



**Billing Code: 4810-33-P**

**DEPARTMENT OF TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 3, 6, 34, 46, 160, 161, 163, and 167**

**[Docket ID OCC-2019-0004]**

**RIN 1557-AE50**

**Other Real Estate Owned and Technical Amendments**

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

**ACTION:** Final rule.

**SUMMARY:** The OCC is issuing a final rule to clarify and streamline its regulation on other real estate owned (OREO) for national banks and update the regulatory framework for OREO activities at Federal savings associations. The OCC is also removing outdated capital rules for national banks and Federal savings associations, which include provisions related to OREO, and making conforming edits to other rules that reference those capital rules.

**DATES:** The final rule is effective December 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** For revisions to part 34, subpart E (OREO): Charlotte Bahin, Senior Advisor for Thrift Supervision, (202) 649-6281; Beth Nalyvayko, Bank Examiner, Commercial Credit Risk, (202) 649-6670; or J. William Binkley, Attorney, Chief Counsel's Office, (202) 649-5490.

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## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On April 24, 2019, the OCC published a proposed rule (proposal)<sup>1</sup> to clarify and streamline the regulation for national bank other real estate owned (OREO) activities and to apply that framework to the OREO activities of Federal savings associations. The OCC's last significant revision to the national bank OREO rules occurred over twenty years ago,<sup>2</sup> and the OCC has gained additional supervisory experience related to OREO since that time.

In addition, the OCC now supervises Federal savings associations pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>3</sup> Federal savings associations, unlike national banks, are not subject to statutory provisions governing OREO. While capital regulations and handbooks issued by the Office of Thrift Supervision (OTS) generally established requirements and supervisory expectations, respectively, for OREO activities, the OCC rescinded many of those documents, creating ambiguity with respect to OREO standards for Federal savings associations. As discussed below, the OCC is adopting a framework for Federal savings associations that generally is consistent with the OTS framework described above. This framework is still followed by many savings associations and offers flexibility consistent with provisions in the Home Owners' Loan Act (HOLA).<sup>4</sup>

The OCC also is removing Appendices A and B to 12 CFR part 3 (risk-based capital guidelines for national banks) and 12 CFR part 167 (capital requirements for Federal savings

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<sup>1</sup> See 84 FR 17094 (April 24, 2019).

<sup>2</sup> See 61 FR 11294 (March 20, 1996).

<sup>3</sup> See 12 U.S.C. 5412.

<sup>4</sup> 12 U.S.C. 1461 *et seq.*

associations) and making conforming technical edits to other CFR parts that reference those provisions. When the OCC revised Part 3, it superseded Appendices A and B to part 3 and part 167. However, because there was a transition period for part 3, the OCC retained those appendices at that time.<sup>5</sup> Part 167 includes provisions relating to treatment of OREO held by Federal savings associations that are no longer in effect. The OCC is removing part 167 and related references to avoid any confusion with the OREO treatment in this final rule. Since Appendices A and B to part 3 include the corresponding capital provisions for national banks and are similarly outdated, the OCC is rescinding those appendices in this final rule as well.

## **II. Description of Final Rule and Comments**

The OCC received two comments on the proposal. Both comments requested clarification or adjustments to the provisions on appraisals of OREO. For the reasons discussed below, the OCC does not believe changes are necessary to the rule text in response to the comments, and therefore is adopting the final rule substantially as proposed. The OCC is making minor adjustments to the proposed technical amendments related to the capital rules.

### **A. Definitions (§ 34.81)**

This section contains definitions used in the OREO regulation. This final rule continues to use the existing definitions for *other real estate owned (OREO)*; *market value*; and *recorded investment amount* in the revised regulation. The term *OREO* continues to mean DPC real estate and former banking premises. The term *market value* continues to mean the value of the property, as determined under the appraisal rule in 12 CFR part 34, subpart C. *Recorded investment amount* continues to mean the recorded loan balance (for loans) or the net book value (for former banking premises).

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<sup>5</sup> See 78 FR 62018 (October 11, 2013).

In addition, the final rule continues to use the current definition of *DPC real estate*, but with minor revisions related to lease accounting described below. The definition of *DPC real estate* continues to mean real estate acquired through any means in satisfaction of a debt previously contracted. The definition of the term includes capitalized and operating leases, which are the two types of leases recognized under current accounting standards from the lessee's perspective. However, revised accounting standards requiring operating leases to be capitalized are scheduled to be implemented in the near future.<sup>6</sup> Therefore, the OCC is revising the terminology in the current definition of DPC real estate to refer to leased real estate, rather than to refer specifically to capitalized and operating leases. The definition continues to cover all leases, but the revision will ensure the regulation is not outdated in this respect after implementation of the new accounting standards.

