Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency

I2 CFR Part 7
[Docket ID OCC–2020–0026]
RIN 1557–AE97

National Banks and Federal Savings Associations as Lenders

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing a regulation to determine when a national bank or Federal savings association (bank) makes a loan and is the “true lender” in the context of a partnership between a bank and a third party, such as a marketplace lender. Under this proposal, a bank makes a loan if, as of the date of origination, it is named as the lender in the loan agreement or funds the loan.

DATES: Comments must be received on or before September 3, 2020.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title “National Banks and Federal Savings Associations as Lenders” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta.

Regulations.gov Classic: Go to https://www.regulations.gov/. Enter “Docket ID OCC–2020–0026” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments. For help with submitting effective comments, please click on “View Commenter’s Checklist.” Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

Regulations.gov Beta: Go to https://beta.regulations.gov/ or click “Visit New Regulations.gov Site” from the Regulations.gov classic homepage. Enter “Docket ID OCC–2020–0026” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or click on the document title and click the “Comment” box on the top-left side of the screen. For help with submitting effective comments, please click on “Commenter’s Checklist.” For assistance with the Regulations.gov Beta site, please call (877)-378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email to regulations@erulemakinghelpdesk.com. • Email: regs.comments@occ.treas.gov.


• Hand Delivery/Courier: 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• Fax: (571) 465–4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC–2020–0026” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the Regulations.gov website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta: Go to https://www.regulations.gov/. Enter “Docket ID OCC–2020–0026” in the Search Box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT: Andra Shuster, Senior Counsel, Karen McSweeney, Special Counsel, Alison MacDonald, Special Counsel, or Priscilla Benner, Senior Attorney, Chief Counsel’s Office, (202) 649–5490. Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY users may contact (202) 649–5997.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. economy relies on access to affordable credit to fuel economic growth and job creation. Americans rely on affordable credit to reach goals large and small, ranging from purchasing consumer goods, cars, and homes to starting or growing small businesses. While national banks and Federal savings associations (banks) play a critical role in supplying this credit, the financial system is most efficient when banks work effectively with other market participants to meet customers’
credit needs. These relationships allow banks to manage their risks and leverage their balance sheets to increase the supply of available credit in ways they would not be able to if they were acting alone.

One way that banks achieve this efficiency is by selling loans to third parties and using the proceeds from these sales to make additional loans. For example, credit card securitization allows a bank to originate very large loan pools for a diverse customer base at lower rates than if the bank had to fund the loans on its balance sheet. By removing the assets and supporting debt from its balance sheet, the bank is able to save some of the costs of on-balance-sheet financing and manage potential asset-liability mismatches and credit concentrations. Bank customers benefit from the increased availability of credit these securitization relationships provide.

Lending relationships with third parties can also help banks meet customers’ needs for affordable credit, including the needs of unbanked or underbanked individuals. For example, these relationships can enable banks to market affordable loan products to a wider range of potential customers or to develop or acquire innovative credit underwriting models that facilitate expanded access to credit. Banks can also work with third parties to develop responsible lending programs to help customers meet credit needs, including small-dollar lending programs designed to assist with cash-flow imbalances, unanticipated expenses, or income shortfalls.

While these lending relationships can be effective tools to facilitate affordable access to credit, there has been increasing uncertainty about the legal framework that applies to the loans made as part of these relationships. This uncertainty may discourage banks and third parties from entering into relationships, limit competition, and chill the innovation that results from these partnerships—all of which may restrict access to affordable credit.

Federal law authorizes banks to enter into contracts, to make loans, and to subsequently transfer these loans and assign loan contracts. These statutes, however, do not specifically address which entity makes a loan (or, in the vernacular commonly used in case law, which entity is the ‘‘true lender’’) and, therefore, what legal framework applies, when the loan is originated as part of a lending relationship between a bank and a third party. Furthermore, the OCC has not previously taken regulatory action to resolve this ambiguity. In the absence of regulatory action, courts are left to determine when, in a lending partnership, a bank is making the loan and when its partner makes the loan.

