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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

Docket ID OCC-2018-0026

RIN 1557-AE48

Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects OCC's Regulatory Flexibility Act certification for the proposed rule that was published in the Federal Register on September 28, 2018, entitled "Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures."

DATES: The proposed rule published on September 28, 2018 at 83 FR 48990 is corrected as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received by [INSERT 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Carl Kaminski, Special Counsel, or Rima Kundnani, Attorney, (202) 649-5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597.

SUPPLEMENTARY INFORMATION:

I. Background

This document supplements the OCC's Regulatory Flexibility Act (RFA) certification for the notice of proposed rulemaking entitled "Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures" (proposed rule) published on September 28, 2018, Federal Register Document 2018–20875 (83 FR 48990), by the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. The sections of this correction document are effective as if they had been included in the **SUPPLEMENTARY INFORMATION** section of the proposed rule.

II. Summary of Supplemental Language

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of $550 million or less and trust companies with total assets of $38.5 million of less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

In the OCC's portion of the **SUPPLEMENTARY INFORMATION** section titled "Regulatory Flexibility Act Analysis" of the proposed rule, "Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures," the OCC stated that the proposal likely would impact a substantial number of small entities. However, the OCC determined that the impact of the proposal would not be economically significant. Therefore, the OCC certified, for the purpose of the RFA, that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

The United States Small Business Administration, which monitors compliance with the RFA, has asked the OCC to provide additional detail to support its certification. Therefore, the OCC is revising the administrative record to include additional information.

Correction

In the third column on page 48996 and the first column on page 48997, revise the section following "B. Regulatory Flexibility Act Analysis" to read as follows:

"*OCC:* The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA), requires an agency, in connection with a notice of proposed rulemaking, to prepare a Final Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration (SBA) 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 of June 30, 2018, the OCC supervised 886 small entities.[1] Currently, 211 small OCC-supervised institutions hold high volatility commercial real estate (HVCRE) exposures and thus will be directly impacted by the proposed rule. Therefore, the proposed rule potentially affects a substantial number of small entities.

The proposed rule would impact two principal areas: (1) the impact associated with implementing revisions to the capital rule to make the definition of an HVCRE exposure consistent with the new statutory definition and, (2) the impact associated with the time required to update policies and procedures and to re-evaluate HVCRE loan portfolios.

[1] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity.

As described in the **Supplementary Information** section in the preamble to this proposed rule, the OCC believes the change to the definition of HVCRE exposure would result in fewer loans being deemed HVCRE exposures. Therefore, the amount of capital required would decrease for impacted OCC-supervised entities.

Further, the OCC believes no currently reported non-HVCRE acquisition, development, or construction (ADC) exposures would be reclassified as HVCRE exposures, and thus there would be no additional compliance burden to OCC-supervised entities for the non-HVCRE component of their ADC portfolios. The proposed rule would not require OCC-supervised entities to amend previously filed reports as OCC-supervised entities adjust their estimates of existing HVCRE exposures. This would serve to minimize the compliance burden for OCC-supervised entities.

Compliance burdens that OCC-supervised entities may face could include: 1) updating policies and procedures to classify newly issued HVCRE loans; and 2) time spent re-evaluating existing HVCRE exposures in order to determine if any are eligible to be reclassified and thus receive a lower risk-weight of 100 percent. Based on the OCC's supervisory experience, OCC staff estimates that it would take an OCC-supervised institution, on average, a one-time investment of one business week, or 40 hours, to update policies and procedures and to re-evaluate their HVCRE exposures for loans originated after January 1, 2015.

The OCC's threshold for a significant effect is whether cost increases associated with a proposed rule are greater than or equal to either 5 percent of a small bank's total annual salaries and benefits or 2.5 percent of a small bank's total non-interest expense. The estimated compliance costs of $4,680 per institution (40 hours x $117 per hour)[2] would not exceed either of these thresholds for a significant impact on any of the 886 OCC-supervised small entities.

For this reason, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities."

Dated: December 18, 2018

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William A. Rowe
Chief Risk Officer

[2] To estimate average hourly wages we review data from May 2017 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100). To estimate compensation costs associated with the rule, we use $117 per hour, which is based on the average of the 90th percentile for seven occupations adjusted for inflation, plus an additional 34.2 percent to cover private sector benefits.

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