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: Notice of proposed rulemaking.

SUMMARY: The OCC is issuing a notice of proposed rulemaking to codify longstanding 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 judgment 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: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title "Real Estate Lending Escrow Accounts" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal – Regulations.gov:*

Go to *https://regulations.gov/*. Enter Docket ID "OCC-2025-0736" in the Search Box and click "Search." Public comments can be submitted via the "Comment" box below the displayed document information or by clicking on the document title and then clicking 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* site, please call 1-866-498-2945 (toll free) Monday – Friday, 9 a.m. – 5 p.m. ET, or e-mail *regulationshelpdesk@gsa.gov*.

- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW, Suite 3E-218, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and Docket ID "OCC-2025-0736" 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, e-mail addresses, or phone numbers. Comments received, 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 action by the following method:

- *Viewing Comments Electronically – Regulations.gov:*

Go to *https://regulations.gov/*. Enter Docket ID "OCC-2025-0736" in the Search Box and click "Search." Click on the "Dockets" tab and then the document's title. After clicking the document's title, click the "Browse All Comments" tab. Comments can be viewed and filtered by clicking on the "Sort By" drop-down on the right side of the screen or the "Refine

Comments Results" options on the left side of the screen. Supporting materials can be viewed by clicking on the "Browse Documents" tab. Click on the "Sort By" drop-down on the right side of the screen or the "Refine Results" options on the left side of the screen checking the "Supporting & Related Material" checkbox. For assistance with the *Regulations.gov* site, please call 1-866-498-2945 (toll free) Monday – Friday, 9 a.m. – 5 p.m. ET, or e-mail *regulationshelpdesk@gsa.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: Karen McSweeney, Special Counsel, Graham Bannon, Counsel, and Priscilla Benner, Counsel, Chief Counsel's Office, 202-649-5490; Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

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 U.S. In order for banks to engage in effective and efficient real estate lending, they 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 can be subject to acts of nature that 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 become a crucial risk mitigation tool that supports safe and sound mortgage lending. Specifically, 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.[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. Should a borrower fail to pay property taxes, for example, a tax lien is, in general, superior to the lender's mortgage lien.[3] If a municipality forced 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, should a borrower fail 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 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.

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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 (2015).

[3] *See* Mortgage Banking Handbook at 99. *See also* 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.

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 those benefits to both lenders and borrowers, escrow accounts are widely used. For example, approximately 80% of U.S. residential real estate mortgages 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, banks may recoup some of these

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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) (escrow account requirements for Federal Housing Administration programs).

[6] *See* Mortgage Banking Handbook 15, 53-54 ("Mortgage servicers are exposed to considerable operational risk when they manage escrow accounts . . . . 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 its 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.").

costs through investing escrow funds, typically in short term assets. Banks may also choose to pay interest on such accounts or otherwise offer some form of related compensation to mortgage borrowers. These decisions may be informed by the bank's business strategy, costs, market demand, competition from other real estate lenders, and eligibility requirements for certain mortgage insurance programs,[7] among other considerations.

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 them 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 provisions of the Federal Reserve Act,[8] the Home Owners Loan Act of 1933 (HOLA),[9] and the National Bank Act.[10] This is consistent with longstanding agency precedent[11] and bank practices, which the OCC is proposing to codify in its regulations governing the mortgage

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[7] *See*, *e.g.*, U.S. DEP'T OF HOUS. & URB. DEV., *HUD Handbook 4000.1*, "FHA Single Family Housing Policy Handbook—III. Servicing and Loss Mitigation—A. Title II Insured Housing Programs Forward Mortgages—1. Servicing of FHA-Insured Mortgages—g. Escrow—ii. Escrowing of funds" (2025).

[8] 12 U.S.C. 371.

[9] 12 U.S.C. 1464.

[10] 12 U.S.C. 24(Seventh).

