

insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

(2) This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

\* \* \* \* \*

*Person* means any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

\* \* \* \* \*

*Suspension* means an action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

#### § 17.610 [Amended]

■ 7. In § 17.610(c), remove the words "subparts A, B, C, D and E of this part", and add in their place the words "2 CFR part 3000"; and remove the words "this part", and add in their place the words "2 CFR part 3000".

#### § 17.615 [Amended]

■ 8. In § 17.615—

■ a. In paragraph (b)(1), remove the words "appendix C" and add, in their place, the word "appendix to part 17".

■ b. In paragraph (c)(1), remove the words "appendix C" and add, in their place, the word "appendix to part 17".

#### § 17.620 [Amended]

■ 9. In § 17.620—

■ a. In paragraph (a)(3), remove the words "this part", and add in their place the words "2 CFR part 3000".

■ b. In paragraph (b), remove the words "this part", and add in their place the words "2 CFR part 3000"; and remove the words "17.320(a)(2) of this part", and add in their place the words "2 CFR part 3000".

#### § 17.630 [Amended]

■ 10. In § 17.630(a)(1), remove the words "appendix C" and add, in their place, the word "appendix to part 17".

#### Appendix A to Part 17 [Removed]

■ 11. In part 17, remove Appendix A.

#### Appendix B to Part 17 [Removed]

■ 12. In part 17, remove Appendix B.

#### Appendix C to Part 17 [Redesignated as Appendix to Part 17]

■ 13. In part 17, redesignate Appendix C as Appendix to Part 17.

#### Van Pace,

*Director, Office of Grant Policy & Oversight,  
Department of Homeland Security.*

[FR Doc. E9-16429 Filed 7-15-09; 8:45 am]

BILLING CODE 9110-9B-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 3

[Docket ID OCC-2009-0007]

RIN 1557-AD25

#### Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital—Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program; Correcting Amendment

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This final rule reinstates regulatory text that was inadvertently removed during the issuance of an interim final rule.

**DATES:** *Effective Date:* July 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** Carl Kaminski, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** On June 30, 2009, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision issued an interim final rule providing that mortgage loans modified under the Making Home Affordable Program (Program) will retain the risk weight assigned to the loan prior to the modification, so long as the loan

continues to meet other applicable prudential criteria.<sup>1</sup> Due to a drafting error, a portion of the OCC's existing capital rule was inadvertently removed. This rule reinstates this text.

#### Regulatory Analysis

##### *Administrative Procedure Act*

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act,<sup>2</sup> the OCC finds that there is good cause for issuing this final rule and making the rule effective immediately upon publication, and that it is impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking and provide an opportunity to comment before the effective date. The rule merely reinstates text that was unintentionally removed.

##### *Riegle Community Development and Regulatory Improvement Act*

Section 302 of Riegle Community Development and Regulatory Improvement Act generally requires that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of a calendar quarter unless the relevant agency finds good cause that the regulations should become effective sooner and publishes its finding with the rule.<sup>3</sup> This provision does not apply because this rule imposes no additional requirements.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). Pursuant to the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(B), general notice and an opportunity for public comment are not required prior to the issuance of a final rule when an agency, for good cause, finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

As discussed above, the OCC has determined for good cause that the APA does not require general notice and public comment on this interim final rule and, therefore, we are not publishing a general notice of proposed rulemaking. Thus, the RFA, pursuant to 5 U.S.C. 601(2), does not apply to this interim final rule.

<sup>1</sup> 74 FR 31160 (June 30, 2009).

<sup>2</sup> 5 U.S.C. 553(b) and (d).

<sup>3</sup> 12 U.S.C. 4802(b)(1).

*Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the agencies have reviewed the interim final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final rule.

*Executive Order 12866*

Executive Order 12866 requires federal agencies to prepare a regulatory impact analysis for agency actions that are found to be "significant regulatory actions." Significant regulatory actions include, among other things, rulemakings that "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." The OCC determined that the final rule is not a significant regulatory action under Executive Order 12866.

