: 4810-33-P]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 34 and 160

[Docket ID OCC-2025-0736]

RIN 1557-AF46

Real Estate Lending Escrow Accounts

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

ACTION: Final rule.

SUMMARY: The OCC is issuing a final rule to codify longstanding and recognized powers of national banks and Federal savings associations (collectively, banks) to establish or maintain real estate lending escrow accounts and to exercise flexibility in making business judgments as to the terms and conditions of such accounts, including whether and to what extent to offer any compensation or to assess any fees related thereto.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

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SUPPLEMENTARY INFORMATION:

I. Introduction

Real estate lending has been core to the business of national banks for over 100 years and of Federal savings associations for their entire existence of over 90 years. Banks are a key pillar supporting homeownership and commercial real estate in the United States. In order to engage

in effective and efficient real estate lending, banks use a variety of tools to safely and soundly manage the associated risks. Mortgages have several features that set them apart from most of banks' other extensions of credit, including that they are typically overcollateralized and the collateral is unique, is often illiquid, and is subject to acts of nature that can rapidly depreciate its value. As such, a significant risk in mortgage lending is related to a bank's ability to assess, manage, and preserve the underlying collateral.[1] Since the late 1930s, escrow accounts have been a crucial risk-mitigation tool that supports safe and sound mortgage lending. For example, a lender may require a borrower to prepay a portion of their annual property taxes, insurance premiums, and certain other payments relating to the mortgaged property, which the lender places into an escrow account. When those payments become due, the lender then forwards the payment to the applicable party to which it is due.[2]

From the lender's perspective, escrow accounts can ensure in advance that these payments will be met, which in turn enables the lender to protect the priority of its mortgage lien and the value of the collateral. If a borrower fails to pay property taxes, for example, a tax lien is, in general, superior to the lender's mortgage lien.[3] If a municipality forces a sale of the property to collect on the taxes owed to it, there may be insufficient proceeds left over from the sale of the property to enable the borrower to satisfy the remaining real estate loan. Similarly, if a borrower fails to pay premiums on an insurance policy covering the property, the lender may bear the risk of uninsured damage to the collateral. For example, the borrower may cease payment on the real estate loan if the property becomes so damaged that its market price is less

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[1] *See* OCC, *Comptroller's Handbook*, "Mortgage Banking," 15, 53-54 (2014) (Mortgage Banking Handbook).

[2] *See id*.; OCC, *Comptroller's Handbook*, "Residential Real Estate," 25-27 (2017).

[3] *See* Mortgage Banking Handbook, *supra* n.1, at 99; *see also* U.S. Gen. Acct. Off., B-114860, *Study of the Feasibility of Escrow Accounts on Residential Mortgages Becoming Interest Bearing*, 6 (1973) ("Escrow accounts began during the economic depression of the 1930s when many homeowners, because of their inability to pay property taxes, lost their homes through foreclosure."). Use of escrow accounts also benefit State and local governments in reducing the number of delinquent or delayed property tax filings and associated foreclosure proceedings. *Id.* at 20.

than the outstanding mortgage balance. In this case, the lender may be unable to recover the value of the outstanding mortgage loan through foreclosure on and sale of the collateral property.

From the borrower's perspective, escrow accounts can help the borrower budget for tax, insurance, and other payments.[4] Use of an escrow account also simplifies the operational aspects associated with making payments and confirming satisfaction of the borrower's obligations to multiple parties.

In light of these benefits to both lenders and borrowers, escrow accounts are widely used. For example, approximately 80 percent of U.S. residential real estate mortgages to purchase a property use an escrow account.[5] While banks typically provide escrow accounts free of charge, banks nonetheless incur costs and assume risks related to administering these accounts, including the operational costs of building escrow systems, ensuring payments are timely made to the relevant parties, and complying with contractual terms and applicable law.[6] When banks establish and maintain escrow accounts, they make a variety of decisions that collectively allow them to balance these costs and risks with the benefits of such accounts. For example, some banks may choose to pay interest on such accounts or otherwise offer some form of related

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[4] Unlike principal and interest payments on the mortgage loan, which are typically due monthly and are consistent over time, tax, insurance, and certain other payments related to the mortgaged property are typically due less frequently (*e.g.*, every six months) and may change throughout the life of the mortgage loan due to, for example, changes in local property tax rates, the assessed tax value of the property, or annual insurance premium adjustments. Such lump sum payments thus mean that total mortgage-related payments on these tax, insurance, or other payments due dates are typically larger and may vary over time.

[5] Fed. Hous. Fin. Agency & Consumer Fin. Prot. Bureau, *A Profile of 2016 Mortgage Borrowers: Statistics from the National Survey of Mortgage Originations*, 27, 30 (2018). In some cases, including certain government insured or guaranteed loans, the use of escrow accounts is required. *See*, *e.g.*, 24 CFR 200.84(b)(3)-(4) (escrow account requirements for Federal Housing Administration programs).

[6] *See* Mortgage Banking Handbook, *supra* n.1, at 15 ("Mortgage servicers are exposed to considerable operational risk when they manage escrow accounts[.]"); *id.* at 53-54 ("Escrow account administration consists of collecting and holding borrower funds in escrow to pay such items as real estate taxes, flood and hazard insurance premiums, property tax assessments, and, in some cases, interest on escrow account balances. The escrow account administration unit (1) sets up the account, (2) credits the account for the tax and insurance funds received as part of the borrower's monthly mortgage payment, (3) makes timely payments of the borrower's obligations, (4) analyzes the account balance in relation to anticipated payments annually, and [(]5) reports the account balance to the borrower annually. Servicers must closely monitor property taxing authorities and individual insurance contracts to ensure that escrow calculations are accurate and that insurance policies have not lapsed. . . . Servicers must comply with applicable law in connection with [their] management of escrow accounts, including collecting, holding, and escrowing funds on behalf of each borrower in accordance with RESPA (12 [U.S.C.] 2609) and Regulation X (12 CFR 1024.17 and 1024.34). . . . Servicers also should ensure compliance with legal requirements regarding the cessation of escrow withholding for [private market insurance] on serviced loans.").