[11] *See* OCC, *Interpretive Letter No. 1041* (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* (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"); OCC, *Conditional Approval No. 276* (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 53-54 (detailing the escrow account administration practices of banks).

lending powers of national banks and Federal savings associations, respectively, for the sake of clarity. Codifying this longstanding power will reduce uncertainty with regards to bank escrow practices and may thereby incentivize increased bank mortgage lending.

II. National Banks' Real Estate Lending and Escrow Account Powers

The Federal Reserve Act and HOLA, respectively, evince clear Congressional intent to provide banks with broad, discretionary real estate lending powers, which includes 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 since been inherent to the business of banking 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.[12] Congress has progressively expanded national banks' mortgage lending powers under this law. Initially limited to loans on farmland,[13] Congress amended the law to include limited general real estate lending in 1916[14] and, through the years, removed all limits and conditions on real estate lending other than those prescribed in regulation

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

[13] *See* Pub. L. 63-43, 38 Stat. 251, 273 (Dec. 23, 1913).

[14] *See* Pub. L. 64-270, 39 Stat. 752, 754-55 (Sept. 7, 1916).

by the Comptroller.[15] The Federal Reserve Act provides the OCC broad authority to prescribe regulations governing national banks' loans or extensions of credit secured by liens on interest in real estate.[16]

Likewise, residential mortgage lending is the central business of Federal savings associations.[17] The explicit purpose of HOLA is to create a Federal chartering regime for institutions that provide credit for housing.[18] HOLA provides Federal savings associations broad powers to invest in, sell, or otherwise deal in residential real property loans, subject to regulations issued by the Comptroller.[19] HOLA also provides the OCC with broad authority to prescribe rules and regulations to provide for the organization, incorporation, examination,

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[15] *See* Pub. L. 97-320, 96 Stat. 1469, 1510-11 (Oct. 15, 1982).

[16] 12 U.S.C. 371(a); *see also Secs. 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 requirements. 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)).

[17] 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 Association, which lasted until all 40 original members had been given the opportunity to become homeowners. The Oxford Provident Building Association's example of cooperative finance to promote home ownership inspired the founding of other associations across the country." OCC, *The History of the OCC*, "The Federal Thrift Charter is Created," available at *https://www.occ.gov/about/who-we-are/history/history-of-the-occ/1914-1935/1914-1935-the-federal-thrift-charter-is-created.html*.

[18] 12 U.S.C. 1464(a).

[19] *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% of capital or certain greater amount as determined by the Comptroller, subject to regulations issued by the Comptroller. 12 U.S.C. 1464(c)(2)(B).

operation, and regulation[20] of Federal savings associations and to specify their powers to invest in, sell, or otherwise deal in various loans and other investments.[21]

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.[22] Courts have also explicitly linked the power to lend as inextricably bound up in the power to make good on collateral.[23] 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 finance the costs of managing and protecting property that serves as collateral for its loans.[24]

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[20] 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." quotation marks omitted)). This authority to promulgate regulations for Federal savings associations was ultimately transferred to the OCC. 12 U.S.C. ch. 53. The grant of rule writing authority to the OCC in each of 12 U.S.C. 371(a) and 1464(a) are of a type that "empower[s] an agency to prescribe rules to fill up the details of a statutory scheme." *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.

[21] 12 U.S.C. 1464(c).

[22] *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 Fed. 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 Fed. 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, W. Va., 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").

[23] *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)).

[24] *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. 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 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.[25] Enacted in 1974, the Real Estate Settlement Procedures Act (RESPA)[26] extensively regulates the use and operation of escrow accounts in residential real estate loans. It requires disclosures as to the nature and purposes of escrow accounts,[27] mandates the provision of free annual escrow account statements,[28] 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,[29] and establishes proportional caps on the total amounts that may be collected from borrowers in escrow accounts.[30] RESPA does not, however, include any provisions related to the use of funds in escrow accounts or require lenders to pay compensation on such accounts. RESPA, in legislating a system of escrow account disclosures and amount limits, implicitly recognizes the

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

[26] Pub. L. 93-533, 88 Stat. 1724 (Dec. 22, 1974), codified at 12 U.S.C. 2601 *et seq*.