In addition, the final rule revises the definition of *former banking premises* to include a reference to 12 CFR 7.1000(a)(1), which provides that national banks and Federal savings associations are permitted to invest in real estate for use in their banking activities. The revised definition defines former banking premises as real estate permitted under section 7.1000(a)(1) that is no longer used or contemplated to be used for the purposes permitted under that section.<sup>7</sup> The revision should improve regulatory consistency by clarifying that both rules cover the same types of real estate for banking activities and eliminate confusion about whether the rules refer to different types of properties.

## **B. Holding Period (§ 34.82)**

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<sup>6</sup> See FASB ASU 2016-02, "Leases (Topic 842)" (February 2016).

<sup>7</sup> While the proposed rule referenced 12 CFR 7.1000(a)(2), which provides a non-exclusive list of permissible real estate investments, the OCC believes a reference to the general authority in 7.1000(a)(1) is more appropriate for the final rule.

This section specifies how long a national bank or a Federal saving association may hold OREO, provides the starting date for that holding period, and addresses additional related provisions affecting the holding period.

The holding period for national banks under the final rule remains unchanged and consists of an initial five-year holding period, with up to an additional five years if approved by the OCC.

The final rule establishes an initial holding period for Federal savings associations of five years after commencement of the holding period to ensure the safe and sound management of OREO holdings. If the Federal savings association has not disposed of the OREO within the initial five-year holding period, the savings association may request OCC approval to continue to hold the real property as OREO for up to five additional years. These provisions are consistent with the rules that apply to national banks. The OCC's supervisory experience is that both types of institutions generally have or obtain similar types of OREO. As with national banks, in deciding whether to grant the approval to hold OREO beyond the initial five-year holding period, the OCC would expect to consider, among other factors, the Federal savings association's current and prior efforts to dispose of the property and safety and soundness concerns related to an immediate disposition of the property. During the initial five-year holding period and any subsequent approved period, the Federal savings association would need to make reasonable efforts to dispose of the OREO. This provision is consistent with prior OTS expectations. This framework also is consistent with the requirement previously applicable to Federal savings associations under 12 CFR part 167, which required savings associations to deduct from regulatory capital the value of OREO held for more than five years, or a longer period with OCC approval, as an equity investment. This provision created incentives for Federal savings

associations to dispose of OREO within five years, or a longer period approved by the OCC, as the regulatory capital treatment for failure to dispose of the property generally would be more onerous than disposing of the property. The OCC believes that an initial five-year holding period is a sufficient amount of time to dispose of most OREO and the option to extend the holding period for an additional five years should be sufficient to address atypical properties or unusual real estate market conditions.

The final rule also adopts for Federal savings associations the existing national bank provision describing the date the holding period for OREO begins. Generally, the holding period for DPC real estate would begin on the date the property is transferred to the national bank or Federal savings association (for example, after a judicial foreclosure or deed-in-lieu of foreclosure), which may be different than the date the institution must recognize the property as OREO for accounting and financial reporting purposes. The title transfer law of the state or other jurisdiction where the property is located governs when the property is considered transferred to the national bank or Federal savings association. The holding period for former bank premises begins when the national bank or Federal savings association ceases using a property as bank premises (whether outright or after relocating) or abandons a plan to use property held for future bank premises.

The OCC is modifying the holding period for OREO obtained by a Federal savings association prior to the effective date of this final rule. For this OREO, the holding period would begin on the rule's effective date (December 1, 2019) to provide for a full initial five-year holding period. The OCC still would consider the entire time the OREO has been held by the Federal savings association in evaluating any request for an additional holding period beyond that initial five years. The OCC believes this accommodation provides Federal savings

associations with a reasonable timeframe to dispose of OREO held prior to the effective date of the final rule, rather than calculating the holding period back to the initial transfer date.

The OCC also is clarifying that when a national bank or Federal savings association obtains OREO from a merged or acquired institution, the relevant holding period commences on the effective date of the merger or acquisition and would not include any time the OREO had been held by the acquired institution prior to the merger or acquisition. Similarly, when an institution converts to a national bank or Federal savings association, the relevant holding period begins on the date of conversion. However, if the institution was already a national bank or Federal savings association immediately prior to the conversion, the holding period would not reset on the conversion date.<sup>8</sup> The OCC believes this is appropriate because different OREO standards might apply to an institution before it becomes a national bank or Federal savings association, unless the institution is already covered by the OCC's OREO rule. The revision also extends to Federal savings associations the national bank regulatory provision which provides that the holding period for DPC real estate that is subject to a redemption period imposed under state law begins after the expiration of the redemption period.

