

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

Docket No. OCC-2020-0039

RIN 1557-AF04

FEDERAL RESERVE SYSTEM

12 CFR Part 226

Docket No. R-1729

RIN 7100-AG00

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Appraisals for Higher-Priced Mortgage Loans Exemption Threshold

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

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The OCC, the Board, and the Bureau are finalizing amendments to the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for “higher-risk mortgages,” termed “higher-priced mortgage loans” or “HPMLs” in the agencies’ regulations. The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) jointly issued final rules implementing these requirements,

effective January 18, 2014. The Agencies' rules exempted, among other loan types, transactions of \$25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). If there is no annual percentage increase in the CPI-W, the OCC, the Board, and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage increase in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. Based on the CPI-W in effect as of June 1, 2020, the exemption threshold will remain at \$27,200, effective January 1, 2021.

DATES: This final rule is effective January 1, 2021.

FOR FURTHER INFORMATION CONTACT: *OCC:* MaryAnn Nash, Counsel, Chief Counsel's Office, (202) 649-6287; for persons who are deaf or hard of hearing TTY, (202) 649-5597. *Board:* Lorna M. Neill, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

Bureau: Rachel Ross, Attorney-Advisor, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to add special appraisal requirements for

“higher-risk mortgages.”¹ In January 2013, the Agencies jointly issued a final rule implementing these requirements and adopted the term “higher-priced mortgage loan” (HPML) instead of “higher-risk mortgage” (the January 2013 Final Rule).² In July 2013, the Agencies proposed additional exemptions from the January 2013 Final Rule (the 2013 Supplemental Proposed Rule).³ In December 2013, the Agencies issued a supplemental final rule with additional exemptions from the January 2013 Final Rule (the December 2013 Supplemental Final Rule).⁴ Among other exemptions, the Agencies adopted an exemption from the new HPML appraisal rules for transactions of \$25,000 or less, to be adjusted annually for inflation.

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

The OCC’s, Board’s, and Bureau’s regulations,⁶ and their accompanying interpretations,⁷ provide that the exemption threshold for smaller loans will be adjusted effective January 1 of each year based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold

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

² 78 FR 10368 (Feb. 13, 2013).

³ 78 FR 48548 (Aug. 8, 2013).

⁴ 78 FR 78520 (Dec. 26, 2013).

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

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

⁷ 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)-1 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)-1 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)-1 (Bureau).

amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900. If there is no annual percentage increase in the CPI-W, the OCC, the Board, and the Bureau will not adjust the threshold amounts from the prior year.⁸

On November 30, 2016, the OCC, the Board, and the Bureau published a final rule in the *Federal Register* to memorialize the calculation method used by the agencies each year to adjust the exemption threshold to ensure that the values for the exemption threshold keep pace with the CPI-W (HPML Small Dollar Adjustment Calculation Rule).⁹ The HPML Small Dollar Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI-W, the OCC, the Board, and Bureau will not adjust the exemption threshold from the prior year. The HPML Small Dollar Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI-W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI-W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI-W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

⁸ See 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)-1 and -2 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)-1 and -2 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)-1 and -2 (Bureau).

⁹ See 81 FR 86250 (Nov. 30, 2016).

II. 2021 Adjustment and Commentary Revision

Effective January 1, 2021, the exemption threshold amount remains at \$27,200. This amount is based on the CPI-W in effect on June 1, 2020, which was reported on May 12, 2020. The Bureau of Labor Statistics publishes consumer-based indices monthly but does not report a CPI change on June 1; indices are reported in the middle of the prior month. The CPI-W is a subset of the CPI-U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI-W reported on May 12, 2020, reflects a 0.1 percent increase in the CPI-W from April 2019 to April 2020. Accordingly, the 0.1 percent increase in the CPI-W from April 2019 to April 2020 results in an exemption threshold amount of \$27,200, after rounding. The OCC, the Board, and the Bureau are revising the commentaries to their respective regulations to add new comments as follows:

- Comment 203(b)(2)-3.viii to 12 CFR part 34, Appendix C to Subpart G (OCC);
- Comment 43(b)(2)-3.viii to Supplement I of 12 CFR part 226 (Board); and
- Comment 35(c)(2)(ii)-3.viii to Supplement I of 12 CFR part 1026 (Bureau).

These new comments state that, from January 1, 2021, through December 31, 2021, the threshold amount is \$27,200. These revisions are effective January 1, 2021.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the agency finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.¹⁰ The amendments in this rule are technical and apply the method previously memorialized in the December 2013 Supplemental Final Rule and the HPML

¹⁰ 5 U.S.C. 553(b)(B).

Small Dollar Adjustment Calculation Rule. For these reasons, the OCC, the Board, and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.¹¹ As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,¹² the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Unfunded Mandates Reform Act

The OCC analyzes proposed rules for the factors listed in Section 202 of the Unfunded Mandates Reform Act of 1995, before promulgating a final rule for which a general notice of proposed rulemaking was published.¹³ As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit

¹¹ 5 U.S.C. 603(a), 604(a).