[27] 12 U.S.C. 2604(b)(9).

[28] 12 U.S.C. 2609(c), 2610.

[29] 12 U.S.C. 2605(g).

[30] 12 U.S.C. 2609(a).

flexibility banks have in deciding how to invest, and whether and to what extent to pay interest on escrowed funds.[31]

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.[32] 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* 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 foreclosures," "claims processing," and "servicing and participation agreements."[33] That is, the *Guidelines* outline broad topics for banks to address, including escrow administration, but give banks substantial flexibility in how to address them.

More generally, neither the Federal Reserve Act, HOLA, nor the National Bank Act displaces 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

[31] *See 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)).

[32] Indeed, Congress has left these business decisions to a bank's discretion except in specific limited circumstances. *See* 15 U.S.C. 1639d.

[33] 12 CFR part 34 Appendix A to Subpart D—Interagency Guidelines for Real Estate Lending.

associations must pay on general deposit accounts. Additionally, a national bank's non-interest charges and fees are subject only to the bank's "discretion, according to sound banking judgment and safe and sound banking principles."[34]

Business of Banking

Furthermore, 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."[35] 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 to permit the use of new ways of conducting the very old business of banking."[36]

Given the discussion in the preceding section, the OCC has consistently taken the position that escrow accounts activities are part of the business of banking.[37] The OCC considers the following factors for 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;

[34] 12 CFR 7.4002(b)(2). *See also* OCC, *Interpretive Letter No. 906* (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.").

[35] 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 . . . ."). *See also* 12 U.S.C. 93a (providing the OCC authority to "prescribe rules and regulations to carry out the responsibilities of the office.").

[36] *M & M Leasing Corp. v. Seattle First Nat'l Bank*, 563 F.2d 1377, 1382 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978).

[37] *See supra* note 11.

(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.[38]

Flexibility to exercise a national bank's business judgment as to how to structure its escrow operations and whether and 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.[39] Furthermore, this flexibility can also be seen as the functional equivalent of national banks' deposit taking powers. Escrow funds are placed into an account and, just like any other account, it is a fundamental precept of banking that the bank has flexibility in determining what, if any, interest is paid on such accounts.[40]

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[38] 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).

[39] *See supra* notes 22-23 and accompanying text.

[40] *See* OCC, *Interpretive Letter No. 1041* (Sept. 28, 2005) ("[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 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* (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.").

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.[41] 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 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, and offer lower prices or fees. 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, otherwise increase borrower costs to offset such loses, 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 financing of its escrow operations, a bank does not "assume[] material burdens other than those

[41] *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). *See also M & M Leasing Corp.*, 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. In reaching this holding, the court noted that "leasing 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."). 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% of mortgages. *See supra* note 5.

of a lender of money and is [not] subject to significant risks not ordinarily incident to a secured loan."[42] 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[43] or implicitly in silence on the subject,[44] and the OCC is not aware of any state restricting this flexibility with regards to commercial real estate lending.

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

III. Description of the Proposed Rule

The proposed rule would amend the OCC's real estate lending and appraisals regulations applicable to national banks and its lending and investment regulations applicable to Federal

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

[43] *See* Iowa Code 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*)).

[44] The states that require their own state-chartered banks to pay specified interest amounts on mortgage escrow accounts include California (Cal. Civ. Code § 2954.8 (2025)), Connecticut (Conn. Gen. Stat. § 49-2a (2025)), Maine (Me. Rev. Stat. Ann. tit. 9-B, § 429; Me. Rev. Stat. Ann. tit. 33, § 504 (2025)), Maryland (MD. Comm. Law Code Ann. § 12-109, § 12-109.2 (2025)), Massachusetts (Mass. Gen. L. ch. 183, § 61 (2025)), Minnesota (Minn. Stat. Ann. § 47.20, subd. 9 (2025)), New Hampshire (N.H. Rev. Stat. Ann. § 383-B:3-303(a)(7)(E) (2025)), New York (N.Y. Gen. Oblig. Law § 5-601 (2025)), Oregon (OR. Rev. Stat. §§ 86.245; 86.250 (2025)), Rhode Island (R.I. Gen. Laws § 19-9-2 (2025)), Utah (Utah Code Ann. § 7-17-3 (2025)), Vermont (Vt. Stat. Ann. tit. 8, § 10404 (2025)), and Wisconsin (Wis. Stat. §§ 138.051; 138.052 (2025)).