The revised section also addresses an interpretive issue that arises when a national bank or Federal savings association enters into a transaction to dispose of OREO, but the real estate is conveyed back to the institution for a reason other than a subsequent purchase by the institution (for example, if there is a failure to complete the disposition or the disposition is validly rescinded or unwound). In those cases, the holding period would be tolled during the period of time the OREO property was not under the bank's or savings association's control. For example,

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<sup>8</sup> For example, if a Federal savings association that had OREO with a holding period that began in January 2020, converted to a national bank in June 2023, the OCC would still consider the holding period for the OREO to have begun in January 2020, not June 2023.

if a third party purchases OREO from a national bank or Federal savings association but later legally rescinds the sale, the bank or savings association cannot start a new five-year holding period for the property. Instead, any previous holding period (including approved extensions) is tolled between the time the bank or savings association sold and reacquired the real property. Similarly, in certain U.S. government mortgage loan programs a national bank or Federal savings association may be required to transfer a foreclosed property to a U.S. government entity, and that entity may later validly reject receipt of the property and return title to the bank or savings association. In that case, the national bank or Federal savings association could not start a new five-year holding period for the property but could toll any previous holding period (including approved extensions) during the time the government entity had possession of the property. However, if the national bank or Federal savings association re-acquires property that was previously OREO and had been disposed of consistent with this part, then the five-year holding period would reset on that property. For example, if a national bank or Federal savings association originates a mortgage loan in connection with the sale of an OREO property that met the requirements for a valid disposition under part 34, but later forecloses on that property due to missed mortgage payments, then the bank or savings association will obtain a new five-year holding period.

### **C. Disposition of OREO (§ 34.83)**

This section specifies methods for national banks and Federal savings associations to dispose of OREO. Generally, the final rule retains the existing disposal methods for national banks and allows Federal savings associations to dispose of OREO using those same methods. These methods include: (i) selling the property outright or over a period of time; (ii) using DPC real estate as bank premises or affiliate premises; or (iii) entering into subleases of OREO leases.

Writing OREO (whether owned or leased) down to zero for accounting purposes is not a valid disposition under the existing rules and would not be a valid disposition under the final rule.

To provide for additional flexibility to dispose of OREO, the OCC also is adding a new paragraph (a)(5) that recognizes that OREO may be disposed of in other ways approved by the OCC consistent with safe and sound banking practices. For example, the OCC previously has approved national banks and Federal savings associations to dispose of OREO in certain circumstances by donating or escheating OREO or by negotiating early terminations of OREO leases.

The final rule recognizes that, unlike a national bank, a Federal savings association also may transfer OREO to a service corporation.<sup>9</sup> Under HOLA and 12 CFR 5.59, a Federal savings association may invest in a service corporation, which may engage in the same activities as its parent Federal savings association under the same terms and conditions. A service corporation also may engage in additional activities not permitted at a Federal savings association, including certain real estate related services such as holding property as an investment in real estate.<sup>10</sup> In addition, 12 CFR 5.59(i) permits a Federal savings association to make a contribution to a service corporation in the exercise of the association's salvage powers.<sup>11</sup> Consistent with HOLA and 12 CFR 5.59, the final rule allows a Federal savings association, through a service

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<sup>9</sup> This provision would not apply to a Federal savings association that elects to be treated as a covered savings association. A covered savings association is not permitted to establish any new service corporations and generally must divest any interests in existing service corporations. *See* 12 CFR 101.5.

<sup>10</sup> *See* 12 U.S.C. 1464(c)(4)(B) and 12 CFR 5.59.

<sup>11</sup> 12 CFR 5.59(i) provides that “a Federal savings association may exercise its salvage power to make a contribution or a loan . . . to a service corporation (“salvage investment”) that exceeds the maximum amount otherwise permitted under law or regulation.” The Federal savings association must demonstrate that: (i) the salvage investment protects the association's interest in the service corporation; (ii) the salvage investment is consistent with safety and soundness; and (iii) the association considered alternatives to the salvage investment but determined the alternatives would not satisfy (i) and (ii).

corporation, to hold OREO property as an investment for longer than 10 years. However, under current statutory and regulatory capital requirements, a Federal savings association must deconsolidate, and deduct any investments in, a subsidiary engaged in activities not permissible for a national bank, including holding property as an investment in real estate.<sup>12</sup>

Finally, this section of the final rule retains the requirement that a national bank must make a diligent and ongoing effort to dispose of OREO and maintain documentation of those efforts. The final rule also applies these provisions to Federal savings associations. Compliance with the requirement to document the national bank's or Federal savings association's diligence when attempting to dispose of OREO is an important consideration if the national bank or Federal savings association requests an extension to hold OREO beyond the initial five-year holding period. The requirement that a Federal savings association make diligent efforts to dispose of OREO and maintain relevant documentation is consistent with both prior OTS expectations that savings associations develop salvage plans that included provisions for disposition of OREO and the existing requirement that Federal savings associations maintain documentation of appraisals of OREO.<sup>13</sup>

#### **D. Appraisal Requirements (§ 34.85)**

This section specifies the appraisal requirements applicable to OREO. The final rule carries over the existing requirements for appraisals of OREO for national banks and applies those same requirements to Federal savings associations. Generally, this section requires an appraisal consistent with 12 CFR part 34, subpart C when property is obtained as OREO, followed by periodic monitoring thereafter. In addition, this section would continue to include

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<sup>12</sup> 12 U.S.C. 1464(t)(5) and 12 CFR 3.22(a)(8). Holding property as an investment in real estate is not authorized for a national bank under 12 U.S.C. 29.