compensation to mortgage borrowers. Banks may also take steps to recoup some of the costs of administering escrow accounts, including through investing escrow funds, typically in short term assets. Some banks may also offset costs by imposing additional fees, such as origination fees, particularly if escrow account administration becomes more expensive. Increased fees may result in larger upfront costs that can create barriers to homeownership. This burden may fall especially hard on first-time and lower-income borrowers, as origination fees, for example, may represent a proportionally larger financing charge compared to higher-balance mortgages.[7] A bank's decisions on how to appropriately balance the applicable costs and benefits may be informed by a wide variety of factors, including the bank's business strategy, costs, market demand, competition from other real estate lenders, and eligibility requirements for certain mortgage insurance programs.[8] It is therefore critical that banks have the flexibility to make the business decisions that adapt to local circumstances and other relevant considerations; otherwise, inefficient and ineffective results are more likely to prevail, which may lead to higher prices and reduced mortgage lending.

The terms and conditions of escrow accounts, including whether and to what extent banks pay interest or other compensation, are ultimately a business judgment made by each bank in accordance with safe and sound banking principles. This discretion ensures that banks have the flexibility to make business decisions about how to effectively and efficiently set the terms and conditions of their escrow accounts, which allows banks to appropriately balance the costs and benefits of these accounts and the risks and rewards of real estate lending more generally. As such, it is a core component of banks' mortgage lending powers under applicable law, including

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[7] One commenter explicitly noted this concern, providing a case study of Iowa's repeal of its mandated interest on escrow account laws, which concludes that the majority of interest payments pre-repeal were passed on to consumers via higher origination fees, including at a rate of over 100 percent for lower-income borrowers, and that origination fees fell substantially post-repeal, as compared to other similarly situated States.

[8] *See, e.g.*, U.S. Dep't of Hous. & Urb. Dev., *Housing Handbooks*, "FHA Single Family Housing Policy Handbook 4000.1," 1164 (2025) (section III(A)(1)(g)(ii) on escrowing of funds).

One commenter suggested that the proposed rule would benefit large banks over community banks. However, the final rule applies to all banks. The need to appropriately balance the applicable costs and benefits may be even more acute for community banks, which, for example, may have less diversified businesses than larger banks.

provisions of the Federal Reserve Act,[9] the Home Owners' Loan Act of 1933 (HOLA),[10] and the National Bank Act.[11] This is consistent with longstanding agency precedent[12] and bank practices, which the OCC is codifying in its regulations governing the mortgage lending powers of national banks and Federal savings associations, respectively, for the sake of clarity.[13]

This final rule will also complement the OCC's preemption determination, which it is concurrently finalizing along with this final rule, related to State laws that restrict banks' flexibility to decide whether and to what extent to pay interest or other compensation on funds placed in escrow accounts or assess related fees.[14] As explained, those State laws prevent or significantly interfere with banks' exercise of their Federally authorized powers and are thus preempted. In addition, codifying these Federal powers makes clear that those State laws also directly conflict with a Federal regulation. Together, these two rules will reduce uncertainty with regards to banks' escrow practices and may thereby incentivize reduced fees and increased mortgage lending.[15]

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[9] 12 U.S.C. 371.

[10] 12 U.S.C. 1464.

[11] 12 U.S.C. 24(Seventh).

[12] *See* OCC, *Interpretive Letter No. 1041*, at 2-3 (Sept. 28, 2005) (detailing the broad array of escrow services permissible for national banks and acknowledging that banks may place escrow funds into accounts that do not pay interest to customers); OCC, *Corporate Decision No. 99-06*, at 3 (Jan. 29, 1999) (opining that a bank's proposed real estate closing and escrow services were permissible as "functionally and operationally equivalent to activities undertaken by banks . . . in their ordinary course of business. The real estate loan closing and escrow services respond to customers' needs and do not involve risks that are not already assumed by banks in their capacity as closing and escrow agents, financial intermediaries, custodians, and trustees." (footnote omitted)); OCC, *Conditional Approval No. 276*, at 12 (May 8, 1998) (noting that the provision of tax escrow services "is an integral part of or a logical outgrowth of the lending function"); Mortgage Banking Handbook, *supra* n.1, at 53-54 (detailing the escrow account administration practices of banks).

[13] This final rule was initially proposed at 90 FR 61099 (Dec. 30, 2025).

[14] This final preemption determination is published elsewhere in this issue of the *Federal Register*. The proposed preemption determination is available at 90 FR 61093 (Dec. 30, 2025).

[15] Subsequent to the issuance of the proposal, the U.S. Court of Appeals for the Second Circuit issued a decision on remand from the Supreme Court concluding that Federal law preempts a New York law mandating the payment of interest by certain institutions on mortgage escrow accounts. *See Cantero v. Bank of Am., N.A.*, --- F.4th ---, 2026 WL 1217467 (2d Cir. May 5, 2026). The court's analysis of national banks' real estate lending powers, including national banks' flexibility in making business judgments regarding the terms and conditions of escrow accounts, was fundamentally consistent with the analysis provided in, and cited to, the proposal, lending additional credence to the arguments discussed herein.

II. National Banks' Real Estate Lending and Escrow Account Powers; Discussion of Public Comments

The Federal Reserve Act and HOLA both evince clear congressional intent to provide banks with broad, discretionary real estate lending powers, which include the flexibility to make business decisions about how to effectively and efficiently set the terms and conditions of escrow accounts. Each of these statutes also provides the OCC broad discretionary grants of rulemaking authority. Additionally, the flexibility to make business judgments concerning the investment and use of escrowed funds has long been inherent in the business of banking as codified in the National Bank Act. These practices are the logical outgrowth or functional equivalent of other longstanding permissible bank practices regarding collateral protection. They benefit the bank and its customers and are well within the types of risks national banks manage in the ordinary course of business.