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. The OCC proposes to define “escrow accounts” 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 OCC proposes to define “escrow accounts” in substantially similarly terms in the context of Federal savings associations.

The OCC also proposes to codify national banks’ escrow powers, including the flexibility such banks have as to how to organize and manage escrow accounts. Specifically, the OCC proposes to codify 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 use 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 OCC proposes to codify these powers in the context of Federal savings associations in substantially similar terms.[45]

[45] 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.

IV. Regulatory Analysis

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)[46] 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 proposed rule and determined that it does not create any information collection or revise any existing collection of information. Accordingly, no PRA submissions to OMB will be made with respect to this proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[47] requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the Federal Register. An IRFA must contain: (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional

[46] 44 U.S.C. 3501-3521.

[47] 5 U.S.C. 601 *et seq.*

skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule that accomplish its stated objectives.

The OCC currently supervises 1,005 institutions (national banks, Federal savings associations, and branches or agencies of foreign banks),[48] of which approximately 609 are small entities under the RFA.[49]

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. Since the proposed rule would affect all OCC-supervised institutions, a substantial number of OCC-supervised small entities would be impacted.

However, this proposed rulemaking imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

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[48] Based on data accessed using the OCC's Financial Institutions Data Retrieval System on November 20, 2025.

[49] 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 counted 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 in December 31, 2024 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*.

Unfunded Mandates Reform Act

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[50] Under this analysis, the OCC considered 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 or more in any one year ($187 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,[51] if a proposed rule meets this UMRA threshold, the OCC would prepare a written statement that includes, among other things, a cost-benefit analysis of the proposal.

This proposed rulemaking imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. Therefore, the proposal would not require additional expenditure by any State, local, or tribal governments, in the aggregate, or by the private sector of $187 million or more in any one year.

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,[52] 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, (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 would

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[50] 2 U.S.C. 1531 *et seq.*

[51] 2 U.S.C. 1532.

[52] 12 U.S.C. 4802(a).

not impose any reporting, disclosure, or other requirements on insured depository institutions. Therefore, section 302(a) does not apply to this proposed rule.

Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023[53] requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website *www.regulations.gov*.

The OCC is issuing a notice of proposed rulemaking to codify longstanding 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 judgment 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.

The proposal and required summary can be found for the OCC at *https://www.regulations.gov* by searching for Docket ID OCC-2025-0736 and *https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html*.

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 proposed rule is a "significant regulatory action" prior to the disclosure of the proposed rule to the public. If OIRA finds the proposed rule to be a "significant regulatory action," Executive Order 12866 requires the OCC to conduct a cost-benefit analysis of the proposed rule and for OIRA to conduct a review of the proposed rule prior to publication in the Federal Register.

[53] 5 U.S.C. 553(b)(4).

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 proposed rule is not a significant regulatory action under section 3(f)(1) of 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. This proposed 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.

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.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend 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, 1465, 1701j-3, 1828(o), 3331 et seq., 5101 et seq., and 5412(b)(2)(B).

2. Amend § 34.2 by:

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

b. Adding a new paragraph (b).

The revisions read 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 a new 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

1. 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.

2. Amend § 160.3 by adding a new paragraph after the definition of “credit card account” 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.

* * * * *

3. Amend § 160.30 by:

a. Designating the existing content as paragraph (a) and

b. Adding a new paragraph (b).

The revisions read as follows:

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

* * * * *

(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.