*Unfunded Mandates Reform Act of 1995 Determination*

The Unfunded Mandates Reform Act of 1995, Public Law 104-4, (2 U.S.C. 1532) (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the final rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

**List of Subjects in 12 CFR Part 3**

Administrative practice and procedure, Banks, Banking, Capital, National banks, Reporting and recordkeeping requirements, Risk.

**Authority and Issuance**

■ For the reasons stated in the preamble, the Office of the Comptroller of the Currency amends Part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

**PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES**

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

**Authority:** 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

■ 2. In appendix A to Part 3, in section 3, add two sentences to the end of paragraph (a)(3)(iii) to read as follows:

**Appendix A to Part 3—Risk Based Capital Guidelines**

\* \* \* \* \*

*Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items*

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(iii) \* \* \* If a bank holds a first lien and junior lien on a one-to-four family residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purposes of both determining the loan-to-value ratio and assigning a risk weight to the transaction. Furthermore, residential property loans made for the purpose of construction financing are assigned to the 100% risk category of section 3(a)(4) of this appendix A; however, these loans may be included in the 50% risk category of this section 3(a)(3) of this appendix A if they are the subject to a legally binding sales contract and satisfy the requirements of section 3(a)(3)(iv) of this appendix A.

\* \* \* \* \*

Dated: July 9, 2009.

By the Office of the Comptroller of the Currency.

**Julie L. Williams,**

*First Senior Deputy Comptroller and Chief Counsel.*

[FR Doc. E9-16882 Filed 7-15-09; 8:45 am]

**BILLING CODE 4810-33-P**

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 17**

**RIN 2900-AN20**

**Elimination of Requirement for Prior Signature Consent and Pre- and Post-Test Counseling for HIV Testing**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** This document adopts, without change, the proposed rule published in the **Federal Register** on December 29, 2008, updating informed consent requirements related to testing for the Human Immunodeficiency Virus (HIV) for Veterans receiving health care from the Department of Veterans Affairs

(VA). This final rule is in accordance with related provisions of the Veteran's Mental Health and Other Care Improvements Act of 2008. The final rule eliminates the regulatory requirement for written informed consent for HIV testing and specific pre- and post-test counseling of Veteran patients. VA will implement this rule through internal policy guidance specifying these requirements and how they apply to HIV testing.

**DATES:** *Effective Date:* This final rule is effective August 17, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Ronald O. Valdiserri, MD, MPH, Chief Consultant (13B), Public Health Strategic Healthcare Group, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-1040. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On December 29, 2008, VA published a proposed rule in the **Federal Register** (73 FR 79428). We proposed to amend 38 CFR 17.32(d), VA's regulation concerning documentation of informed consent, and 38 CFR 17.32(g), VA's regulation concerning special consent situations, by removing the requirement for written rather than oral informed consent for HIV testing and specific pre- and post-test counseling of Veteran patients related to HIV testing. However, nothing in this regulation changes existing statutory requirements for informed consent. These changes are in response to provisions included in section 124 of Public Law 100-322, the Veteran's Mental Health and Other Care Improvement Act of 2008. VA provided a 30-day comment period, which ended on January 28, 2009.

We received a number of comments that did not address the proposed amendments to § 17.32 and thus were outside the scope of this rulemaking proceeding. Although we appreciate those comments, we will not address them in this final rule.

We received comments concerning the proposed amendments from 10 organizations and 10 individuals. Sixteen commenters expressed support for the proposed rule. We received two comments opposing the rule, one of which was submitted jointly by four commenters, and will address each of those comments below.

VA proposed to amend the Informed Consent regulation for HIV testing in the medical regulations in 38 CFR part 17 to remove § 17.32(d)(1)(vi) and 17.32(g)(4). Section 124 of Public Law 100-322 (1988) ("section 124") prohibited any VA program from widespread testing to identify HIV