A growing body of case law has introduced divergent standards for resolving some cases, the court has concluded that the form of the transaction alone resolves this issue. Under this analysis, the lender is the entity named in the loan agreement. In other cases, the courts have applied fact-intensive balancing tests, in which they have considered a multitude of factors, including: (1) How long the entity named as the lender holds the loan before selling it to the third party; (2) whether the third party advances money that the named lender draws on to make loans; (3) whether the third party guarantees minimum payments or fees to the named lender; (4) whether the third party agrees to indemnify the named lender; and (5) how loans are treated for financial reporting purposes. However, no factor is dispositive, nor are the factors assessed based on any predictable, bright-line standard. Even when nominally engaged in the same analysis—determining which entity has the ‘‘predominant economic interest’’ in the transaction—courts do not necessarily consider all of the same factors or give each factor the same weight. These fact-intensive inquiries, coupled with the lack of a uniform and predictable standard, increase the subjectivity in determining who is the true lender and undermine banks’ ability to partner with third parties to lend across jurisdictions on a nationwide basis.

As a result of this legal uncertainty, stakeholders cannot reliably determine which entity makes a loan, and therefore, the applicability of key factors of the legal framework as of the date of origination is unclear. For example, Federal law establishes the interest a bank may charge on any loan it makes and authorizes the bank to export that rate from the state in which it is located to borrowers in other states. While the OCC recently clarified that interest permissible on a loan made by a bank is not affected by the subsequent sale, assignment, or other transfer of the loan, uncertainty remains regarding how to determine if a loan is, in fact, made by a bank as opposed to by its relationship partner.

To address this uncertainty, the OCC is proposing a clear test to determine when a bank makes a loan. In doing so, the OCC is fulfilling its responsibility to resolve ambiguities in the Federal banking laws it is charged with administering and ensuring clarity and
uniformity for the banks it supervises.\footnote{See Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843 (1984) ("[i]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute."); see also 12 U.S.C. 93a (OCC authority to prescribe rules and regulations).} The OCC’s proposed rule would enable banks to fully exercise the lending authority granted to them under Federal law and allow stakeholders to reliably and consistently identify key aspects of the legal framework applicable to a loan. When a bank makes a loan, a robust Federal framework applies to ensure that banks are lending in a safe and sound manner and in compliance with applicable laws and regulations, and the OCC is the prudential regulator of the bank’s lending activities. Additionally, if the bank makes the loan in the context of a relationship with a third party, the OCC ensures that the bank has instituted appropriate safeguards to manage the associated risks.\footnote{See e.g., OCC Bulletin 2013–29, “Third-Party Relationships: Risk Management Guidance” (Oct. 30, 2013); OCC Bulletin 2020–10, “Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2019–29” (Mar. 5, 2020).} In contrast, if a third party makes a loan as part of a relationship with a bank, the OCC is not the prudential regulator of the lending activity, though it still assesses the third-party risk management in connection with the relationship itself.\footnote{See supra note 19.}

\section*{II. Description of the Proposal}

Several provisions of Federal banking law grant banks the authority to make loans. Specifically, section 5136 of the Revised Statutes (12 U.S.C. 24) provides that a national bank may engage in the business of banking, including by “lending money.” Section 24 of the Federal Reserve Act (12 U.S.C. 371) states that a national bank may “make . . . loans,” and section 5(c) (12 U.S.C. 1464(c)) of the Home Owners’ Loan Act states that a Federal savings association may “invest in, sell, or otherwise deal in . . . loans.” Although each statute uses slightly different language to authorize banks to extend credit, none describes how to determine when a bank has, in fact, exercised this authority, and when, by contrast, the bank’s relationship partner has made the loan. In light of this statutory ambiguity, the OCC has concluded, for the reasons set forth below, that it is reasonable to interpret these statutes to provide that a bank makes a loan whenever it, as of the date of origination, (1) is named as the lender in the loan agreement or (2) funds the loan.\footnote{This proposal also interprets 12 U.S.C. 85 and 1463(g), which govern the interest permitted on bank loans. This proposal would not, however, affect the application of Federal consumer financial laws. For example, this proposal would not affect the meaning of the term “creditor” as used in the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 1026, or the term “lender” as defined in Regulation X, 12 CFR part 1024.}

If a bank is named in the loan agreement as the lender as of the date of origination, the OCC views this imprimatur as conclusive evidence that the bank is exercising its authority to make loans pursuant to the statutes cited above and has elected to subject itself to the panoply of applicable Federal laws and regulations (including but not limited to consumer protection laws) governing lending by banks.\footnote{See Beechum, 2016 WL 5340454: Lender, Black’s Law Dictionary (11th ed. 2019) (“A person or entity from which something (esp. money) is borrowed.”).} There are also circumstances in which a bank is not named as the lender in the loan agreement but is still, in the OCC’s view, making the loan.\footnote{See, e.g., OCC Interpretive Letter 1002 (May 13, 2004) (discussing “table funding” arrangements).} To ensure that the OCC’s rule would capture these circumstances, the agency is proposing a second standard based on which party funded the loan. Under this standard, if a bank funds a loan as of the date of origination, the OCC concludes that it has a predominant economic interest in the loan and, therefore, has made the loan—regardless of whether it is the named lender in the loan agreement as of the date of origination.\footnote{As discussed previously, while courts have relied on a multitude of factors to evaluate which party has the predominant economic interest in a loan, the OCC believes that such a fact-specific analysis is unnecessarily complex and unpredictable. See, e.g., supra note 17 and accompanying text.} Under the OCC’s proposal, the determination of which entity made the loan under the above standards would be complete as of the date the loan is originated and would not change, even if the bank were to subsequently transfer the loan.\footnote{The OCC is also considering how the two standards interact and may revise its test if this interaction creates challenges in determining which party makes a loan.}