Broad Real Estate Lending Powers under the Federal Reserve Act and HOLA

National banks are authorized under the Federal Reserve Act to "make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate," subject to requirements imposed by the OCC.[16] Congress has progressively expanded national banks' mortgage lending powers under this law. Initially limited to loans on farmland,[17] Congress amended the law to include limited general real estate lending in 1916[18] and, through the years, removed all limits and conditions on real estate lending other than those prescribed in regulation by the Comptroller.[19] The Federal Reserve Act provides the OCC broad authority to prescribe

[16] 12 U.S.C. 371(a).

[17] Sec. 24, Pub. L. 63-43, 38 Stat. 251, 273 (1913).

[18] Pub. L. 64-270, 39 Stat. 752, 754-55 (1916).

[19] Sec. 403, Pub. L. 97-320, 96 Stat. 1469, 1510-11 (1982).

regulations governing national banks' loans or extensions of credit secured by liens on interest in real estate.[20]

Several commenters commended the proposal as correctly recognizing and applying the underlying statutes and the OCC's longstanding practices.[21] That said, one commenter objected to the OCC's reading of the Federal Reserve Act by noting that 12 U.S.C. 371(a) provides that national banks' real estate lending powers are also "subject to section [12 U.S.C. 1828(o)]."[22] The commenter asserted that, contrary to the above description of the history of the Federal Reserve Act, this evinces that Congress has not removed all limits and conditions on real estate lending other than those prescribed in regulation by the Comptroller. Instead, this commenter asserts that national banks' real estate lending powers remain significantly constrained, and any regulations must, per section 1828(o), be adopted in concert with the other Federal banking agencies.[23] This argument is neither supported by the plain meaning of the text nor the history of the statute's various amendments.

12 U.S.C. 371(a) clearly states that national banks' real estate lending powers are subject both to 12 U.S.C. 1828(o) "*and* such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order" (emphasis added). A reading of the statute that section 1828(o) is the controlling basis for adopting regulations would render the Comptroller's concurrent rulemaking authority as surplusage—"[i]t is a cardinal principle of statutory

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[20] 12 U.S.C. 371(a); *see also Sec. Indus. Ass'n v. Clarke*, 885 F.2d 1034, 1048 (2d Cir. 1989) ("Legislative history indicates that the [1982] amendment [to 12 U.S.C. 371(a)] was intended to simplif[y] the real estate lending authority of national banks by deleting rigid statutory [limitations]. Section 403 [which amended 12 U.S.C. 371] is intended to provide national banks with the ability to engage in more creative and flexible financing, and to become stronger participants in the home financing market." (citation modified)).

[21] Several commenters requested that the OCC extend the comment period, which the OCC declined to do. The OCC determined that the original comment period provided a meaningful opportunity to comment consistent with the requirements of the Administrative Procedure Act and that this rulemaking should be finalized as expeditiously as possible. The volume and range of comments the OCC received on the proposal is consistent with the OCC's conclusion that the comment period was sufficient.

[22] 12 U.S.C. 1828(o) instructs the Federal banking agencies to "adopt uniform regulations prescribing standards for extensions of credit" related to certain real estate transactions.

[23] The preamble's statement that the Federal Reserve Act "removed all limits and conditions on real estate lending other than those prescribed in regulation by the Comptroller" is not an error or oversight. Even when certain regulations are adopted in concert with other agencies, only the OCC may prescribe rules for national banks.

construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant."[24]

Moreover, the statutory history supports the conclusion that the OCC has wide discretion to issue regulations under 12 U.S.C. 371(a). Prior to 1982, section 371(a) variously set detailed and prescriptive statutory limits on national banks' real estate lending powers, including, among other things, minimum or maximum mortgage maturities, minimum loan-amount-to-collateral-value ratios, distinctions based on real estate type, and restrictions based on a bank's location.[25] Congress removed these prescriptive requirements in favor of only such discretionary regulations as the OCC prescribes, indicating Congress's intent to provide the OCC with wide latitude to regulate national bank real estate lending. The addition of 12 U.S.C. 1828(o) as an alternative rulemaking authority does not indicate a contrary intent. That provision vests the Federal banking agencies with similarly broad discretion, setting forth general criteria (*e.g.*, "the risk posed to the Deposit Insurance Fund") that the agencies shall "consider."

Other commenters alternatively asserted that 12 U.S.C. 371(a)'s grant of rulemaking authority only permits for limitations on national banks' real estate lending powers and not expansions. These commenters point to the statute's use of the phrase "such restrictions and requirements" in qualifying the OCC's rulemaking authority. Even assuming that this assertion is accurate, nothing in the final rule impermissibly expands national banks' powers beyond the bounds of the statute. Rather, as discussed throughout the preamble, which details the extensive statutory, judicial, and historical record, the final rule merely clarifies longstanding and recognized real estate lending powers. In addition, judicial precedent contradicts the

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[24] *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation modified) (rejecting a claim of a general discovery rule that a statute of limitations starts running when a party knows or has reason to know she was injured as doing so would render a specific exception to tolling periods in the relevant statute superfluous in all but the most unusual circumstances).

[25] *See, e.g.*, Pub. L. 64-270, 39 Stat. 752, 754-55 (1916); Secs. 711, 802(i)(1), Pub. L. 93-383, 88 Stat. 714, 716, 725 (1974).

commenters' reasoning. The D.C. Circuit, for example, discussing an earlier, though substantially similar, version of section 371's grant of rulemaking authority, aptly noted that:

> [the plaintiff] maintains that the language and legislative history of section 371 indicate the Comptroller is permitted only to impose "*conditions and limitations*" on the lending powers of national banks, not to issue rules that would *expand* those powers. The short answer to this argument, as the Comptroller notes, is that permitting national banks to offer [adjustable-rate mortgages] is not a new power at all. National banks could offer ARMs before the promulgation of these regulations. . . . It is significant that, in its selective recapitulation of the legislative history of section 371, appellant omits the following sentence from the report by the House Committee on Banking and Currency:
>
> > The primary purpose of this provision is to improve and update the mortgage investment tools of national banks to assist them in their efforts to respond to the demands of the real estate industry.
>
> This clearly authorizes the Comptroller to regulate the terms and conditions of mortgages.[26]

In the case of Federal savings associations, residential mortgage lending is central to their business.[27] The explicit purpose of HOLA is to create a Federal chartering regime for institutions that provide credit for housing.[28] HOLA provides Federal savings associations broad powers to invest in, sell, or otherwise deal in residential real property loans, subject to

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[26] *Conf. of State Bank Supervisors v. Conover*, 710 F.2d 878, 884 (D.C. Cir. 1983) (emphasis in original) (citations omitted).