<sup>13</sup> 12 CFR 160.172.

existing exceptions from the appraisal requirements. For example, an appraisal is not required if there is still a valid appraisal that was created in a transaction involving the property, as described in § 34.85(b). Because the requirements for appraisals of OREO held by Federal savings associations are set out in the final rule, the OCC also is repealing 12 CFR 160.172, which includes comparable appraisal standards for OREO held by Federal savings associations.

As noted above, the OCC received two comments raising three issues related to the appraisal provisions applicable to OREO. One comment requested that the OCC permit appraisals of OREO to use liquidation value or disposition value instead of market value as required by the current rule, as the commenter stated that these alternate values are commonly used with OREO. The OCC notes that liquidation value or disposition value generally assume a seller who is compelled or strongly motivated to sell a property as compared to a market value appraisal that assumes a willing seller in the ordinary course of business. As the OREO rule permits an initial holding period of five years, that timeframe aligns better with the assumptions of a seller under a market value appraisal rather than a liquidation value or disposition value appraisal for purposes of this rule. While a bank or savings association may request alternate values in addition to market value, only a market value appraisal is required for OREO in the final rule.

Another commenter requested clarification regarding the amount a bank should use in determining whether to request an appraisal of a property in foreclosure. Under the final rule, an appraisal is required by default when the property is obtained as OREO, unless the “recorded investment amount” of the OREO is less than the applicable threshold in 12 CFR § 34.43(a). For foreclosed real estate, referred to as DPC property in the final rule, recorded investment amount means the recorded loan balance (*i.e.*, contractual loan balance less payments and charge-offs) at

the time the property is obtained as OREO. If the recorded investment amount is less than the applicable threshold, 12 CFR § 34.43(b) generally requires an evaluation, instead of an appraisal, for OREO.

The same commenter also requested clarification on applying the requirement to obtain an appraisal or evaluation after a foreclosed property is transferred to OREO but when the bank may not have full access to the property (for example, if the bank obtains title to the property but the prior owners continue to occupy the property as squatters) and whether an alternate valuation is appropriate in those circumstances. The OCC believes that it is important for a bank or savings association to obtain the best appraisal or evaluation possible at the time a property is transferred to OREO. In situations where it may be unreasonable or unsafe to conduct a full appraisal or evaluation of the interior or other portions of the property, the appraisal or evaluation may include “extraordinary assumptions” about the condition of the interior of the property or other areas that could not reasonably and safely be accessed at the time the property is transferred to OREO. Once the bank or savings association completes the process of obtaining access to or possession of the property and the property has been inspected by the lender or an authorized third-party, the appraisal or evaluation should promptly be updated if the actual condition of the property materially differs from the extraordinary assumptions.

#### **E. OREO Expenditures and Notification (§ 34.86)**

This section contains provisions related to permissible expenditures on OREO. The final rule codifies various interpretations regarding other permissible expenses related to OREO for national banks and Federal savings associations in new paragraphs (a) and (b). Paragraph (a) allows national banks and Federal savings associations to pay any normal operating expenses relating to the OREO property, such as taxes, insurance, utilities, and maintenance, and

homeowners' or condominium association fees, to the extent those fees are reasonable and consistent with safe and sound banking practices. This addition is consistent with a provision in existing paragraph (b)(1), prior interpretations issued by the OCC for national banks, and prior OTS expectations concerning payment of taxes, insurance, and similar expenses on OREO by Federal savings associations.<sup>14</sup>

Paragraph (b) allows national banks and Federal savings associations to pay expenses for the operation of a business associated with the OREO property, if (i) payment of the expenses is reasonably calculated to reduce the shortfall between the current value of the property and the national bank or Federal savings association's investment in the property; and (ii) the expenses are consistent with safe and sound banking practices. For example, if a national bank or Federal savings association obtains an OREO property that includes a functioning hotel and resort, the national bank or Federal savings association may be able to minimize its loss on the defaulted loan by continuing to pay business expenses to operate the hotel and resort, such as staff wages, inventory, management fees, and licensing fees, while the OREO is being prepared for sale. The OCC has previously addressed these types of expenses for national banks consistent with safe and sound banking practices, and this provision extends the permission to Federal savings associations.<sup>15</sup>

Under the current rule, a national bank is permitted to make advances to complete an OREO development or improvement project (referred to as "additional expenditures").

Paragraph (c) continues the existing requirements for additional expenditures on OREO for a

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<sup>14</sup> For more information, *see* Comptroller's Handbook on "Other Real Estate Owned" (August 2018). For Federal savings associations, this provision was included in the OTS Examination Handbook, Section 251, "Real Estate Owned and Repossessed Assets" (December 2010), which has since been rescinded by the OCC.

