

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 34**

**Docket No. OCC-2015-0021**

**RIN 1557-AD99**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 226**

**[Docket No. R-1443]**

**RIN 7100-AD 90**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1026**

**[Docket No. CFPB-2016-0035]**

**RIN 3170-AA11**

**Appraisals for Higher-Priced Mortgage Loans Exemption Threshold**

**AGENCIES:** Board of Governors of the Federal Reserve System (Board); Bureau of Consumer Financial Protection (Bureau); and Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Proposed rule; request for public comment.

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**SUMMARY:** The OCC, the Board and the Bureau are publishing proposed rules amending the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for “higher-risk mortgages,” termed “higher-priced mortgage loans” or “HPMLs” in the agencies’ regulations.

The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation (FDIC), the

National Credit Union Administration (NCUA) and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) issued joint final rules implementing these requirements, effective January 18, 2014. The Agencies' rules exempted, among other loan types, transactions of \$25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the OCC, the Board and the Bureau will not adjust this exemption threshold from the prior year. The proposal would memorialize this as well as the agencies' calculation method for determining the adjustment in years following a year in which there is no annual percentage increase in the CPI-W.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** Interested parties are encouraged to submit written comments jointly to the OCC, the Board, and the Bureau. Commenters are encouraged to use the title “Appraisals for Higher-Priced Mortgage Loans” to facilitate the organization and distribution of comments among the agencies. Interested parties are invited to submit written comments to:

*OCC:* Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Appraisals for Higher-Priced Mortgage Loans” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—“regulations.gov”:* Go to <http://www.regulations.gov>.

Enter “Docket ID OCC-2015-0021” in the Search box and click “Search.” Results can be

filtered using the filtering tools on the left side of the screen. Click on “Comment Now” to submit public comments.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *E-mail:* [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).
- *Mail:* Legislative and Regulatory Activities Division, 400 7<sup>th</sup> Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7<sup>th</sup> Street SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.
- *Fax:* (571) 465-4326.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2015-0021” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice of proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to <http://www.regulations.gov>. Enter “Docket ID OCC-2015-0021” in the Search box and click “Search.” Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7<sup>th</sup> Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

*Docket:* You may also view or request available background documents and project summaries using the methods described above.

*Board:* You may submit comments, identified by Docket No. R-1443 or RIN XXXX XX-XX, by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20<sup>th</sup> Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20<sup>th</sup> and C Streets, NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

*Bureau:* You may submit comments, identified by Docket No. CFPB-2016-0035 or RIN 3170-AA11, by any of the following methods:

- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB-2016-0035 or RIN 3170-AA11 in the subject line of the email.
- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street, NE., Washington, DC 20002.

*Instructions:* All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without

change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street, NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** *OCC*: MaryAnn Nash, Counsel, Legislative and Regulatory Affairs Division, (202) 649-6287; for persons who are deaf and hard of hearing TTY, (202) 649-5597. *Board*: Lorna M. Neill, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869. *Bureau*: Shaakira Gold-Ramirez, Paralegal Specialist, Jaclyn Maier, Counsel, Office of Regulations, Consumer Financial Protection Bureau, at (202) 435-7700.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to add special appraisal requirements for “higher-risk mortgages.”<sup>1</sup> In January 2013, the Agencies issued a joint final rule implementing these requirements and adopted the term “higher-priced mortgage loan” (HPML) instead of

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<sup>1</sup> Public Law 111-203 section 1471, 124 Stat. 1376 (2010), codified at TILA section 129H, 15 U.S.C. 1639h.

“higher-risk mortgage” (the January 2013 Final Rule).<sup>2</sup> In July 2013, the Agencies proposed additional exemptions from the January 2013 Final Rule (the 2013 Supplemental Proposed Rule).<sup>3</sup> In December 2013, the Agencies issued a supplemental final rule with additional exemptions from the January 2013 Final Rule (the December 2013 Supplemental Final Rule).<sup>4</sup> Among other exemptions, the Agencies adopted an exemption from the new HPML appraisal rules for transactions of \$25,000 or less, to be adjusted annually for inflation.

The Bureau’s, the OCC’s, and the Board’s versions of the January 2013 Final Rule and December 2013 Supplemental Final Rule and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the Bureau’s version of the regulations under the January 2013 Final Rule and December 2013 Supplemental Final Rule.<sup>5</sup>

Section 34.203(b)(2) of Subpart G of part 34 of the OCC’s regulations, § 226.43(b)(2) of the Board’s Regulation Z, and § 1026.35(c)(2)(ii) of the Bureau’s Regulation Z, and their accompanying interpretations,<sup>6</sup> provide that the exemption threshold for smaller loans will be adjusted effective January 1 of each year based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the

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<sup>2</sup> 78 FR 10368 (Feb. 13, 2013).