[27] The history of savings associations more generally in the United States dates back to 1831, "when townspeople in Frankford, Pa., agreed to pool their money to buy their own homes. The result was the Oxford Provident Building Association, which lasted until all 40 original members had been given the opportunity to become homeowners. The Oxford's example of cooperative finance to promote home ownership inspired the founding of other associations across the country." OCC, *History of the OCC*, "1914-1935: The Federal Thrift Charter is Created," https://www.occ.gov/about/who-we-are/history/history-of-the-occ/1914-1935/1914-1935-the-federal-thrift-charter-is-created.html.

[28] 12 U.S.C. 1464(a).

regulations issued by the Comptroller.[29] HOLA also provides the OCC with broad authority to prescribe rules and regulations to provide for the organization, incorporation, examination, operation, and regulation[30] of Federal savings associations and to specify their powers to invest in, sell, or otherwise deal in various loans and other investments.[31]

Since the earliest days of the Federal banking system, courts have held that banks have wide latitude in managing and protecting property acquired in the usual course of banking, even where such activities are not otherwise permissible.[32] Courts have also explicitly linked the power to lend as inextricably bound up in the power to foreclose on collateral.[33] As such, it is clear that the discretion afforded a bank in making business judgments related to real estate lending does not end when a bank decides the means by which to administer and finance the costs of managing and protecting property that serves as collateral for its loans.[34]

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[29] *See* 12 U.S.C. 1464(c); 12 CFR part 160. HOLA also authorizes Federal savings associations to engage in nonresidential real estate lending not in excess of 400 percent of capital or certain greater amounts as determined by the Comptroller, subject to regulations issued by the Comptroller. 12 U.S.C. 1464(c)(2)(B).

[30] 12 U.S.C. 1464(a); *see also Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 145 (1982) ("Pursuant to this authorization [12 U.S.C. 1464(a)], the [Federal Home Loan Bank] Board has promulgated regulations governing the powers and operations of every Federal savings and loan association from its cradle to its corporate grave." (citation modified)). This authority to promulgate regulations for Federal savings associations was ultimately transferred to the OCC. 12 U.S.C. 5412(b)(2)(B). The grant of rule writing authority to the OCC in each of 12 U.S.C. 371(a) and 1464(a) is of a type that "empower[s] an agency to prescribe rules to fill up the details of a statutory scheme . . . or to regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility . . . ." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024) (citation modified). That is, they are grants of authority to the agency to "exercise a degree of discretion." *Id*. at 394.

[31] 12 U.S.C. 1464(c).

[32] *See*, *e.g.*, *First Nat'l Bank v. Nat'l Exch. Bank*, 92 U.S. 122, 128 (1875) (holding that a bank may accept stock in satisfaction of a defaulted debt, notwithstanding a prohibition in dealing in stocks); *Cockrill v. Abeles*, 86 F. 505, 511 (8th Cir. 1898) (holding that where a national bank acquired an undivided interest in real property in satisfaction of a debt, it could also purchase other undivided interests in the property and discharge thereon where necessary to better enable the bank to manage or dispose of the property); *Cooper v. Hill*, 94 F. 582, 586 (8th Cir. 1899) (holding that a bank could expend money to restore a mine shaft acquired in satisfaction of a debt to presentable condition for purposes of attracting a buyer); *Second Nat'l Bank of Parkersburg v. U.S. Fid. & Guar. Co.*, 266 F. 489, 494 (4th Cir. 1920) (citing other cases related to the protection and disposition of collateral as "sufficient to illustrate the latitude that is permitted national banks, not in the character of the acts they may primarily engage in as a business, but in the management and protection of property and property rights acquired in the usual course of banking transactions, and it includes such minor incidental powers as may be reasonably adapted to the ends in view.").

[33] *See JPMorgan Chase Bank, N.A. v. Johnson*, 719 F.3d 1010, 1017-18 (8th Cir. 2013) ("There is little doubt the power to foreclose is closely related to and useful in carrying out the business of banking. As the district court recognized, [t]he power to engage in real estate lending would be rendered a nullity if national banks could not also foreclose when the borrower defaulted." (citation modified)).

[34] *See also* 12 CFR 7.4002 (providing that a national bank may charge non-interest fees, including deposit account service charges, and that the establishment, amount, and method of calculation are business decisions made by each national bank it its discretion). As noted above, escrow accounts are typically provided free of cost to consumers.

This history, and the statutory role of the OCC as the agency delegated discretion in enacting real estate lending regulations for both national banks and Federal savings associations, evince a clear congressional intent to provide banks with broad, discretionary real estate lending powers.

This intent is clear too from the primary piece of Federal legislation governing escrow accounts. In the 1970s, Congress determined that certain abuses in mortgage lenders' real estate settlement processes necessitated nationwide reform, including with respect to lenders that were requiring excessive funds be placed in escrow accounts.[35] The Real Estate Settlement Procedures Act (RESPA) of 1974[36] regulates elements of the use and operation of escrow accounts in residential real estate loans. It requires disclosures as to the nature and purposes of escrow accounts,[37] mandates the provision of free annual escrow account statements,[38] requires amounts in escrow accounts be paid timely as they become due and any funds remaining in such accounts after the loan is repaid be promptly returned to the borrower,[39] and establishes proportional caps on the total amounts that may be collected from borrowers in escrow accounts.[40] RESPA does not, however, include any provisions related to the use of funds in escrow accounts or that require lenders to pay compensation on such accounts. Several commenters argued that the enactment of RESPA represented a comprehensive reform of banks' use of mortgage-escrow accounts and reflected a general congressional intent to constrain or eliminate banks' flexibility regarding these accounts, even beyond its specific provisions. These

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However, a bank's decision to not charge permissible fees may in many cases be underwritten by reasonable short-term returns that banks are able to earn on escrowed funds. This flexibility may allow a bank to recoup the costs of escrow accounts rather than passing them on to borrowers through additional upfront fees.