<sup>15</sup> *See* Comptroller's Handbook on "Other Real Estate Owned" (August 2018).

national bank and applies the same requirements to a Federal savings association. A national bank or Federal savings association could make additional expenditures only if (i) the expenditures are reasonably calculated to reduce the shortfall between the current value of the property and the bank's investment in the property; (ii) the expenditures are not made for purposes of speculation in real estate; and (iii) the expenditures are consistent with safe and sound banking practices. These requirements are consistent with prior OTS expectations, which addressed a Federal savings association's reasonable capital expenditures to reduce the loss on OREO obtained by the savings association.<sup>16</sup>

In addition, paragraph (d) updates the requirements for prior notification for significant additional expenditures on OREO for national banks and extends the provision to Federal savings associations. Currently, under 12 CFR 34.86(b), a national bank must notify the OCC at least 30 days before making additional expenditures if the amount of the expenditures and recorded investment in the OREO exceeds ten percent of the national bank's capital and surplus, which generally is based on regulatory capital calculated under 12 CFR part 3. Federal savings associations were subject to supervisory review of any expenditures on OREO in excess of their lending limits, which are calculated based on a formula that incorporates a percentage of capital and surplus.<sup>17</sup> While based on different calculations, the supervisory review for Federal savings associations had a similar purpose as the required OCC notification for national banks, namely, to ensure that institutions did not expend an excessive amount of funds to complete or renovate

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<sup>16</sup> For Federal savings associations, this provision was included in the OTS Examination Handbook, Section 251, "Real Estate Owned and Repossessed Assets" (December 2010), which has since been rescinded by the OCC.

<sup>17</sup> This provision was reflected in the OTS lending limits at 12 CFR 560.93 and included in the OTS Examination Handbook, Section 211, "Loans to One Borrower" (December 2007). The OCC has superseded the rule and rescinded the handbook section.

OREO. The OCC is updating and streamlining the notification provision by requiring prior notification only when the proposed additional expenditures and recorded investment in an individual OREO property exceed 10 percent of the institution's total equity capital based on the institution's most recent Consolidated Reports of Condition and Income (Call Report). The OCC believes that using a measure based on total equity capital for this purpose, rather than a measure tied to 12 CFR part 3 regulatory capital or lending limits, allows for a less burdensome and more transparent calculation, while not impairing the OCC's supervisory review of institutions that propose making significant additional expenditures on OREO.

A comparison of capital and surplus and total equity capital for national banks supports this approach.<sup>18</sup> Based on information from the June 30, 2018 Call Report, the measures of regulatory capital and total equity capital are numerically comparable, and identical in some cases, for many national banks that hold OREO. Under the final rule, national banks with significant loan loss reserves or excessive losses recorded in accumulated other comprehensive income will generally have a lower limit for notification compared with the "capital and surplus" measure. The OCC believes that this result is appropriate, as those losses may indicate national banks with a higher risk profile for which notification of significant OREO expenditures is most relevant. National banks holding assets that are deducted under the regulatory capital rule, such as mortgage servicing assets or investments in other financial institutions, would generally have a higher limit for notification under the revised measure.

## **F. Additional Provisions**

The OCC is rescinding existing 12 CFR 34.87, which requires national banks to account for OREO consistent with the instructions for the Call Report, because it is now redundant to

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<sup>18</sup> The OCC did not review these measures for Federal savings associations because Federal savings associations were not subject to either the existing limit or notification provision for improvements to OREO.

statutory requirements. Historically, there have been differences between regulatory accounting principles and generally accepted accounting principles (GAAP). However, currently, national banks and Federal savings associations must follow GAAP when accounting for transactions involving OREO.<sup>19</sup> Therefore, codifying this requirement in the OREO rule is unnecessary. Guidance on the application of GAAP for OREO transactions can be found in the instructions for the Call Report and the OCC's Bank Accounting Advisory Series.<sup>20</sup> However, the OCC notes that, although the accounting standard generally establishes a bright line for when a bank or savings association must report a property as OREO for financial reporting purposes (*i.e.*, when a judge completes a judicial foreclosure), section 34.82(b) does not establish a bright line for when property is originally transferred to a bank or savings association. As a result, the date on which reporting requirements begin for OREO under the accounting standard may be different than the date that the holding period commences under 34.82(b), as described above in Section III.B. The OCC also notes that writing off a property or lease classified as OREO for accounting purposes does not eliminate the need to comply with the requirements of this subpart, including the requirement for appraisals and disposition of the property or lease under one of the allowed methods.

#### **IV. Technical Amendments**

As described above, the OCC also is removing Appendices A and B to 12 CFR part 3 (risk-based capital guidelines for national banks) and 12 CFR part 167 (capital requirements for Federal savings associations) and making conforming technical edits to other parts, as part 167 is outdated and includes OREO provisions that conflict with the provisions described in this final

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<sup>19</sup> See 12 U.S.C. 1831n(a)(2).