<sup>3</sup> 78 FR 48548 (Aug. 8, 2013).

<sup>4</sup> 78 FR 78520 (Dec. 26, 2013).

<sup>5</sup> See NCUA: 12 CFR 722.3; FHFA: 12 CFR part 1222. Although the FDIC adopted the Bureau’s version of the regulation, the FDIC did not issue its own regulation containing a cross-reference to the Bureau’s version. See 78 FR 10368, 10370 (Feb. 13, 2013).

<sup>6</sup> See 12 CFR part 34, Appendix C to Subpart G, comment 203(b)(2)-1 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)-1 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)-1 (Bureau).

threshold amount, the threshold amount will be increased by \$900. If there is no annual percentage increase in the CPI-W, the OCC, the Board, and the Bureau will not adjust the threshold amounts from the prior year.<sup>7</sup>

## **II. Commentary Revision**

The OCC, the Board and the Bureau are proposing new commentary to memorialize the calculation method used by the agencies each year to adjust the exemption threshold. The new commentary is substantively identical for § 34.203(b)(2) of Subpart G of part 34 of the OCC’s regulations, § 226.43(b)(2) of the Board’s Regulation Z, and § 1026.35(c)(2)(ii) of the Bureau’s Regulation Z. For ease of reference, the “Commentary Revision” refers only to the section numbers of the commentary that will published in the Bureau’s Regulation Z at 12 CFR part 1026, Supplement I.

Comment 35(c)(2)(ii)-1 to the Bureau’s Regulation Z currently provides the threshold amount in effect during a particular period and details the rules the agencies use for rounding the threshold calculation to the nearest \$100 or \$1,000 increment, as discussed above in part I, “Background.” The OCC, the Board and the Bureau are proposing to revise comment 35(c)(2)(ii)-1 by moving the text regarding the threshold amount that is in effect during a particular period to a new proposed comment 35(c)(2)(ii)-3. The discussion of how the agencies round the threshold calculation would remain in comment 35(c)(2)(ii)-1. Current comments 35(c)(2)(ii)-2 and 35(c)(2)(ii)-3 would be renumbered as proposed comments 35(c)(2)(ii)-5 and 35(c)(2)(ii)-6, respectively.

As the Agencies have stated previously,<sup>8</sup> if there is no annual percentage increase in the CPI-W, the OCC, the Board, and the Bureau will not adjust the exemption threshold from the

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<sup>7</sup> See 78 FR 48548, 48565 (Aug. 8, 2013) (“Thus, under the proposal, if the CPI–W decreases in an annual period, the percentage increase would be zero, and the dollar amount threshold for the exemption would not change.”).

prior year. This position is consistent with the Board’s and the Bureau’s approach in adjusting the coverage thresholds for the Consumer Leasing Act (CLA) and TILA, based on Section 1100E(b) of the Dodd-Frank Act, which states that the threshold must be adjusted by the “annual percentage *increase*” in the CPI-W (emphasis added). The Board and the Bureau are publishing similar amendments to the commentaries to each of their respective regulations implementing the CLA (Regulation M) and TILA (Regulation Z) elsewhere in the *Federal Register*.<sup>9</sup>

For the HPML appraisal rule exemption for smaller loans, the OCC, the Board, and the Bureau are proposing to memorialize this concept in proposed comment 35(c)(2)(ii)-2, which would provide that if the CPI-W in effect on June 1 does not increase from the CPI-W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. For example, if the threshold in effect from January 1, 2019, through December 31, 2019, is \$27,500 and the CPI-W in effect on June 1 of 2019, indicates a 1.1 percent decrease from the CPI-W in effect on June 1, 2018, the threshold in effect for January 1, 2020, through December 31, 2020, will remain \$27,500.

Proposed comment 35(c)(2)(ii)-2 would further set forth the calculation method the agencies would use in years following a year in which the exemption threshold was not adjusted because there was no increase in the CPI-W from the previous year. Specifically, as set forth under proposed comment 35(c)(2)(ii)-2, for the years after a year in which the threshold did not change because the CPI-W in effect on June 1 decreased from the CPI-W in effect on June 1 of the previous year, the threshold is calculated by applying the annual percentage change in the CPI-W to the dollar amount that would have resulted if the decreases and any subsequent

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<sup>8</sup> See 78 FR 48548, 48565 (Aug. 8, 2013) and 80 FR 73943, 73944 (Nov. 27, 2015).

