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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-AA68

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: Final rules, official interpretations and commentary.

SUMMARY: The OCC, the Board, and the Bureau are finalizing amendments to 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 final rule will 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. Based on the CPI-W in effect as of June 1, 2016, the exemption threshold will remain at \$25,500 through 2017.

DATES: This final rule is effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT: *OCC:* MaryAnn Nash, Counsel, Legislative and Regulatory Activities 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:* 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.”¹ In January 2013, the Agencies issued a joint final rule implementing these requirements and adopted the term “higher-priced mortgage loan” (HPML) instead of “higher-risk mortgage” (the January 2013 Final Rule).² In July 2013, the Agencies proposed additional exemptions from the January 2013 Final Rule (the 2013 Supplemental Proposed Rule).³ 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).⁴ 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.⁵

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

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

² 78 FR 10368 (Feb. 13, 2013).

³ 78 FR 48548 (Aug. 8, 2013).

⁴ 78 FR 78520 (Dec. 26, 2013).

⁵ 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).

accompanying interpretations,⁶ 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 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.⁷

II. Commentary Revision

On August 4, 2016, the OCC, the Board and the Bureau published a proposed rule in the *Federal Register* to memorialize the calculation method used by the agencies each year to adjust the exemption threshold. See 81 FR 51394 (Aug. 4, 2016). The proposed commentary stated that 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 prior year. The proposed commentary 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. As the OCC, the Board and the Bureau discussed in the proposal, the proposed calculation method would ensure that the values for the exemption threshold keep pace with the CPI-W as contemplated in the December 2013 Supplemental Final Rule.

⁶ 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).

⁷ 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.”).

The comment period closed on September 6, 2016. In response to the proposal, the OCC, the Board and the Bureau received one comment from an individual, one from a State bankers association, and one from a community bank. The individual supported the proposal. The State bankers association requested that the smaller dollar loan exemption be raised to \$50,000, and the community bank commenter requested an exemption from the HPML rules for small institutions. Both of these comments are beyond the scope of this rulemaking.

The OCC, the Board, and the Bureau are adopting the commentary revisions as proposed, with some minor clarifying amendments. These changes will be effective on January 1, 2017. 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, this "Commentary Revision" discussion refers only to the section numbers of the commentary that will be 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 revising 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. Consistent with the proposal, the discussion of how the agencies round the threshold calculation will remain in comment 35(c)(2)(ii)-1 of the final rule. Additionally, current comments 35(c)(2)(ii)-2 and 35(c)(2)(ii)-3 are re-numbered as comments 35(c)(2)(ii)-4 and 35(c)(2)(ii)-5, respectively.

As the Agencies have stated previously,⁸ 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 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).⁹ 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 this issue of the *Federal Register*.

For the HPML appraisal rule exemption for smaller loans, the OCC, the Board, and the Bureau are memorializing this concept in comment 35(c)(2)(ii)-2, which provides 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.

In the final rule, comment 35(c)(2)(ii)-2 further sets 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, comment 35(c)(2)(ii)-2 provides that, 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

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

⁹ 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.").

previous year, the threshold is calculated by applying the annual percentage change in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. Comment 35(c)(2)(ii)-2.i further states that, if the resulting amount, after rounding, 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, after rounding. 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, after rounding, 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, after rounding. 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, after rounding, 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, after rounding, to the CPI-W in effect on June 1, 2020.

III. 2017 Threshold

Based on the calculation method detailed above, the exemption threshold amount for 2017 remains at \$25,500. This is based on the CPI-W in effect on June 1, 2016, which was reported on May 17, 2016. The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of the month. The CPI-W is a subset of the CPI-U index (based on all urban consumers) and represents approximately 28 percent of the U.S. population. The CPI-W reported on May 17, 2016, reflects a 0.8 percent increase in the CPI-W from April 2015 to April 2016. Because the CPI-W decreased by 0.8 percent from April 2014 to April 2015, the OCC, the Board and the Bureau are calculating the threshold based on the amount that would have resulted had this decrease been taken into account, which is \$25,300. A 0.8 percent increase in the CPI-W applied to \$25,300 results in \$25,500, which is the same threshold amount for 2016. Thus, the exemption threshold amount that will be in effect for 2017 remains at \$25,500. The OCC, the Board and the Bureau are revising the commentaries to their respective regulations to add new comments as follows:

- Comment 203(b)(2)–3.iv to 12 CFR part 34, appendix C to subpart G (OCC);
- Comment 43(b)(2)–3.iv to supplement I of 12 CFR part 226 (Board); and

- Comment 35(c)(2)(ii)–3.iv in supplement I of 12 CFR part 1026 (Bureau).

These new comments state that, from January 1, 2017, through December 31, 2017, the threshold amount is \$25,500. These revisions are effective January 1, 2017.