Therefore, the OCC proposes that, for purposes of sections 5136 and 5197 of the Revised Statutes (12 U.S.C. 24 and 12 U.S.C. 85), section 24 of the Federal Reserve Act (12 U.S.C. 371), and sections 4(g) and 5(c) of the Home Owners’ Loan Act (12 U.S.C. 1463(g) and 12 U.S.C. 1464(c)), a bank makes a loan when, as of the date of origination, it (1) is named as lender in the loan agreement or (2) funds the loan. The OCC invites comments on all aspects of this proposal, including whether there are additional lending arrangements that should be captured by the OCC’s standards for determining when a bank makes a loan and whether the proposed standards would capture lending arrangements that should be excluded.\footnote{The OCC is also considering how the two standards interact and may revise its test if this interaction creates challenges in determining which party makes a loan.}

\section*{III. Consequences of the Bank as Lender}

A key objective of this proposal is to provide regulatory clarity and certainty that would enable banks and their partners to lend in a manner consistent with their business objectives and risk appetite and in compliance with applicable laws and regulations. As noted previously, identifying the lender would pinpoint key elements of the statutory, regulatory, and supervisory framework applicable to the loan in question. Specifically, when a bank makes a loan, it is responsible for ensuring that the loan is made both in a safe and sound manner and in accordance with applicable laws and regulations, even if the loan is made in the context of a third-party partnership and even if the bank’s partner is the customer-facing entity.\footnote{As the OCC’s proposal, the determination of which entity made the loan under the above standards would be complete as of the date the loan is originated and would not change, even if the bank were to subsequently transfer the loan. The OCC also ensures that the bank has instituted appropriate safeguards to manage the risks associated with the partnership.} As the bank’s prudential regulator, the OCC directly supervises these lending activities.\footnote{Depending on the structure of the bank and the activities it conducts, other regulators may have oversight roles as well. For example, the Consumer Financial Protection Bureau has exclusive supervisory authority and primary enforcement authority for Federal consumer financial laws for banks that are insured depository institutions and have assets greater than $10 billion. See 12 U.S.C. 5515. The OCC generally has exclusive supervisory and enforcement authority for banks with assets of $10 billion or less. See 12 U.S.C. 5516, 5581(c)(1)(B).} The OCC generally has exclusive supervisory and enforcement authority for banks with assets of $10 billion or less. See 12 U.S.C. 5516, 5581(c)(1)(B).
practices. The OCC recently issued a new booklet of the Comptroller’s Handbook to provide guidance to examiners about the risks of banks and third parties engaging in lending, marketing, or other practices that may constitute unfair or deceptive acts or practices or unfair, deceptive, or abusive acts or practices. The OCC has taken a number of public enforcement actions against banks for violating section 5 of the FTC Act, including for failure to: (1) Provide sufficient information to allow consumers to understand the terms of the product or service being offered; (2) adequately disclose when significant fees or similar material prerequisites are imposed in order to obtain the particular product or service being offered; and (3) adequately disclose material limitations affecting the product or service being offered. The agency will continue to exercise its enforcement authority to address unlawful actions.

Banks also are subject to Federal fair lending laws and may not engage in unlawful discriminatory practices, such as "steering" a borrower to a higher cost loan on the basis of the borrower’s race, national origin, age, or gender. If a bank engages in any unlawful discriminatory practices, the OCC will take appropriate action under the Federal fair lending laws. Further, under the Community Reinvestment Act (CRA) regulations, evidence of discriminatory or other illegal credit practices adversely affect a bank’s CRA performance rating. The OCC has also taken significant steps to eliminate predatory, unfair, or deceptive practices in the Federal banking system, recognizing that “[s]uch practices are inconsistent with important national objectives, including the goals of fair access to credit, community development, and stable homeownership by the broadest spectrum of America.” To address these concerns, the OCC requires banks engaged in lending to take into account the borrower’s ability to repay the loan according to its terms. In the OCC’s experience, “a departure from fundamental principles of loan underwriting generally forms the basis of abusive lending: lending without a determination that a borrower can reasonably be expected to repay the loan from resources other than the collateral securing the loan, and relying instead on the foreclosure value of the borrower’s collateral to recover principal, interest, and fees.”