<sup>9</sup> 76 FR 18354, 18355 n.1 (Apr. 4, 2011) (“[A]n annual period of deflation or no inflation would not require a change in the threshold amount.”).

increases in the CPI-W had been taken into account. Proposed comment 35(c)(2)(ii)-2.i further states that, if the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

For example, assume that the threshold in effect from January 1, 2019, through December 31, 2019, is \$27,500 and that, due to a 1.1 percent decrease from the CPI-W in effect on June 1, 2018, to the CPI-W in effect on June 1, 2019, the threshold in effect from January 1, 2020, through December 31, 2020, remains at \$27,500. If, however, the threshold had been adjusted downward to reflect the decrease in the CPI-W over that time period, the threshold in effect from January 1, 2020, through December 31, 2020, would have been \$27,200. Further assume that the CPI-W in effect on June 1, 2020, increased by 1.6 percent from the CPI-W in effect on June 1, 2019. The calculation for the threshold that will be in effect from January 1, 2021, through December 31, 2021, is based on the impact of a 1.6 percent increase in the CPI-W on \$27,200, rather than \$27,500, resulting in a 2021 threshold of \$27,600.

Furthermore, comment 35(c)(2)(ii)-2.ii states that, if the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted. To illustrate, assume in the example above that the CPI-W in effect on June 1, 2020, increased by only 0.6 percent from the CPI-W in effect on June 1, 2019. The calculation for the threshold that will be in effect from January 1, 2021, through December 31, 2021, is based on the impact of a 0.6 percent increase in the CPI-W on \$27,200. The resulting amount is \$27,400, which is lower than \$27,500, the threshold in effect from January 1, 2020, through December 31, 2020. Therefore, the threshold in effect from January 1, 2021, through December 31, 2021, will remain \$27,500. However, the calculation for the threshold that will be in effect from January 1,

2022, through December 31, 2022, will apply the percentage change in the CPI-W to \$27,400, the amount that would have resulted based on the 0.6 percent change from the CPI-W in effect on June 1, 2019, to the CPI-W in effect on June 1, 2020.

The agencies request comment on all aspects of the proposed rule.

### **III. Regulatory Analysis**

#### *Bureau’s Dodd-Frank Act Section 1022(b)(2) Analysis*

In developing this proposal, the Bureau has considered potential benefits, costs, and impacts.<sup>10</sup> In addition, the Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Bureau has chosen to evaluate the benefits, costs and impacts of the proposed commentary against the current state of the world, which takes into account the current regulatory regime. The Bureau is not aware of any significant benefits or costs to consumers or covered persons associated with the proposal relative to the baseline. The OCC, the Board, and the Bureau previously stated that if there is no annual percentage increase in the CPI-W, then the agencies will not adjust the exemption threshold from the prior year.<sup>11</sup> The proposal memorializes this in official commentary. The proposal also clarifies how the threshold would be calculated for years after a year in which the threshold did not change. The Bureau believes

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<sup>10</sup> Specifically, section 1022(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas.

<sup>11</sup> 78 FR 48547, 48565 (Aug. 8, 2013) and 80 FR 73943, 73944 (Nov. 27, 2015).

that this clarification memorializes the method that the Bureau would be expected to use: This method holds the threshold fixed until a notional threshold calculated using the Bureau's methodology, but taking into account both decreases and increases in the CPI-W, exceeds the actual threshold. The Bureau requests comment on this point. Thus, the Bureau believes that the proposed rule does not change the regulatory regime relative to the baseline and creates no significant benefits, costs, or impacts.

The proposed rule will have no unique impact on depository institutions or credit unions with \$10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act or on rural consumers. The Bureau does not expect this final rule to affect consumers' access to credit.

*Regulatory Flexibility Act*

*OCC:* The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA) requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of \$550 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As explained in the Commentary Revision section of the preamble, this proposed rule memorializes the calculation method used by the OCC, the Board, and the Bureau each year to adjust the threshold for exemption from the special appraisal requirements for HPMLs and clarifies the agencies' calculation method for determining the adjustment in the years following a year in which there is no annual percentage increase in the CPI-W. The economic impact of this proposed rule on national banks and Federal savings associations, regardless of size, is not

expected to be significant. Accordingly, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

*Board:* The Regulatory Flexibility Act (RFA) requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.<sup>12</sup> Based on its analysis, and for the reasons stated below, the Board believes that the rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of its analysis. The Board will, if necessary, conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. Statement of the need for, and objectives of, the proposed rule. The proposed rule would memorialize the calculation method used by the Board each year to adjust the exemption threshold in accordance with Regulation Z, 12 CFR 226.43(b)(2).
2. Small entities affected by the proposed rule. The Board invites comment on the effect of the proposed rule on small entities. For purposes of the RFA, the Small Business Administration defines small entities to include banking entities with total assets of \$550 million or less. Of Board supervised institutions with an asset size of \$550 million or less as of March 2016, 223 reported making 5,135 higher-priced mortgage loans in 2015.<sup>13</sup>
3. Recordkeeping, reporting, and compliance requirements. The proposed rule would not impose any recordkeeping, reporting, or compliance requirements.

