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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 34**

**[Docket No. OCC-2018-0031]**

**RIN 1557-AE53**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 226**

**[Docket No. R-1634]**

**RIN 7100-AF26**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1026**

**RIN 3170-AA91**

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

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

**ACTION:** Final rules, official interpretations and commentary.

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**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. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage increase 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. Based on the CPI-W in effect as of June 1, 2018, the exemption threshold will increase from \$26,000 to \$26,700, effective January 1, 2019.

**DATES:** This final rule is effective January 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** *OCC:* MaryAnn Nash, Counsel, Chief Counsel's Office, (202) 649-6287; for persons who are deaf or 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:* Shelley Thompson, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435-7700.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to add special appraisal requirements for “higher-risk mortgages.”<sup>1</sup> In January 2013, the Agencies issued a joint final rule implementing these requirements and adopted the term “higher-priced mortgage loan” (HPML) instead of “higher-risk mortgage” (the January 2013 Final Rule).<sup>2</sup> In July 2013, the Agencies proposed additional exemptions from the January 2013 Final Rule (the 2013 Supplemental Proposed Rule).<sup>3</sup> In December 2013, the Agencies issued a supplemental final rule with additional exemptions from the January 2013 Final Rule (the December 2013 Supplemental Final Rule).<sup>4</sup> Among other exemptions, the Agencies adopted an exemption from the new HPML appraisal rules for transactions of \$25,000 or less, to be adjusted annually for inflation.

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

The OCC’s, Board’s, and Bureau’s regulations,<sup>6</sup> and their accompanying interpretations,<sup>7</sup> provide that the exemption threshold for smaller loans will be adjusted effective January 1 of

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<sup>1</sup> Pub. L. 111-203, section 1471, 124 Stat. 1376, 2185–87 (2010), codified at TILA section 129H, 15 U.S.C. 1639h.

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

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

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

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

<sup>6</sup> 12 CFR 34.203(b)(2) (OCC); 12 CFR 226.43(b)(2) (Board); and 12 CFR 1026.35(c)(2)(ii) (Bureau).

<sup>7</sup> 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).

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.<sup>8</sup>

On November 30, 2016, the OCC, the Board, and the Bureau published a final rule in the *Federal Register* to memorialize the calculation method used by the agencies each year to adjust the exemption threshold to ensure that, as contemplated in the December 2013 Supplemental Final Rule (HPML Small Dollar Adjustment Calculation Rule), the values for the exemption threshold keep pace with the CPI-W.<sup>9</sup> The HPML Small Dollar Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI-W, the OCC, the Board, and Bureau will not adjust the exemption threshold from the prior year. The HPML Small Dollar Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI-W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective

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

<sup>9</sup> See 81 FR 86250 (Nov. 30, 2016).

January 1 the following year will increase accordingly; 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.

## **II. 2019 Adjustment and Commentary Revision**

Effective January 1, 2019, the exemption threshold amount is increased from \$26,000 to \$26,700. This is based on the CPI-W in effect on June 1, 2018, which was reported on May 10, 2018. 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 prior month. The CPI-W is a subset of the CPI-U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI-W reported on May 10, 2018, reflects a 2.6 percent increase in the CPI-W from April 2017 to April 2018. Accordingly, the 2.6 percent increase in the CPI-W from April 2017 to April 2018 results in an exemption threshold amount of \$26,700. 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.vi to 12 CFR part 34, Appendix C to Subpart G (OCC);
- Comment 43(b)(2)-3.vi to Supplement I of 12 CFR part 226 (Board); and
- Comment 35(c)(2)(ii)-3.vi to Supplement I of 12 CFR part 1026 (Bureau).

These new comments state that, from January 1, 2019, through December 31, 2019, the threshold amount is \$26,700. These revisions are effective January 1, 2019.

## **III. Regulatory Analysis**

### *Administrative Procedure Act*

Under the Administrative Procedure Act, notice and opportunity for public comment are

not required if an agency finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.<sup>10</sup> The amendments in this rule are technical and apply the method previously set forth in the 2013 Supplemental Proposed Rule<sup>11</sup> and the HPML Small Dollar Adjustment Calculation Rule. 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 are unnecessary. Therefore, the amendments are adopted in final form.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.<sup>12</sup> As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995,<sup>13</sup> 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 analyzes proposed rules for the factors listed in Section 202 of the Unfunded Mandates Reform Act of 1995, before promulgating a final rule for which a general notice of

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<sup>10</sup> 5 U.S.C. 553(b)(B).

<sup>11</sup> See 78 FR 48548, 48565 (Aug. 8, 2013) (“Thus, under the proposal, if the CPI-W decreases in an annual period, the percentage increase would be zero, and the dollar amount threshold for the exemption would not change.”).

<sup>12</sup> 5 U.S.C. 603 and 604.

<sup>13</sup> 44 U.S.C. 3506; 5 CFR part 1320.

proposed rulemaking was published.<sup>14</sup> As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary.

#### *Bureau Congressional Review Act Statement*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a “major rule” as defined by 5 U.S.C. 804(2).

#### **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**

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<sup>14</sup> 2 U.S.C. 1532.

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, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, 5412(b)(2)(B) and 15 U.S.C. 1639h.

2. In Appendix C to Subpart G, under *Section 34.203—Appraisals for Higher-Priced Mortgage Loans*, paragraph 34.203(b)(2), paragraph 3.vi is added to read as follows:

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

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

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*Paragraph 34.203(b)(2)*

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3. \* \* \*

vi. From January 1, 2019, through December 31, 2019, the threshold amount is \$26,700.

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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*, paragraph 43(b)(2), paragraph 3.vi is added to read as follows:

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

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

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*Paragraph 43(b)(2)*

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3. \* \* \*

vi. From January 1, 2019, through December 31, 2019, the threshold amount is \$26,700.

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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*, paragraph 35(c)(2)(ii), paragraph 3.vi is added to read as follows:

**Supplement I to Part 1026—Official Interpretations**

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

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Paragraph 35(c)(2)(ii)

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3. \* \* \*

vi. From January 1, 2019, through December 31, 2019, the threshold amount is \$26,700.

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**Dated:** November 6, 2018.

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Joseph M. Otting

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System under delegated authority,  
November 13, 2018.

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Ann E. Misback  
*Secretary of the Board.*

Dated: November 9, 2018.

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Mick Mulvaney

*Acting Director, Bureau of Consumer Financial Protection.*

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