<sup>20</sup> Bank Accounting Advisory Series (August 2019), *available at*: <https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-bank-accounting-advisory-series.pdf>.

rule. The final rule also makes conforming technical changes to portions of the OCC's rules that refer to Appendices A and B to 12 CFR part 3 or to 12 CFR part 167. Specifically, the OCC is making conforming edits to 12 CFR 3.1, 6.1, 6.2, Appendix A to Subpart D of part 34, 46.6, 160.100, Appendix A to 160.101, 161.55, 163.74, and 163.80. This final rule does not impact the legal status of any reference to the superseded capital rules in outstanding compliance and enforcement orders, agreements, and memoranda of understanding entered into by the OCC and a national bank or Federal savings association, as those references became references to 12 CFR part 3 when the revised capital rule became effective.

## **V. Regulatory Analyses**

### **A. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995,<sup>21</sup> the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The OCC has submitted the information collection requirements imposed by this final rule to OMB for review. However, the final rule will not result in a change in burden. While the respondent count will increase with the addition of Federal savings associations, the OCC estimates fewer notices from national banks due to a decrease in charters since the last review, resulting in no change in burden.

Section 34.86(d) updates the requirements for prior notification for significant additional expenditures on OREO for national banks and extends the provision to Federal savings associations. Currently, a national bank must notify the OCC at least 30 days before making additional expenditures if the amount of the expenditures and recorded investment in the OREO exceeds ten percent of its capital and surplus, based on regulatory capital calculated under 12

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<sup>21</sup> 44 U.S.C. 3501 *et seq.*

CFR part 3. Federal savings associations are subject to supervisory review of any expenditures on OREO in excess of their lending limits, which are calculated based on a formula that incorporates a percentage of capital and surplus.

The final rule updates and streamlines the notification provision by requiring prior notification only when the proposed additional expenditures and recorded investment in an individual OREO property exceeds 10 percent of the institution's total equity capital based on its most recent Call Report. National banks with significant loan loss reserves or excessive losses recorded in accumulated other comprehensive income will generally have a reduced limit for notification. National banks holding assets that are deducted under the regulatory capital rule, will generally have an increase limit for notification under the final rule. The OCC expects a similar result for Federal savings associations that previously used a notification framework based on lending limits.

Title: Real Estate Lending and Appraisals.

OMB Control No.: 1557-0190.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 6.

Estimated Burden per Respondent: 5 hours.

Estimated Total Annual Burden: 30 hours.

Comments are invited on:

- (a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;
- (b) The accuracy of the OCC's estimates of the burden of the collections of information;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

## **B. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act<sup>22</sup> requires an agency, in connection with a final rule, to prepare a Final 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 \$600 million or less and trust companies with total revenue of \$41.5 million or less) or to certify that the final rule would not have a significant economic impact on a substantial number of small entities. As of December 31, 2018, the OCC supervised 782 small entities. The final rule would apply to all entities supervised by the OCC and, therefore, would affect a substantial number of small entities. The economic impact on each small Federal savings association is estimated to be approximately \$1,824, which is not significant based on 5% of total annual salaries or 2.5% of other noninterest income. The economic impact on each small national bank is estimated to be *de minimis*. Therefore, the OCC

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<sup>22</sup> 5 U.S.C. 601 *et seq.*

certifies the final rule would not have a significant economic impact on a substantial number of small entities.

### **C. OCC Unfunded Mandates Reform Act of 1995**

The OCC 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 for inflation). The OCC estimates that the total cost of the final rule is \$568,000. Therefore, the OCC has determined that this final rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this final rule.

### **D. Riegle Community Development and Regulatory Improvement Act of 1994**

This rulemaking would not impose additional reporting, disclosure, or other requirements on an insured depository institution. Therefore, section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 does not apply to this rulemaking.

### **E. Congressional Review Act Determination**

Pursuant to the Congressional Review Act, the Office of Management and Budget's Office of Information and Regulatory Affairs designated this rule as not a "major rule," as defined at 5 U.S.C. 804(2).

### **List of Subjects**

#### **12 CFR Part 3**

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

#### **12 CFR Part 6**

National banks.

**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 46**

Banks, Banking, Capital, Disclosures, National banks, Reporting and recordkeeping requirements, Risk, Stress test.

**12 CFR Part 160**

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

**12 CFR Part 161**

Administrative practice and procedure, Savings associations.

**12 CFR Part 163**

Accounting, Administrative practice and procedure, Advertising, Conflicts of interest, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Surety bonds.