[35] *See* 12 U.S.C. 2601(a), (b)(3).

[36] Pub. L. 93-533, 88 Stat. 1724, codified at 12 U.S.C. 2601 *et seq*.

[37] 12 U.S.C. 2604(b)(9).

[38] 12 U.S.C. 2609(c), 2610.

[39] 12 U.S.C. 2605(g).

[40] 12 U.S.C. 2609(a). One commenter argued that the proposed rule would incentivize banks to require borrowers pay a larger amount into escrow accounts than is necessary. However, no such incentive exists since such a practice is prohibited under RESPA. *Id*.

commenters do not, however, provide evidence to support the assertion that RESPA was intended to restrict previously existing bank powers. Rather, case law has recognized that RESPA, in legislating a system of escrow account disclosures and amount limits, implicitly recognizes the flexibility banks have in deciding how to invest, and whether and to what extent to pay interest on escrowed funds.[41]

Congress has largely refrained from interfering with the flexibility of banks in setting the terms and conditions of how escrowed funds are handled by the bank.[42] This flexibility allows banks to efficiently and effectively balance the risks and rewards of mortgage lending, just as banks do with other aspects of the credit underwriting and lending process. The OCC has long recognized this principle as well. For example, the *Interagency Guidelines for Real Estate Lending*, adopted pursuant to 12 U.S.C. 1828(o), state that each insured depository institution should establish loan administration procedures for its real estate portfolio that address "escrow administration," along with other core aspects of the lending arrangements, including "documentation," "loan closing and disbursement," "payment processing," "collateral administration," "loan payoffs," "collections and foreclosure," "claims processing," and "servicing and participation agreements."[43] That is, the *Guidelines* outline broad topics for

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[41] *See Cantero*, 2026 WL 1217467 at *7 ("The omission of an interest rate requirement from RESPA, a statute regulating many other aspects of escrow accounts, suggests that national banks have a broad power to set those rates."); *Flagg v. Yonkers Sav. & Loan Ass'n, FA*, 396 F.3d 178, 185 (2d Cir. 2005) ("RESPA is meant to regulate the amount of money that a borrower is required to deposit in escrow by tying that amount to the costs the escrow fund is meant to secure. RESPA is not, however, designed to reduce the dollar costs of taxes, fees, and insurance premiums. RESPA can, and does, accomplish its task by setting rules on required escrow contributions. That this system may, in the end, be more expensive to borrowers than, say, keeping their money in interest-bearing accounts to pay their own bills, does not violate RESPA's stated goal of 'reduc[ing] the amounts home buyers are required to place in escrow accounts.'" (citations omitted)).

[42] Some commenters asserted that 15 U.S.C. 1639d, which addresses escrow requirements for certain mortgages, evinces broad Congressional intent to limit banks' flexibility in setting the terms of escrow accounts under 12 U.S.C. 24(Seventh) and 371, including for escrow accounts outside the scope of the statute. The OCC disagrees with these commenters. Section 1639d sets limited additional requirements related to escrow accounts for certain mortgages but is not a comprehensive framework for the regulation of escrow accounts more generally. Furthermore, nothing in section 1639d evinces a broad Congressional intent to carve out the creation or administration of escrow accounts from Federal law nor limit the OCC's rulemaking authority with respect thereto. Section 1639d is not limited to national banks but rather applies to a wide variety of creditors, including many that are regulated by States. The references in section 1639d to State law are thus best understood to reflect Congress's intent to ensure that state law continues to apply to these other creditors.

[43] 12 CFR part 34 appendix A to subpart D.

banks to address, including escrow administration, but give banks substantial flexibility in how to address them.

More generally, the Federal Reserve Act, HOLA, and the National Bank Act do not individually or together displace a national bank's or Federal savings association's general business judgment with respect to compensation paid to or fees assessed on customers. For example, no Federal law dictates or contemplates a minimum interest rate that national banks or Federal savings associations must pay on general deposit accounts. Additionally, a national bank's non-interest charges and fees are subject to the bank's "discretion, according to sound banking judgment and safe and sound banking principles."[44]

Business of Banking

In addition to the abovementioned powers, national banks are permitted to engage in the business of banking more generally and "all such incidental powers as shall be necessary to carry on the business of banking."[45] Courts have noted that "the National Bank Act did not freeze the practices of national banks in their nineteenth century forms. . . . [W]hatever the scope of such powers may be, we believe the powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking."[46]

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[44] 12 CFR 7.4002(b)(2). *See also* OCC, *Interpretive Letter No. 906*, at 6 (Jan. 19, 2001) ("The National Bank Act does not displace business judgments by dictating any general restrictions on the kinds or amounts of fees that banks may charge for services, leaving those decisions to the discretion of bank management.").

[45] 12 U.S.C. 24(Seventh); *see also NationsBank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 258 n.2 (1995) ("We expressly hold that the 'business of banking' is not limited to the enumerated powers in § 24 Seventh . . . ."); 12 U.S.C. 93a (providing the OCC authority to "prescribe rules and regulations to carry out the responsibilities of the office."). Several commenters argued that *NationsBank* is no longer good law due to the opinion's reliance on the now-overturned framework laid out in *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). However, these commenters misread the proposal and caselaw. The cited proposition in *NationsBank* stands for the limited proposition that the term "business of banking" is not limited to the enumerated powers in section 24(Seventh). This proposition is not itself premised on *Chevron*. Either way, the case overturning *Chevron* makes clear that prior decisions premised on *Chevron* remain good law. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) ("[W]e do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful . . . are still subject to statutory *stare decisis* despite our change in interpretive methodology."). One commenter argues in the alternative that additional language from *NationsBank* is nonetheless dispositive. *NationsBank*, 513 U.S. at 258 n.2 ("The exercise of the Comptroller's discretion, however, must be kept within reasonable bounds."). As discussed in length in this preamble, the final rule merely clarifies the longstanding and recognized real estate lending powers that banks have exercised, and as such is well within reasonable bounds.