Additionally, the OCC has cautioned banks about lending activities that may be considered predatory, unfair, or deceptive, noting that many such lending practices are unlawful under existing Federal laws and regulations or otherwise present significant safety, soundness, or other risks. These practices include those that target prospective borrowers who cannot afford credit on the terms being offered, provide inadequate disclosures of the true costs and risks of transactions, involve loans with high fees and frequent renewals, or constitute loan “flipping” (frequent re-financings that result in little or no economic benefit to the borrower that are undertaken with the primary or sole objective of generating additional fees). Policies and procedures should also be designed to ensure clear and transparent disclosure of the terms of the loan, including relative costs, risks, and benefits of their loan transaction, which helps to mitigate the risk that a transaction could be unfair or deceptive. The OCC believes that the applicable statutes and regulations, enforceable guidelines, and other issuances include appropriate safeguards with respect to a bank’s use of its lending power and are also appropriate to consider in the context of a lending partnership. While partnerships provide benefits, including expanding access to affordable credit, they may also pose legitimate safety and soundness concerns and raise questions regarding banks’ involvement in activities that may not be consistent with applicable laws and regulations, if they are not appropriately managed. In this regard, the OCC believes it is appropriate to re-emphasize that “any lending practices that take unfair advantage of borrowers, or that have a detrimental impact on communities . . . conflict with the high standards
expected of [banks].”42 To ensure that banks operate consistent with these principles, the OCC evaluates the following as part of its routine supervision of a bank’s lending relationships with third parties:

- Does the bank appropriately manage the risks associated with its third-party relationships, including through policies and procedures that ensure adherence to the bank’s risk appetite and tolerances and by appropriate ongoing monitoring of the third party’s relevant activities? 43

- Are the underwriting criteria for loans made by the bank as part of third-party relationships consistent with criteria the bank would use for loans made without a third party?44

- If the underwriting criteria differs, are these underwriting criteria consistent with applicable law, including 12 CFR part 30, Appendix A, and with safety and soundness?

- Are the terms and structures of the bank’s loan appropriate for the borrower? Are the lending practices appropriate?45

- Are there characteristics, structures, or practices that make it difficult or impossible for a borrower to reduce or repay its indebtedness (e.g., repeated capitalization of interest; extended negative amortization; or a single payment or balloon payment)?

- Are borrowers forced into costly rollovers, renewals, or refinancing transactions that are likely to result in debt traps or ongoing cycles of debt?

- Are the bank’s overall returns on the loans reasonably related to the bank’s risks and costs of the loans (e.g., the total credit costs on short term loans, such as 12- to 36-month loans, are not substantial in relation to, or do not exceed, the principal amount of the loan)?46

- Do disclosures provide sufficient information to draw the borrower’s attention to key terms and to enable the borrower to determine whether the loan meets their particular financial circumstances and needs? For example, would a borrower who is not financially sophisticated or who is otherwise vulnerable to abusive practices understand the terms of the loan, including the loan’s relative costs, risks, and benefits?47

In addition to the consequences described above, the proposal would operate together with the OCC’s recently finalized Madden-fix rule to provide greater clarity to banks regarding their lending activities.48 Once it is determined that a loan has, in fact, been made by a bank under the clear standards set out in this proposal, the applicable Federal legal framework (1) determines the interest permitted on the loan, pursuant to 12 U.S.C. 85 and 1463(g), and (2) permits the loan to be subsequently sold, assigned, or otherwise transferred without affecting the interest term, pursuant to the Madden-fix rule. This clarity would enable banks to more effectively and efficiently work with other market participants to manage their risks and leverage their balance sheets to meet customers’ needs for affordable credit.

IV. Regulatory Analyses

Paperwork Reduction Act. In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., the OCC may not conduct or sponsor, and respondents are not 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 the notice of proposed rulemaking and determined that it would not introduce any new or revise any existing collection of information pursuant to the PRA. Therefore, no submission will be made to OMB for review.

Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 745 small entities. The OCC expects that all of these small entities would be impacted by the rule.