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<sup>12</sup> See 5 U.S.C. 601 *et seq.*

<sup>13</sup> Board supervised institutions include State Member Banks, uninsured state branches and agencies of foreign banks. The number of institutions making higher-priced mortgage loans and the number of higher-priced mortgage loans is based on data reported pursuant to the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.*

4. Other Federal rules. The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

5. Significant alternatives to the proposed revisions. The Board solicits comment on any significant alternatives that would reduce the regulatory burden on small entities associated with this proposed rule.

*Bureau:* The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.<sup>14</sup> These analyses must “describe the impact of the proposed rule on small entities”.<sup>15</sup> An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.<sup>16</sup> The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.<sup>17</sup>

An IRFA is not required for this proposal because if adopted it would not have a significant economic impact on a substantial number of small entities. As discussed in the Bureau’s Section 1022(b)(2) Analysis above, this proposal does not introduce costs or benefits to covered persons because the proposal seeks only to clarify the method of threshold adjustment

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<sup>14</sup> 5 U.S.C. 601 *et seq.*

<sup>15</sup> *Id.* at 603(a). For purposes of assessing the impacts of the proposed rule on small entities, “small entities” is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. *Id.* at 601(6). A “small business” is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. *Id.* at 601(3). A “small organization” is any “not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” *Id.* at 601(4). A “small governmental jurisdiction” is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. *Id.* at 601(5).

<sup>16</sup> *Id.* at 605(b).

<sup>17</sup> *Id.* at 609.

which has already been established in previous Agency rules. Therefore this proposed rule would not have a significant impact on small entities.

### Certification

Accordingly, the Bureau Director, by signing below, certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995,<sup>18</sup> the agencies reviewed this proposed rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

#### *Unfunded Mandates Reform Act*

The OCC has analyzed the notice of proposed rulemaking under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation).

The proposed rule memorializes the calculation method used by the OCC, the Board, and the Bureau each year to adjust the threshold for exemption from the special appraisal requirements for HPMLs and clarifies the agencies' calculation method for determining the adjustment in the years following a year in which there is no annual percentage increase in the CPI-W. Because the proposed rule is designed to clarify existing rules, and does not introduce any new requirements, the OCC has determined that it would not result in expenditures by State, local, and Tribal governments or by the private sector, of \$100 million or more. Accordingly,

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<sup>18</sup> 44 U.S.C. 3506; 5 CFR 1320.

the OCC has not prepared a written statement to accompany its proposed rule.

## **List of Subjects**

### *12 CFR Part 34*

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

### *12 CFR Part 226*

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

### *12 CFR Part 1026*

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

## **DEPARTMENT OF THE TREASURY**

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

#### **Authority and Issuance**

For the reasons set forth in the preamble, the OCC amends 12 CFR part 34 as set forth below:

## **PART 34 — REAL ESTATE LENDING AND APPRAISALS**

1. The authority citation for part 34 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 25b, 29, 93a, 371, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, 5412(b)(2)(B) and 15 U.S.C. 1639h.

### **Subpart G — Appraisals for Higher-Priced Mortgage Loans**

2. In Appendix C to Subpart G, under *Section 34.203 -- Appraisals for Higher-Priced Mortgage Loans*, under paragraph (b)(2):

- i. Paragraph 1 is revised;
- ii. Paragraphs 2 and 3 are re-designated as paragraphs 4 and 5, respectively; and
- iii. Paragraphs 2 and 3 are added.

The additions and revisions read as follows:

## **Appendix C to Subpart G—OCC Interpretations**

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### *Section 34.203—Appraisals for Higher-Priced Mortgage Loans*

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#### *34.203(b) Exemptions*

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##### *Paragraph 34.203(b)(2)*

1. *Threshold amount.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 203(b)(2)-3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Comment 203(b)(2)-3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.

2. *No increase in the CPI-W.* If the CPI-W in effect on June 1 does not increase from the CPI-W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI-W applied to the dollar amount that would have resulted if decreases and any subsequent increases in the CPI-W had been taken into account.

i. *Net increases.* If the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

- i. From January 18, 2014, through December 31, 2014, the threshold amount is \$25,000.
- ii. From January 1, 2015, through December 31, 2015, the threshold amount is \$25,500.
- iii. From January 1, 2016 through December 31, 2016, the threshold amount is \$25,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 34.203(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 34.203(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a

§ 34.203(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 34.203 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 34.203 applies. See § 34.203(b) and (d)(7).