**12 CFR Part 167**

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

**Authority and Issuance**

For the reasons set out in the preamble, the OCC is revising 12 CFR chapter I as follows:

**PART 3—CAPITAL ADEQUACY STANDARDS**

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

**§ 3.1 [Amended]**

2. Section 3.1 is amended by removing and reserving paragraph (f)(1)(ii).

**Appendix A to Part 3 [Removed]**

3. Remove Appendix A to part 3.

**Appendix B to Part 3 [Removed]**

4. Remove Appendix B to part 3.

**PART 6—PROMPT CORRECTIVE ACTION**

5. The authority citation for part 6 continues to read as follows:

Authority: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

**§ 6.1 [Amended]**

6. Section 6.1 is amended by removing and reserving paragraph (f)(1).

**§ 6.2 [Amended]**

7. Section 6.2 is amended by removing footnotes 30, 31, 32, 33, 34, and 35.

**PART 34 – REAL ESTATE LENDING AND APPRAISALS**

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

**Authority:** 12 U.S.C. 1 et seq., 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 et seq., 5101 et seq., and 5412(b)(2)(B) and 15 U.S.C. 1639h.

**Subpart D – Real Estate Lending Standards**

9. Footnote 2 of Appendix A to Subpart D of part 34 is revised to read as follows:

**Appendix A to Subpart D of Part 34— Interagency Guidelines for Real Estate Lending**

\* \* \* \* \*

<sup>2</sup>For the state member banks, the term “total capital” means “total risk-based capital” as defined in Appendix A to 12 CFR part 208. For insured state non-member banks, “total capital” refers to that term described in table I of Appendix A to 12 CFR part 325. For national banks and Federal savings associations, the term “total capital” is defined at 12 CFR 3.2.

**Subpart E – Other Real Estate Owned**

10. Section 34.81 is amended by:

- a. Removing the paragraph designations and arranging the definitions in alphabetical order;
- b. Removing the definition of “capital and surplus”; and
- c. Revising the definitions of “debts previously contracted (DPC) real estate” and “former banking premises”.

The revisions read as set forth below.

**§ 34.81 Definitions.**

\* \* \* \* \*

*Debts previously contracted (DPC) real estate* means real estate (including leases) acquired by a national bank or Federal savings association through any means in full or partial satisfaction of a debt previously contracted.

*Former banking premises* means real estate permissible under § 7.1000(a)(1) of this chapter that is no longer used or contemplated to be used for the purposes permitted under that section.

\* \* \* \* \*

11. Section 34.82 is amended by revising paragraphs (a) and (b) and adding paragraphs (d) and (e) to read as follows:

**§ 34.82 Holding period.**

(a) *Holding period for OREO*—(1) *National bank.* A national bank shall dispose of OREO at the earliest time that prudent judgment dictates, but not later than the end of the holding period (or an extension thereof) permitted by 12 U.S.C. 29.

(2) *Federal savings association.* A Federal savings association may hold OREO for not more than five years after commencement of the holding period. On the request of a Federal savings association, the OCC may extend the holding period for not more than an additional five years.

(b) *Commencement of holding period.* The holding period begins on the date that:

(1) Ownership of the property is originally transferred to a national bank or Federal savings association, including as a result of a merger with or acquisition of another organization holding OREO;

(2) A national bank or Federal savings association completes relocation from former banking premises to new banking premises or ceases to use the former banking premises without relocating;

(3) A national bank or Federal savings association decides not to use real estate acquired for future banking expansion;

(4) An institution converts to a national bank or Federal savings association, unless the institution was a national bank or Federal savings association immediately prior to the conversion; or

(5) Is December 1, 2019, for OREO obtained by a Federal savings association prior to that date.

\* \* \* \* \*

(d) *Effect of failed disposition.* If a national bank or Federal savings association disposes of OREO, but the real estate subsequently is conveyed back to the institution within five years as a result of a valid rescission or invalidation of the original disposition, then the holding period will be tolled for the period during which the real estate was not in possession of the national bank or Federal savings association.

(e) *Re-acquisition of former OREO.* If a national bank or Federal savings association reacquires a property that had been OREO and was disposed of consistent with § 34.83, the holding period will reset.

12. Section 34.83 is amended:

- a. By revising the section heading and paragraphs (a) introductory text, (a)(3) introductory text, (a)(3)(i)(B), and (a)(3)(ii);
- b.. In paragraph (a)(4) by removing the period at the end and adding “; or” in its place;
- c. Adding paragraph (a)(5);
- d. Redesignating paragraph (b) as paragraph (c);
- e. Adding new paragraph (b); and
- f. In newly redesignated paragraph (c), by adding “or Federal savings association” after “national bank”.

The revisions and addition read as follows:

**§ 34.83 Disposition of OREO.**

(a) *Disposition.* A national bank or Federal savings association may dispose of OREO in the following ways:

\* \* \* \* \*

(3) With respect to a lease:

(i) By obtaining an assignment or a coterminous sublease. If a national bank or Federal savings association enters into a sublease that is not coterminous, the period during which the master lease must be divested will be suspended for the duration of the sublease, and will begin running again upon termination of the sublease. A national bank or Federal savings association holding a lease as OREO may enter into an extension of the lease that would exceed the holding period referred to in §34.82 if the extension meets the following criteria:

\* \* \* \* \*

(B) The national bank or Federal savings association, prior to entering into the extension, has a firm commitment from a prospective subtenant to sublease the property; and

\* \* \* \* \*

(ii) Should the OCC determine that a national bank or Federal savings association has entered into a lease, extension of a lease, or a sublease for the purpose of real estate speculation, the OCC will take appropriate measures to address the violation, which may include requiring the bank or savings association to take immediate steps to divest the lease or sublease; and

\* \* \* \* \*

(5) By any other method approved by the OCC.