[46] *M&M Leasing Corp. v. Seattle First Nat'l Bank*, 563 F.2d 1377, 1382 (9th Cir. 1977).

As reflected in the discussion in the preceding section, the OCC has consistently taken the position that escrow account activities are part of the business of banking.[47] The OCC considers the following factors when determining whether an activity that is not explicitly enumerated in 12 U.S.C. 24(Seventh) is nonetheless part of the business of banking:

(i) Whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity;

(ii) Whether the activity strengthens the bank by benefiting its customers or its business;

(iii) Whether the activity involves risks similar in nature to those already assumed by banks; and

(iv) Whether the activity is authorized for State-chartered banks.[48]

Flexibility to exercise a national bank's business judgment as to how to structure its escrow operations and whether and to what extent to offer any compensation to customers is a clear logical outgrowth of national banks' other powers to manage and protect collateral. As discussed above, courts have long recognized the wide latitude that banks have in the activities they may undertake in managing and protecting collateral on loans.[49] Furthermore, this flexibility can also be seen as the functional equivalent of national banks' deposit-taking powers. It is a fundamental precept of banking that the bank has flexibility in determining what, if any, interest is paid on the funds held in customer accounts, including escrow accounts.[50] One

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[47] *See supra* n.12.

[48] 12 CFR 7.1000(c)(1). The weight accorded to each factor depends on the facts and circumstances of each case. 12 CFR 7.1000(c)(2). Relatedly, an activity is "incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking." The OCC considers the following factors in such analysis: "(i) Whether the activity facilitates the production or delivery of a bank's products or services, enhances the bank's ability to sell or market its products or services, or improves the effectiveness or efficiency of the bank's operations, in light of risks presented, innovations, strategies, techniques and new technologies for producing and delivering financial products and services; and (ii) Whether the activity enables the bank to use capacity acquired for its banking operations or otherwise avoid economic loss or waste." 12 CFR 7.1000(d)(1).

[49] *See supra* notes 3232-34 and accompanying text.

[50] *See* OCC, *Interpretive Letter No. 1041*, *supra* note 12, at 3 ("[T]he first three activities listed when the Bank acts as escrow agent [receiving funds, depositing funds into a separate non-interest escrow account, and honoring checks

commenter strongly supported this logical outgrowth argument, noting that banks' experiences in managing the risks associated with protecting their collateral is fundamental to real estate lending.

Flexibility to exercise a national bank's business judgment as to how to structure the financing of its escrow operations can also strengthen a national bank by benefiting its customers or its business. As noted above, this flexibility allows banks to defray the costs of providing escrow services, including coordinating payments by the customer to multiple different parties free of charge.[51] While a bank's customers may not receive any interest payments if the bank decides not to offer it, the bank's ability to exercise its business judgment in how it structures its escrow operations may mean that the bank is less likely to need to recoup these costs through other fees, which may be large and upfront and create barriers to homeownership, or which, for some borrowers, may even exceed interest that could otherwise be earned on escrow accounts. Flexibility may also make it more likely for the bank to use escrow accounts in its mortgage lending operations, with their attendant benefits to both the lender and borrower. For example, if national banks were required to use some fixed interest calculation to determine what compensation to pay to customers using escrow accounts, should market interest rates fall below such threshold, then banks could face losses on their provision of escrow accounts and may reasonably decide, where practicable, to desist from using escrow accounts, implement fees,

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written against the account] constitute depository and check cashing functions that are enumerated powers set forth in statutory law."); OCC, *Corporate Decision No. 98-09*, at 15 (Jan. 28, 1998) ("[I]nterest rates paid by the bank on its deposit accounts are generally a business decision as long as the rates do not violate federal banking laws or regulations. . . . [I]t is generally a business decision of the bank to determine which lending programs fit in to its lending goals and objectives.").

[51] *See Clement Nat'l Bank v. Vermont*, 231 U.S. 120, 140-41 (1913) (allowing national banks to pay State taxes on depositors' accounts from their customers' account balances in part justified by the benefit to each customer in not having to separately calculate the tax and submit an individual tax return, which would remove unnecessary obstacles to the successful prosecution of the bank's business); *M&M Leasing*, 563 F.2d at 1381-82 (holding that leases of personal property constitute the loan of money secured by the properties leased, and so are part of the business of banking); *id.* ("[L]easing yields to the banks a rate of return that compares favorably to that of lending. A portfolio of prudently-arranged leases imposes no greater risks than one of equally prudently-arranged loans. It is small wonder, therefore, that today over 1000 national banks are engaged in the leasing of personal property which has an aggregate value in excess of $2 billion." (citation omitted)). Compare the flexibility of national banks to structure secured lending programs as leases and the wide adoption of national bank leasing programs to the flexibility banks may exercise in structuring their escrow accounts and their adoption in approximately 80 percent of mortgages to purchase a property. *See supra* n.5 and accompanying text.

otherwise increase borrower costs to offset such losses, or reduce their overall mortgage lending due to decreased profitability.

National banks also have a core competency in managing risks associated with fee structures and investing funds. In exercising its business judgment as to how to structure the administration and financing of its escrow operations, a bank does not "assume[] material burdens other than those of a lender of money and is [not] subject to significant risks not ordinarily incident to a secured loan."[52] Rather, it continues to protect its security interest and the attendant collateral while managing investment risks associated with what are typically short-term investments using the escrowed funds.

Finally, roughly three quarters of States permit State-chartered banks flexibility to exercise their business judgment as to how to structure the financing of their escrow operations for residential real estate lending, either explicitly[53] or implicitly through silence on the subject,[54] and the OCC is not aware of any State restricting this flexibility with regards to commercial real estate lending.

