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DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket ID OCC-2019-0004]

RIN 1557-AE91

Other Real Estate Owned and Technical Amendments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; correction.

SUMMARY: On October 22, 2019, the Office of the Comptroller of the Currency (OCC) published in the *Federal Register* a final rule to revise provisions on other real estate owned and make related technical amendments. Due to a technical error in the amendatory text, certain revisions in the final rule were not incorporated in the Code of Federal Regulations. This final rule corrects those omissions.

DATES: The final rule is effective on [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 2019, the OCC published in the *Federal Register* a final rule to revise its rule on other real estate owned (OREO) at 12 CFR part 34, subpart E, and make related technical

amendments (OREO final rule).¹ The OREO final rule was intended to apply to national banks and federal savings associations, and the rule text printed in the OREO final rule did incorporate both types of institutions in all relevant sections. However, due to a technical error in the amendatory instructions, the phrase “federal savings associations” was not included in two places in the introductory text to 12 CFR 34.83(a)(3)(i). This final rule corrects the amendatory instructions to add the phrase “federal savings associations” in those two locations. This final rule does not make any substantive changes to the OREO final rule or any requirements of 12 CFR part 34, subpart E.

II. Administrative Law Statements

A. Administrative Procedure Act

The OCC is issuing the final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).² Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”³

The OCC believes that the final rule should be effective immediately upon publication in the **FEDERAL REGISTER**. The final rule merely implements a technical correction to the amendatory text to reflect the text of the OREO final rule for purposes of accurate printing in the Code of Federal Regulations and has no substantive effect. The OCC previously requested

¹ 84 FR 56369 (Oct. 22, 2019).

² 5 U.S.C. 553.

³ 5 U.S.C. 553(b)(3)(A).

comment on the revision, adopted the revision in a final rule, and believes requesting further comment or delaying the correction would be unnecessary.

For these reasons, the OCC finds that there is good cause to issue the rule without notice and comment.⁴

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.⁵ The final rule merely implements a technical correction to the amendatory text to reflect the text of the OREO final rule for purposes of accurate printing in the Code of Federal Regulations and has no substantive effect.⁶ Therefore, the OCC similarly finds good cause to dispense with the 30-day delayed effective date.

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a “major” rule.⁷ If a rule is deemed a “major rule” by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.⁸

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government

⁴ 5 U.S.C. 553(b)(B); 553(d)(3).

⁵ 5 U.S.C. 553(d).

⁶ 5 U.S.C. 553(d)(1).

⁷ 5 U.S.C. 801 *et seq.*

⁸ 5 U.S.C. 801(a)(3).

agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.⁹

For the same reasons set forth above, the OCC is adopting the final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.¹⁰ In light of the fact that the final rule has no substantive effect and merely implements a technical correction to the amendatory text to reflect the text of the OREO final rule for purposes of accurate printing in the Code of Federal Regulations, the OCC believes that delaying the effective date of the rule is unnecessary.

As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The final rule does not affect any current information collections for 12 CFR part 34.

D. Regulatory Flexibility Act

⁹ 5 U.S.C. 804(2).

¹⁰ 5 U.S.C. 808.

The Regulatory Flexibility Act (RFA)¹¹ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.¹² The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the OCC has not issued a notice of proposed rulemaking. Accordingly, the OCC has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),¹³ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions,

¹¹ 5 U.S.C. 601 *et seq.*

¹² Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$600 million or less and trust companies with total assets of \$41.5 million or less. See 13 CFR 121.201.

¹³ 12 U.S.C. 4802(a).

including for good cause.¹⁴ For the reasons described above, the OCC finds good cause exists under section 302 of RCDRIA to publish this final rule with an immediate effective date.

As such, the final rule will be effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act¹⁵ requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC has sought to present the final rule in a simple and straightforward manner.

G. Unfunded Mandates

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.*, requires the preparation of a budgetary impact statement before promulgating a rule that 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. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. *See* 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this final rule, the OCC has not prepared a budgetary impact statement for the rule under the UMRA.

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.

¹⁴ 12 U.S.C. 4802.

¹⁵ 12 U.S.C. 4809.

For the reasons stated in the preamble, the Office of the Comptroller of the Currency amends 12 CFR part 34 as follows:

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., and 5412(b)(2)(B) and 15 U.S.C. 1639h.

Subpart E – Other Real Estate Owned

§ 34.83 [Amended]

2. In § 34.83 amend paragraph (a)(3)(i) introductory text by adding “or Federal savings association” after “national bank” wherever it occurs.

Brian P. Brooks,

Acting Comptroller of the Currency.

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