¹² 44 U.S.C. 3506; 5 CFR part 1320.

¹³ 2 U.S.C. 1532.

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

Bureau Signing Authority

The Acting Associate Director for Research, Markets and Regulations, Dan S. Sokolov, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 226

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR part 34 as set forth below:

PART 34 — REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 *et seq.*, 5101 *et seq.*, 5412(b)(2)(B) and 15 U.S.C. 1639h.

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

Appendix C to Subpart G—OCC Interpretations

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Section 34.203—Appraisals for Higher-Priced Mortgage Loans

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Paragraph 34.203(b)(2)

1. *Threshold amount.* For purposes of §34.203(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 203(b)(2)-3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Comment 203(b)(2)-3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.

2. *No increase in the CPI-W.* If the CPI-W in effect on June 1 does not increase from the CPI-W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI-W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI-W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of §34.203(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

- i. From January 18, 2014, through December 31, 2014, the threshold amount is \$25,000.
- ii. From January 1, 2015, through December 31, 2015, the threshold amount is \$25,500.
- iii. From January 1, 2016, through December 31, 2016, the threshold amount is \$25,500.
- iv. From January 1, 2017, through December 31, 2017, the threshold amount is \$25,500.
- v. From January 1, 2018, through December 31, 2018, the threshold amount is \$26,000.
- vi. From January 1, 2019, through December 31, 2019, the threshold amount is \$26,700.
- vii. From January 1, 2020, through December 31, 2020, the threshold amount is \$27,200.
- viii. From January 1, 2021, through December 31, 2021, the threshold amount is \$27,200.

4. *Qualifying for exemption—in general.* A transaction is exempt under §34.203(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under §34.203(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a §34.203(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of §34.203 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of §34.203 applies. *See* §34.203(b) and (d)(7).

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

3. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. No. 111-24, section 2, 123 Stat. 1734; Pub. L. No. 111-203, 124 Stat. 1376.

4. In Supplement I to part 226, under *Section 226.43—Appraisals for Higher-Risk Mortgage Loans*, paragraph 43(b)(2) is revised to read as follows:

Supplement I to Part 226—Official Staff Interpretations

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Section 226.43—Appraisals for Higher--Risk Mortgage Loans

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Paragraph 43(b)(2)

1. *Threshold amount.* For purposes of §226.43(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 43(b)(2)-3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Comment 43(b)(2)-3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.

2. *No increase in the CPI-W.* If the CPI-W in effect on June 1 does not increase from the CPI-W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI-W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI-W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of §226.43(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

- i. From January 18, 2014, through December 31, 2014, the threshold amount is \$25,000.
- ii. From January 1, 2015, through December 31, 2015, the threshold amount is \$25,500.
- iii. From January 1, 2016, through December 31, 2016, the threshold amount is \$25,500.
- iv. From January 1, 2017, through December 31, 2017, the threshold amount is \$25,500.
- v. From January 1, 2018, through December 31, 2018, the threshold amount is \$26,000.
- vi. From January 1, 2019, through December 31, 2019, the threshold amount is \$26,700.
- vii. From January 1, 2020, through December 31, 2020, the threshold amount is \$27,200.
- viii. From January 1, 2021, through December 31, 2021, the threshold amount is \$27,200.

4. *Qualifying for exemption—in general.* A transaction is exempt under §226.43(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under §226.43(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a §226.43(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of §226.43 with respect to the year

ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of §226.43 applies. *See* §226.43(b) and (d)(7).

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BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

5. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

6. In Supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans*, paragraph 35(c)(2)(ii) is revised to read as follows:

Supplement I to Part 1026—Official Interpretations

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Section 1026.35—Requirements for Higher-Priced Mortgage Loans

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Paragraph 35(c)(2)(ii)

1. *Threshold amount.* For purposes of §1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated in comment 35(c)(2)(ii)-3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) that was in effect on the preceding June 1. Comment 35(c)(2)(ii)-3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI-W that was in effect

on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest \$100 increment. For example, if the annual percentage increase in the CPI-W would result in a \$950 increase in the threshold amount, the threshold amount will be increased by \$1,000. However, if the annual percentage increase in the CPI-W would result in a \$949 increase in the threshold amount, the threshold amount will be increased by \$900.

2. *No increase in the CPI-W.* If the CPI-W in effect on June 1 does not increase from the CPI-W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI-W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI-W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of §1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is \$25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is \$25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is \$25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is \$25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is \$26,000.

- vi. From January 1, 2019, through December 31, 2019, the threshold amount is \$26,700.
- vii. From January 1, 2020, through December 31, 2020, the threshold amount is \$27,200.
- viii. From January 1, 2021, through December 31, 2021, the threshold amount is \$27,200.

4. *Qualifying for exemption—in general.* A transaction is exempt under §1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under §1026.35(c)(2)(ii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a §1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of §1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of §1026.35(c) applies. *See* §1026.35(c)(2) and (c)(4)(vii).

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Brian P. Brooks
Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann Misback,
Secretary of the Board.

Laura Galban
Federal Register Liaison, Bureau of Consumer Financial Protection.