Several commenters rejected this line of reasoning on the basis that 12 U.S.C. 93a merely allows the OCC to carry out its responsibilities and does not carry with it authority to confer on national banks powers that they do not have under existing law. Even assuming this assertion is accurate, the OCC's rule is fully consistent with it. The preamble extensively discusses the existing and historical power of national banks to exercise flexibility to make business judgments

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[52] *M&M Leasing*, 563 F.2d at 1380.

[53] *See* Iowa Code sec. 524.905(2) (2025) ("A bank receiving funds in escrow pursuant to an escrow agreement executed in connection with a loan . . . *may* pay interest to the borrower on those funds." (emphasis added)).

[54] The States and territories that require their own State-chartered banks to pay specified interest amounts on mortgage-escrow accounts include California (Cal. Civ. Code sec. 2954.8 (2025)), Connecticut (Conn. Gen. Stat. sec. 49-2a (2025)), Guam (11 Guam Code Ann. sec. 106103 (2024)); Maine (Me. Rev. Stat. Ann. tit. 9-B, sec. 429; *id.* tit. 33, sec. 504), Maryland (Md. Code Ann., Com. Law secs. 12-109, 12-109.2 (2025)), Massachusetts (Mass. Gen. Laws ch. 183, sec. 61 (2025)), Minnesota (Minn. Stat. Ann. sec. 47.20, subd. 9 (2025)), New Hampshire (N.H. Rev. Stat. Ann. sec. 383-B:3-303(a)(7)(E) (2025)), New York (N.Y. Gen. Oblig. Law sec. 5-601 (2025)), Oregon (Or. Rev. Stat. secs. 86.245, 86.250 (2025)), Rhode Island (19 R.I. Gen. Laws sec. 19-9-2 (2025)), U.S. Virgin Islands (V.I. Code tit. 9, sec. 67 2025), Utah (Utah Code Ann. sec. 7-17-3 (2025)), Vermont (Vt. Stat. Ann. tit. 8, sec. 10404 (2025)), and Wisconsin (Wis. Stat. secs. 138.051, 138.052 (2025)).

in structuring escrow accounts under 12 U.S.C. 24(Seventh). The final rule merely clarifies longstanding and recognized real estate lending powers that banks have exercised under existing law.

Other commenters stated that the agency's rulemaking authority is limited based on 12 U.S.C. 25b, a statute that does not concern national banks' real estate lending powers. Specifically, these commenters pointed to the OCC's concurrent proposed preemption determination related to State interest-on-escrow laws[55] and asserted that the proposed rule on bank powers was merely pretext for achieving other aims. As explained above, this final rule is clearly supported by the plain meaning and judicial history of the statutory authorities cited. Assertions that these authorities are somehow limited by either context or unrelated statutes that do not specifically limit application of the cited authorities are not statutorily grounded. This final rule is a permissible exercise of the OCC's congressionally granted authority to clarify national banks' longstanding and recognized real estate lending powers.

Another commenter alleged that the OCC failed to provide technical studies and data justifying why the terms and conditions of escrow accounts should be left to a bank's business judgment and why this codification of flexibility is necessary now. Relevant case law requires that agencies disclose technical studies, *when such studies form the basis of a proposed rule*, to give the public adequate opportunity to provide comment.[56] The OCC has not relied on any technical studies or data for this final rule, nor is it required to do so.

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As such, these statutory schemes make clear that the flexibility of banks to make the appropriate business judgment in structuring escrow accounts and investing related funds is a

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[55] 90 FR 61093 (Dec. 30, 2025).

[56] *See Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 199 (D.C. Cir. 2007) (cited by the commenter).

core component of banks' broad mortgage lending powers under applicable law. The OCC has broad authority to prescribe regulations codifying this flexibility.

III. Description of the Final Rule

After considering all comments received in light of the text and purpose of the applicable statutes, the OCC has adopted the proposal without amendment.

The final rule amends the OCC's real estate lending and appraisals regulations applicable to national banks and its lending and investment regulations applicable to Federal savings associations to add a definition of "escrow account," expressly codify banks' power to establish and maintain escrow accounts, and to clarify that the terms and conditions of escrow accounts, including the extent of any compensation paid to customers, are business decisions to be made by each bank.

First, the final rule defines an "escrow account" used by national banks as an account established in connection with a loan or extension of credit secured by a lien on interest in real estate in which the borrower places funds for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property. The final rule defines "escrow accounts" in substantially similar terms in the context of Federal savings associations. One commenter supported the definition but suggested expanding it to avoid unintended gaps by adding explicit references to other terminology used to describe escrow accounts, including "reserve account" or "impound account." The OCC believes this change would be unnecessary as the final rule defines the term "escrow account" by way of the account's use and purpose, rather than the terminology used. Another commenter suggested expanding the rule to cover other accounts with features similar to, but distinct from, escrow accounts. The OCC will continue to monitor whether there are other instances where banks' real estate lending powers may benefit from further regulatory clarity, but the OCC has determined not to expand the scope of the final rule at this time.

Second, the final rule codifies national banks' escrow powers, including the flexibility such banks have as to how to organize and manage escrow accounts. Specifically, the final rule codifies that (1) the powers of national banks include establishing and maintaining escrow accounts in connection with real estate loans; and (2) the terms and conditions of such escrow accounts (including, but not limited to, the investment of escrowed funds, fees assessed for the provision of such accounts, and whether and to what extent interest or other compensation is calculated and paid to customers whose funds are placed in the escrow account) are business decisions to be made by each national bank in its discretion. The final rule codifies these powers in the context of Federal savings associations in substantially similar terms.[57]

One commenter recommended that the final rule establish boundaries that protect homeowners' escrow funds and prevent abusive or unpredictable practices. The OCC remains committed to ensuring that homeowners' escrow funds are protected against abusive practices. The OCC has determined that sufficient statutory, regulatory, and supervisory protections and practices already exist addressing this concern and has accordingly decided that additional regulatory requirements here would be redundant.[58]

IV. Administrative Law Matters

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)[59] 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 Office of Management and Budget (OMB) control number. The OCC has reviewed this final rule and determined that it does not create any new or revise any existing

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[57] While Federal law vests banks with broad discretion, banks' real estate lending operations may be subject to additional requirements under Federal law, and any such operations should be conducted pursuant to safe and sound banking principles and the terms of any applicable agreement with the borrower.