\* \* \* \*

## **BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

### **Authority and Issuance**

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

### **PART 226—TRUTH IN LENDING (REGULATION Z)**

3. The authority citation for part 226 continues to read as follows:

**Authority:** 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. No. 111-24, section 2, 123 Stat. 1734; Pub. L. No. 111-203, 124 Stat. 1376.

4. In Supplement I to part 226, under *Section 226.43—Appraisals for Higher-Risk Mortgage Loans*, under paragraph 43(b)(2), paragraph 1 is revised, paragraphs 2 and 3 are re-numbered paragraphs 4 and 5, respectively, and new paragraphs 2 and 3 are added, to read as follows:

### **Supplement I to Part 226—Official Staff Interpretations**

\* \* \* \*

## **SUBPART E – SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS**

\* \* \* \*

### *Section 226.43—Appraisals for Higher- Risk Mortgage Loans*

\* \* \* \*

### *43(b) Exemptions*

\* \* \* \*

#### *Paragraph 43(b)(2)*

*1. Threshold amount.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 43(b)(2)-3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Comment 43(b)(2)-3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.

*2. No increase in the CPI-W.* If the CPI-W in effect on June 1 does not increase from the CPI-W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI-W applied to the dollar amount that would have resulted if decreases and any subsequent increases in the CPI-W had been taken into account.

*i. Net increases.* If the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

- i. From January 18, 2014, through December 31, 2014, the threshold amount is \$25,000.
- ii. From January 1, 2015, through December 31, 2015, the threshold amount is \$25,500.
- iii. From January 1, 2016 through December 31, 2016, the threshold amount is \$25,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 226.43(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 226.43(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.43(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 226.43 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 226.43 applies. See § 226.43(b) and (d)(7).

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

### PART 1026—TRUTH IN LENDING (REGULATION Z)

5. The authority citation for part 1026 continues to read as follows:

**Authority:** 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

6. In Supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans*, under paragraph 35(c)(2)(ii), paragraphs 1 through 3 are revised, and paragraphs 4 and 5 are added, to read as follows:

### Supplement I to Part 1026—Official Interpretations

\* \* \* \*

### Subpart E –Special Rules for Certain Home Mortgage Transactions

\* \* \* \*

#### *Section 1026.35—Requirements for Higher-Priced Mortgage Loans*

\* \* \* \*

##### *35(c) Appraisals*

\* \* \* \*

##### *35(c)(2) Exemptions*

\* \* \* \*

##### *Paragraph 35(c)(2)(ii)*

1. *Threshold amount.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated in comment 35(c)(2)(ii)-3 for that period. The

threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Comment 35(c)(2)(ii)-3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.

2. *No increase in the CPI-W.* If the CPI-W in effect on June 1 does not increase from the CPI-W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI-W applied to the dollar amount that would have resulted if decreases and any subsequent increases in the CPI-W had been taken into account.

i. *Net increases.* If the resulting amount is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is \$25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is \$25,500.

iii. From January 1, 2016 through December 31, 2016, the threshold amount is \$25,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under

§ 1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 1026.35(c)(2)(ii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 1026.35(c) applies. See § 1026.35(c)(2) and (c)(4)(vii).

\* \* \* \*

**[THIS SIGNATURE PERTAINS TO THE PROPOSED RULE TITLED “APPRAISALS  
FOR HIGHER-PRICED MORTGAGE LOANS EXEMPTION THRESHOLD”]**

**Dated: July 19, 2016**

Thomas J. Curry (signed)

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Thomas J. Curry

*Comptroller of the Currency.*

**[THIS SIGNATURE PERTAINS TO THE PROPOSED RULE TITLED “APPRAISALS  
FOR HIGHER-PRICED MORTGAGE LOANS EXEMPTION THRESHOLD”]**

By order of the Board of Governors of the Federal Reserve System, July 19, 2016.

Robert deV. Frierson (signed)

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Robert deV. Frierson  
*Secretary of the Board.*

**[THIS SIGNATURE PERTAINS TO THE PROPOSED RULE TITLED “APPRAISALS  
FOR HIGHER-PRICED MORTGAGE LOANS EXEMPTION THRESHOLD”]**

Dated: July 13, 2016.

Richard Cordray (signed)

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Richard Cordray

*Director, Bureau of Consumer Financial Protection.*