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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. OCC-2019-0024]

RIN: 1557-AE71

Licensing Amendments: Technical Correction

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

ACTION: Final rule; correction.

SUMMARY: On December 11, 2020, the Office of the Comptroller of the Currency (OCC) published in the **Federal Register** a final rule that revises its regulations relating to policies and procedures for corporate activities and transactions involving national banks and Federal savings associations to update and clarify the policies and procedures, eliminate unnecessary requirements consistent with safety and soundness, and make other technical and conforming changes. This correcting amendment supplements the Effective Date discussion in the **SUPPLEMENTARY INFORMATION** section of the final rule as it appeared in the **Federal Register**. It also makes three technical changes to the regulatory text of the final rule that appeared in the **Federal Register** to correct typographical errors.

DATES: This correction is effective January 11, 2021.

FOR FURTHER INFORMATION CONTACT: Heidi M. Thomas, Special Counsel, Chief Counsel's Office, (202) 649-5490, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background and Description of Correcting Amendment

On December 11, 2020, the OCC published in the **Federal Register** a final rule that revises its regulations relating to policies and procedures for corporate activities and transactions involving national banks and Federal savings associations to update and

clarify the policies and procedures, eliminate unnecessary requirements consistent with safety and soundness, and make other technical and conforming changes.¹ This correcting amendment adds a paragraph to the Effective Date discussion in the **SUPPLEMENTARY INFORMATION** section of the final rule that was inadvertently omitted. This paragraph describes the OCC’s good cause determination that the quarterly effective date requirement of section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) (12 U.S.C. 4802(b)) does not apply to the final rule. This correcting amendment also makes three technical changes to the regulatory text of the final rule. First, it adds a missing comma to the cross reference to 12 U.S.C. 215(b), (e), and (f) in paragraph (g)(2)(iv) of § 5.33, Business combinations involving a national bank or Federal savings association. Second, it corrects the paragraph designations in paragraph (g) of § 5.58, Pass-through investments by a Federal savings association. Third, it removes the superfluous word “to” in redesignated paragraph (g)(1) of § 5.58. These last three changes correct typographical errors and do not substantively change the meaning of these provisions.

II. Administrative Law Matters

A. Administrative Procedure Act

The OCC is issuing this correcting amendment without prior notice and the opportunity for public comment 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,

¹ 85 FR 80404.

² 5 U.S.C. 553.

unnecessary, or contrary to the public interest.³ The OCC finds that public notice and comment are unnecessary because this correcting amendment makes technical changes to correct typographical errors in the final rule. Therefore, the OCC believes it has good cause to dispense with the APA prior notice and public comment process.

The OCC also is issuing this correcting amendment without the delayed effective date ordinarily prescribed by the APA. The APA 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.⁴ Because this correcting amendment makes technical changes to correct typographical errors in the final rule, the OCC believes it has good cause to issue this correcting amendment without a delayed effective date.

B. Riegle Community Development and Regulatory Improvement Act

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),⁵ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, 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. Because the changes made by this technical correction do not impose additional reporting, disclosure, or other requirements on insured depository institutions, section 302(a) of RCDRIA does not apply.

³ 5 U.S.C. 553(b)(3)(A).

⁴ 5 U.S.C. 553(d).

⁵ 12 U.S.C. 4802(a).

Section 302(b) of RCDRIA requires that regulations issued by a Federal banking agency⁶ imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of a calendar quarter that begins on or after the date of publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time.⁷ For the same reasons set forth above regarding the APA delayed effective date, the OCC finds that it has good cause to adopt this correcting amendment without the delayed effective date generally prescribed under the RCDRIA.

C. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major rule.”⁸ If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.⁹

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: (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on

⁶ For purposes of RCDRIA, “Federal banking agency” means the OCC, FDIC, and Board. *See* 12 U.S.C. 4801.

⁷ 12 U.S.C. 4802(b).

⁸ 5 U.S.C. 801 *et seq.*

⁹ 5 U.S.C. 801(a)(3).

the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.¹⁰

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

E. Regulatory Flexibility Act

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 is not issuing a notice of proposed rulemaking. Accordingly, the RFA's requirements relating to initial and final regulatory flexibility analyses do not apply.

F. Unfunded Mandates

As a general matter, the Unfunded Mandates Act of 1995 (UMRA)¹³ 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

¹⁰ 5 U.S.C. 804(2).

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 2 U.S.C. 1531 *et seq.*

proposed rulemaking was not published.¹⁴ Therefore, because the OCC has found good cause to dispense with notice and comment for this correcting amendment, the OCC has not prepared an economic analysis of the rule under the UMRA.

G. 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. This correcting amendment does not contain any information collection requirements therefore no submissions will be made by the agencies to OMB in connection with this rulemaking.

Corrections

In the final rule document OCC-2020-25595 published in the **Federal Register** on December 11, 2020, at 85 FR 80404, the following corrections are made:

1. On page 80434, in the first column, the discussion under “E. Effective Date” is corrected by adding the following at the end of the section to read as follows:

Section 302(b) of the RCDRIA, 12 U.S.C. 4802(b), requires that regulations issued by a Federal banking agency imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of a calendar quarter that begins on or after the date of publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time. Applying RCDRIA’s quarterly effective date requirement in conjunction with the APA’s 30 day delayed effective date requirement would result in an April 1, 2021, effective date. However, much of the final rule increases flexibility for filing procedures, eliminates redundant or unnecessary reporting requirements consistent with safety and soundness, and updates policies and procedures that increase clarity and

¹⁴ See 2 U.S.C. 1532(a).

reduce ambiguity for banks seeking compliance with 12 CFR part 5 requirements. In order for OCC-regulated institutions to take advantage of these burden-reducing amendments as soon as possible, the OCC finds that the benefits of an earlier effective date of the final rule outweighs the burden of a delayed April 1, 2021, effective date. Therefore, the OCC has determined that it has good cause to make the final rule effective before April 1, 2021.

§ 5.33 [Corrected]

2. On page 80450, in the third column, in amendment 25, in § 5.33, paragraph (g)(2)(iv), “12 U.S.C. 215(b), (e) and (f)” is corrected to read “12 U.S.C. 215(b), (e), and (f)”.

§ 5.58 [Corrected]

3. On page 80469, in the first and second columns, in amendment 45, in § 5.58, paragraphs (g)(i) through (g)(v) are corrected to be designated as paragraphs (g)(1) through (g)(5).

4. On page 80469, in the first column, in amendment 45, in § 5.58, in redesignated (g)(1), “limited to those to activities” is corrected to read “limited to those activities”.

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