[58] *See*, *e.g.*, 15 U.S.C. 45(a) (prohibiting unfair or deceptive acts or practices in or affecting commerce); *see also* 12 CFR 34.62 (requiring national banks to adopt and maintain written policies that establish appropriate limits and standards for real estate lending, including that they be consistent with safe and sound banking practices); 12 CFR part 34 appendix A to subpart D (requiring banks to establish loan administration procedures that address escrow account administration).

[59] 44 U.S.C. 3501-21.

collections of information under the PRA. Accordingly, no PRA submissions to OMB will be made with respect to this final rule.

Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA)[60] 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 Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of $850 million or less and trust companies with total assets of $47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the *Federal Register* along with its rule.

The OCC currently supervises 991 institutions (national banks, Federal savings associations, and branches or agencies of foreign banks),[61] of which approximately 602 are small entities under the RFA.[62]

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number, and at present, 30 OCC-supervised small entities would constitute a substantial number.

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[60] 5 U.S.C. 601 *et seq.*

[61] Based on data accessed using the OCC's Financial Institutions Data Retrieval System on May 8, 2026.

[62] The OCC bases its estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are $850 million and $47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC used average quarterly assets on December 31, 2025, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

While the final rule will impact a substantial number of OCC-supervised institutions, it imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. For these reasons, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities supervised by the OCC. Accordingly, a final regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[63] 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 ($193 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,[64] if a final rule meets this UMRA threshold, the OCC prepares a written statement that includes, among other things, a cost-benefit analysis of the rule.

This final rule imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. Therefore, the final will not require additional expenditure of $193 million or more annually by any State, local, or tribal governments, in the aggregate, or by the private sector. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994,[65] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with

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[63] 2 U.S.C. 1531 *et seq.*

[64] 2 U.S.C. 1532.

[65] 12 U.S.C. 4802(a).

principles of safety and soundness and the public interest, (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the final rule. This rulemaking will not impose any reporting, disclosure, or other requirements on insured depository institutions. Therefore, section 302(a) does not apply to this final rule.

Executive Order 12866 (as amended)

Executive Order 12866, titled "Regulatory Planning and Review," as amended, requires the Office of Information and Regulatory Affairs (OIRA), OMB, to determine whether a final rule is a "significant regulatory action" prior to the disclosure of the final rule to the public. If OIRA finds the final rule to be a "significant regulatory action," Executive Order 12866 requires the OCC to conduct a cost-benefit analysis of the final rule and for OIRA to conduct a review of the final rule prior to publication in the *Federal Register*. Executive Order 12866 defines a "significant regulatory action" to mean a regulatory action that is likely to (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

OIRA has determined that this final rule is not a significant regulatory action under Executive Order 12866 and, therefore, is not subject to review under Executive Order 12866.

Executive Order 14192

Executive Order 14192, titled "Unleashing Prosperity Through Deregulation," requires that an agency, unless prohibited by law, identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new

regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. The final rule is not an Executive Order 14192 regulatory action because it is not significant under Executive Order 12866. Further, the final rule is a deregulatory action under Executive Order 14192 because it would provide legal clarity (and therefore a potential reduction in legal-related costs) on how banks may structure the financing of their escrow operations and whether (and, if so, to what extent) to offer any compensation to customers or assess any fee.

Congressional Review Act

For purposes of the Congressional Review Act, OMB makes a determination as to whether a final rule constitutes a "major" rule.[66] 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.[67]

The Congressional Review Act defines a "major rule" as any rule that the Administrator of OIRA 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) 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.[68]

OIRA has determined that this final rule is not a major rule. 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.

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[66] 5 U.S.C. 801 *et seq.*

[67] 5 U.S.C. 801(a)(3).

[68] 5 U.S.C. 804(2).

List of Subjects

12 CFR Part 34

Accounting, Banks, banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

12 CFR Part 160

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

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends parts 34 and 160 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

Subpart A—General

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. Amend § 34.2 by:

a. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; and

b. Adding a new paragraph (b).

The addition reads as follows:

§ 34.2 Definitions.

* * * * *

(b) *Escrow account* means an account established in connection with a loan or extension of credit secured by a lien on interest in real estate in which the borrower places funds for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property.

* * * * *

3. Amend § 34.3 by adding paragraph (d) to read as follows:

§ 34.3 General rule.

* * * * *

(d) National banks may establish or maintain escrow accounts. The terms and conditions of any such escrow account, including the investment of escrowed funds, fees assessed for the provision of such accounts, or whether and to what extent interest or other compensation is calculated and paid to customers whose funds are placed in the escrow account, are business decisions to be made by each national bank in its discretion.

PART 160—LENDING AND INVESTMENT

4. The authority citation 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.

5. Amend § 160.3 by adding the definition of "Escrow account" in alphabetical order to read as follows:

§ 160.3 Definitions.

* * * * *

Escrow account means an account established in connection with a real estate loan in which the borrower places funds for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property.

* * * * *

6. Amend § 160.30 by:

a. Designating the introductory text as paragraph (a);

b. In newly designated paragraph (a), revising the table heading; and

c. Adding paragraph (b).

The revision and addition read as follows:

§ 160.30 General lending and investment powers of Federal savings associations.

* * * * *

Table 1 to Paragraph (a)

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(b) Federal savings associations may establish or maintain escrow accounts. The terms and conditions of any such escrow account, including the investment of escrowed funds, fees assessed for the provision of such accounts, or whether and to what extent interest or other compensation is calculated and paid to customers whose funds are placed in the escrow account, are business decisions to be made by each Federal savings association in its discretion.

Jonathan V. Gould,
Comptroller of the Currency.
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