulations that applied to disclosure of customer information before the Bank Board's adoption of 12 CFR 545.132. However, associations should be aware that state law will be controlling in this area until a new final rule is adopted.

Executive Order 12291

The Office has determined that this removal does not constitute a "major rule" and, therefore, will not require the preparation of a final regulatory impact analysis.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required for this rule, the provisions of the Regulatory Flexibility Act do not apply.

List of Subjects in 12 CFR Part 545

Accounting, Consumer protection,
Credit, Electronic funds transfers,
Investments, Manufactured homes,
Mortgages, Reporting and recordkeeping
requirements, Savings associations.

Accordingly, the Office hereby
amends part 545, subchapter C, chapter
V, title 12, Code of Federal Regulations,
as set forth below.

**SUBCHAPTER C—REGULATIONS FOR
FEDERAL SAVINGS ASSOCIATIONS**

PART 545—(AMENDED)

1. The authority citation for part 545
continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103
Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by
sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5,
48 Stat. 132, as amended (12 U.S.C. 1464); sec.
18, 64 Stat. 801, as amended by sec. 221, 103
Stat. 267 (12 U.S.C. 1828).

§ 545.132 [Removed and reserved]

2. Section 545.132 is removed and
reserved.

Date: June 29, 1990.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

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