While this proposal could affect how banks structure their current or future third-party relationships, the OCC does not expect that these adjustments would involve an extraordinary demand on a bank’s human resources. Banks already have systems, policies, and procedures in place for issuing loans when third parties are involved, and it takes significantly less time to amend existing policies than to create them. In addition, any costs would likely be absorbed as ongoing administrative expenses. Based on this, the OCC believes the costs associated with any administrative changes in bank lending policies and procedures would be de minimis. Furthermore, legal certainty about whether a loan is made by a bank may encourage some banks to engage in new lending relationships or to expand their existing lending relationships. However, as noted, we do not expect the accompanying costs to be substantial. Therefore, the OCC anticipates that costs, if any, will be de minimis and certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act. Consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, the OCC considers whether the proposed 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 adjusted for inflation (currently $157 million) in any one year. The proposed rule does not impose new mandates. Therefore, the OCC concludes that implementation of the proposed rule would not result in an expenditure of $157 million or more annually by state, local, and tribal governments, or by the private sector.

Riegle Community Development and Regulatory Improvement Act. Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), 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 principles 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, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosures, or
other new requirements on insured depository institutions 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. Although the proposed rule does not impose additional reporting, disclosures, or other new requirements on insured depository institutions, the OCC invites comments that will inform its consideration of the administrative burdens and the benefits of its proposal, as well as the effective date of the final rule.

List of Subjects in 12 CFR Part 7


Office of the Comptroller of the Currency

For the reasons set out in the preamble, the OCC proposes to amend 12 CFR part 7 as follows.

PART 7—ACTIVITIES AND OPERATIONS

1. The authority citation for part 7 continues to read as follows:

   Authority: 12 U.S.C. 1 et seq., 25h, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1463, 1464, 1465, 1818, 1828(m) and 5412(b)(2)(B).

2. Add § 7.1031 to read as follows:

§ 7.1031 National banks and Federal savings associations as lenders.

For purposes of sections 5136 and 5197 of the Revised Statutes (12 U.S.C. 24 and 12 U.S.C. 85), section 24 of the Federal Reserve Act (12 U.S.C. 371), and sections 4(9) and 5(c) of the Home Owners’ Loan Act (12 U.S.C. 1463(g) and 12 U.S.C. 1464(c)), a national bank or Federal savings association makes a loan when the national bank or Federal savings association, as of the date of origination:

(a) Is named as the lender in the loan agreement; or

(b) Funds the loan.

Brian P. Brooks,

Acting Comptroller of the Currency.

[RFDoc. 2020–13997 Filed 7–21–20; 8:45 am]

BILLING CODE 4810–33–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2020–0023

RIN 3170–AA83

Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation Z, which implements the Truth in Lending Act, as mandated by section 108 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The amendments would exempt certain insured depository institutions and insured credit unions from the requirement to establish escrow accounts for certain higher-priced mortgage loans.

DATES: Comments on the proposed rule must be received on or before September 21, 2020.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2020–0023 and RIN 3170–AA83, by any of the following methods:

• Federaleregulationmaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

• Email: 2020-NPRM-EscrowExemption@cfpb.gov. Include Docket No. CFPB–2020–0023 or RIN 3170–AA83 in the subject line of the message.

• Mail/Hand Delivery/Courier: Comment Intake—Higher-Priced Mortgage Loan Escrow Exemption, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to http://www.regulations.gov. In addition, once the Bureau’s headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Joseph Devlin, Senior Counsel, Office of Regulations, at 202–435–7700 or https://reginquiries.consumerfinance.gov/. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

Regulation Z, 12 CFR part 1026, implements the Truth in Lending Act (TILA), 15 U.S.C. 1601 et seq., and includes a requirement that creditors establish an escrow account for certain higher-priced mortgage loans (HPMLs), along with certain exemptions from this requirement. In the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), Congress required the Bureau to issue regulations to add a new exemption from TILA’s escrow requirement that exempts transactions by certain insured depository institutions and insured credit unions. The proposed rule would implement the EGRRCPA section 108 statutory directive, and would also remove certain obsolete text from the

1 12 CFR 1026.35(a) and (b). An HPML is defined in 12 CFR 1026.35(a)(1) and generally means a closed-end consumer credit transaction secured by the consumer’s principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by (1) 1.5 percentage points or more for a first-lien transaction at or below the Freddie Mac conforming loan limit; (2) 2.5 percentage points or more for a first-lien transaction above the Freddie Mac conforming loan limit; or (3) 3.5 percentage points or more for a subordinate-lien transaction. The escrow requirement only applies to first-lien HPMLs.

2 12 CFR 1026.35(b)(2)(i) and (iii).