(b) *Additional method for Federal savings associations.* A Federal savings association also may transfer OREO to a service corporation. A service corporation may hold real property transferred to it:

(1) As OREO, subject to the requirements otherwise applicable to the Federal savings association under this Subpart E; or

(2) As an investment in real estate under §5.59.

\* \* \* \* \*

**§ 34.85 [Amended]**

13. Section 34.85 is amended:

a. After “national bank”, wherever it appears, by adding “or Federal savings association”;

and

b. In paragraphs (a)(2) and (b), by adding “or savings association” after “the bank”.

14. Section 34.86 is revised to read as follows:

**§ 34.86 OREO expenditures and notification.**

(a) *Operating expenditures.* A national bank or Federal savings association may pay operating expenses on OREO, including taxes, insurance, utilities, and maintenance, that are reasonable and consistent with safe and sound banking practices.

(b) *Business expenditures.* A national bank or Federal savings association may pay expenses for OREO that includes the operation of a business, provided the expenses are:

(1) Reasonably calculated to reduce any shortfall between the property’s market value and the recorded investment amount; and

(2) Consistent with safe and sound banking practices.

(c) *Additional expenditures.* For OREO that is a development or improvement project, a national bank or Federal savings association may make advances to complete the project if the advances are:

(1) Reasonably calculated to reduce any shortfall between the property's market value and the recorded investment amount;

(2) Not made for the purpose of speculation in real estate; and

(3) Consistent with safe and sound banking practices.

(d) *Notification procedures for additional expenditures.* (1) A national bank or Federal savings association shall notify the appropriate supervisory office at least 30 days before implementing a development or improvement plan for OREO when the sum of the plan's estimated cost and the bank's or savings association's current recorded investment amount (including any unpaid prior liens on the property) exceeds 10 percent of the bank's or savings association's total equity capital on its most recent report of condition. A national bank or Federal savings association need notify the OCC under this paragraph (d)(1) only once.

(2) The required notification must demonstrate that the additional expenditure is consistent with the conditions and limitations in paragraph (c) of this section.

(3) Unless informed otherwise, the national bank or Federal savings association may implement the proposed plan on the thirty-first day (or sooner, if notified by the OCC) following receipt by the OCC of the notification, subject to any conditions imposed by the OCC.

#### **§ 34.87 [Removed]**

15. Remove § 34.87.

#### **PART 46 – ANNUAL STRESS TEST**

16. The authority citation for part 46 continues to read as follows:

Authority: 12 U.S.C. 93a; 1463(a)(2); 5365(i)(2); and 5412(b)(2)(B).

#### **§ 46.6 [Amended]**

17. Section 46.6 is amended in paragraph (a)(2), in the first sentence, by removing “or part 167, as applicable,” after “12 CFR part 3”.

## **PART 160 – LENDING AND INVESTMENT**

18. The authority for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j-3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

### **§ 160.100 [Amended]**

19. Section 160.100 is amended by removing “or 167.1, as applicable,”.

20. Section 160.101 is amended by revising footnote 2 in appendix A to § 160.101 to read as follows:

### **§ 160.101 Real estate lending standards.**

\* \* \* \* \*

<sup>2</sup>For the state member banks, the term “total capital” means “total risk-based capital” as defined in Appendix A to 12 CFR part 208. For insured state non-member banks, “total capital” refers to that term described in table I of Appendix A to 12 CFR part 325. For national banks and Federal savings associations, the term “total capital” is defined at 12 CFR 3.2.

### **§ 160.172 [Removed]**

21. Remove § 160.172.

## **PART 161 – DEFINITIONS FOR REGULATIONS AFFECTING ALL SAVINGS ASSOCIATIONS**

22. The authority for part 161 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 5412(b)(2)(B).

### **§ 161.55 [Amended]**

23. Section 161.55 is amended in paragraph (c) by removing “or part 167, as applicable” after “12 CFR part 3”.

## **PART 163 – SAVINGS ASSOCIATIONS – OPERATIONS**

24. The authority for part 163 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.*, 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

### **§ 163.74 [Amended]**

25. Section 163.74 is amended in paragraphs (i)(2)(iv) and (v) by removing “or part 167, as applicable,” after “12 CFR part 3”.

### **§ 163.80 [Amended]**

26. Section 163.80 is amended in paragraph (e)(1) introductory text by removing “or part 167, as applicable”.

## **PART 167—[REMOVED]**

27. Under the authority of 12 U.S.C. 1464, part 167 is removed.

Dated: October 11, 2019

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Morris R. Morgan  
First Deputy Comptroller

*Comptroller of the Currency.*

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