IV. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the OCC, the Board and the Bureau find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.¹⁰ The 2017 threshold amount for exempt transactions announced in this rule, \$25,500, is technical and applies the calculation method set forth elsewhere in this final rule, for which notice and public comment were provided.¹¹ For these reasons, the OCC, the Board and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment for purposes of the 2017 threshold adjustment are unnecessary. Therefore, the amendments regarding the 2017 threshold amount for exempt transactions are adopted in final form.

Bureau's Dodd-Frank Act Section 1022(b)(2) Analysis

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts.¹² 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

¹⁰ 5 U.S.C. 553(b)(B).

¹¹ See 81 FR 51394 (Aug. 4, 2016).

¹² 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.

systemic objectives administered by such agencies.

The Bureau has chosen to evaluate the benefits, costs and impacts of the final rule 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 final rule 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.¹³ The final rule memorializes this in official commentary. The final rule also clarifies how the threshold is calculated for years after a year in which the threshold did not change. The Bureau believes 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, taking into account both decreases and increases in the CPI-W, exceeds the actual threshold. The Bureau requested, but did not receive, comment on this point. Thus, the Bureau concludes that the final rule will not change the regulatory regime relative to the baseline and will create no significant benefits, costs, or impacts.

The final 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: Pursuant to the Regulatory Flexibility Act (RFA), an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule

¹³ 78 FR 48547, 48565 (Aug. 8, 2013) and 80 FR 73943, 73944 (Nov. 27, 2015).

on small entities.¹⁴ Under section 605(b) of the RFA, this analysis is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the *Federal Register* along with its rule. The OCC has concluded that the final rule does not have a significant economic impact on a substantial number of small entities supervised by the OCC.

As explained in the Commentary Revision section of the preamble, this final 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 final rule on small national banks and Federal savings associations 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 small OCC-supervised entities. Therefore, pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Board: An initial regulatory flexibility analysis (IRFA) was included in the proposal in accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (RFA). In the IRFA, the Board requested comments on any approaches, other than the proposed alternatives, that would reduce the burden on small entities. The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small

¹⁴ See 5 U.S.C. 601 *et seq.*

entities.¹⁵ In accordance with section 3(a) of the RFA, the Board has reviewed the final regulation. 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.

1. Statement of the need for, and objectives of, the final rule. The final rule memorializes 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). The final rule also adopts the exemption threshold that will apply from January 1, 2017, through December 31, 2017, based on the calculation method memorialized in the final rule.

2. Summary of issues raised by comments in response to the IFRA. The Board did not receive any comments on the IFRA.

3. Small entities affected by the final rule. 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 2015.¹⁶ The Board does not believe that the final rule will have a significant economic impact on the entities that it affects.

4. Recordkeeping, reporting, and compliance requirements. The final rule would not impose any recordkeeping, reporting, or compliance requirements.

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

¹⁵ See 5 U.S.C. 601 *et seq.*

¹⁶ 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.*

and-comment rulemaking requirements.¹⁷ These analyses must describe the impact of the proposed and final rules on small entities.¹⁸ 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.¹⁹ 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.²⁰

A FRFA is not required for this final rule because it will 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 final rule does not introduce costs or benefits to covered persons because it seeks only to clarify the method of threshold adjustment which has already been established in previous Agency rules. Therefore this final rule will not have a significant impact on small entities.

Certification

Accordingly, the Bureau Director, by signing below, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

¹⁷ 5 U.S.C. 601 *et seq.*

¹⁸ *Id.* at 603(a) and 604(a). For purposes of assessing the impacts of the 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).

¹⁹ *Id.* at 605(b).

²⁰ *Id.* at 609.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,²¹ the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Unfunded Mandates Reform Act

The OCC has analyzed the final rule 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 final 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 final 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 final 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, the OCC has not prepared a written statement to accompany its final rule.

²¹ 44 U.S.C. 3506; 5 CFR part 1320.

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*, the entry for Paragraph 34.203(b)(2) is revised to read as follows:

Appendix C to Subpart G of Part 34—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, after rounding, if decreases and any subsequent increases in the CPI-W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, 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, after rounding, 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.

iv. From January 1, 2017, through December 31, 2017, 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).

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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*, the entry for *Paragraph 43(b)(2)* is revised to read as follows:

Supplement I to Part 226—Official Staff Interpretations

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SUBPART E – SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

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Section 226.43—Appraisals for Higher--Risk Mortgage Loans

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43(b) Exemptions.

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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, after rounding, if decreases and any subsequent increases in the CPI-W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, 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, after rounding, 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.
- iv. From January 1, 2017, through December 31, 2017, 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 amends 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*, the entry for Paragraph 35(c)(2)(ii) is revised 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

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35(c)--Appraisals

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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, after rounding, if decreases and any subsequent increases in the CPI-W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, 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, after rounding, 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.
- iv. From January 1, 2017, through December 31, 2017, 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).

* * * * *

Dated: November 22, 2016.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 21, 2016.

Robert deV. Frierson,
Secretary of the Board.

Dated: November 7, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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