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FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R–1740]

RIN 7100–AG 10

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Interim final rule with request for comment.

SUMMARY: On April 17 and July 15, 2020, the Board issued two interim final rules to except certain loans made through June 30 and August 8, 2020, respectively, that are guaranteed under the Small Business Administration's Paycheck Protection Program from the requirements of section 22(h) of the Federal Reserve Act and the Board's Regulation O. The Board is issuing this interim final rule to further extend this relief to PPP loans, including PPP second draw loans, made through March 31, 2021.

DATES: This interim final rule is effective February 17, 2021. Comments on the interim final rule must be received no later than April 5, 2021.

ADDRESSES: You may submit comments, identified by Docket No. R–1740 and RIN 7100 AG 10, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments also may be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Benjamin McDonough, Associate General Counsel, (202) 452–2036, Alison Thro, Deputy Associate General Counsel, (202) 452–3236, Dan Hickman, Senior Counsel, (202) 973–7432, Josh Strazanac, Senior Attorney, (202) 452–2457, Jasmin Keskinen, Attorney, (202) 475–6650, Legal Division; or Anna Lee Hewko, Associate Director, (202) 530–6360, Juan Climent, Assistant Director, (202) 872–7526, (202) 452–5239, Kathryn Ballintine, Manager, (202) 452–2555, Rebecca Zak, Lead Financial Institution Policy Analyst, (202) 912–7995, Eusebius Luk, Senior Financial Policy Analyst I, (202) 452–2874, Division of Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

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I. Background

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act which, among other things, created the Paycheck Protection Program (PPP) to facilitate lending to small businesses affected by the outbreak of COVID–19 and imposition of associated containment measures (COVID event). Although the CARES Act specified that the PPP would end on June 30, 2020, it was later extended to August 8, 2020.[1] On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021 (Appropriations Act), which further extended the PPP to March 31, 2021.[2] The Appropriations Act also created ''PPP second draw loans,'' which are substantially similar to the PPP loans that have been made to date.[3]

Regulation O sets forth quantitative and qualitative requirements for loans made by a bank[4] to its directors, executive officers, and principal shareholders, as well as to any companies owned by such persons (collectively, insiders).[5] Regulation O also sets forth procedural and recordkeeping requirements for loans by banks to their insiders. These requirements normally would apply to PPP loans made by banks to the small businesses owned by their insiders. In some cases, the restrictions in Regulation O could delay or entirely prohibit a bank from making a PPP loan to such a business. This could be particularly challenging in small communities where bank insiders often own small businesses and there are few alternative lenders.

On April 17, 2020, the Board issued an exception to section 22(h) of the Federal Reserve Act[6] and the corresponding provisions of Regulation O for PPP loans made to insiders that would not be prohibited from receiving a PPP loan under the Small Business Administration (SBA) lending

[1] Prioritized Paycheck Protection Program Act, S. 4116, 116th Cong. section 1 (2020).

[2] Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. section 323 (2020).

[3] Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. section 311.

[4] Sections 22(g) and 22(h), and Regulation O, apply to all banks that are members of the Federal Reserve System. Other federal law subjects federally insured state non-member banks and insured savings associations to sections 22(g) and 22(h) in the same manner and to the same extent as if they were member banks. 12 U.S.C. 1828(j) (non-member banks); 12 U.S.C. 1468(b) (savings associations); 12 CFR 337.3 (state non-member banks and state savings associations); 12 CFR 31.2 (national banks and federal savings associations). Accordingly, any reference to ''bank'' in this notice applies to all member banks and institutions subject to sections 22(g) and 22(h) in the same manner and to the same extent as member banks.

[5] *See generally* 12 CFR part 215.

[6] 12 U.S.C. 375b.

restrictions (original IFR).[7] The exception was intended to facilitate lending by banks to a broad range of small businesses within their communities, consistent with applicable law and safe and sound banking practices. The exception applied only to PPP loans made by June 30, 2020, the original date on which the PPP was set to expire. The Board extended the exception after Congress extended the PPP.[8]

The Board received a dozen comments in response to the IFRs it issued in April and July from one trade association, several small businesses, and several individuals. Most of the comments expressed support for the Board's relief, indicating that it would bolster the effectiveness of the PPP in providing support to small businesses. Several raised issues related to the terms and administration of the PPP. One commenter asserted that no bank executives should receive loans from their banks in excess of $15,000 because executives could take advantage of their banks to the detriment of depositors.

In response to comments about the terms and administration of the PPP, the Board notes that the SBA is the agency responsible for setting forth the requirements and administering the program. Any comments concerning those matters are properly addressed to the SBA. Regarding one commenter's suggestion that no executive should be able to borrow more than $15,000 from its banks because executives could exert undue influence and cause harm to a bank, the Board notes that PPP loans have standardized terms and are fully guaranteed as to principal and interest by the U.S. government. Accordingly, a bank may not amend the terms of a PPP loan to be unduly favorable to an executive and the bank is unlikely to suffer a loss because of the loan guarantee. The Board also notes that the relief only extends to insiders who would not be prohibited from receiving a PPP loan by the SBA's lending restrictions, which currently prohibit an ''officer'' from receiving a PPP loan from his or her bank.[9]

The Board is issuing this interim final rule to extend the exception to PPP loans made through March 31, 2021, and to PPP second draw loans.

II. The Interim Final Rule

Section 22(h) authorizes the Board to adopt, by regulation, exceptions to the definition of ''extension of credit'' in section 22(h) for transactions that ''pose minimal risk.'' [10] Therefore, the Board may except PPP loans and PPP second draw loans from the restrictions in section 22(h) and the corresponding provisions of Regulation O upon a determination that such loans pose minimal risk.

The Board determined in the original IFR that PPP loans pose minimal risk.[11] Among other things, this determination relieved member banks from ensuring that PPP loans made to certain insiders complied with the qualitative, quantitative, and procedural requirements set forth in section 22(h) and Regulation O. The Appropriations Act did not change any of the features of PPP loans on which the Board relied in the original IFR to determine that PPP loans pose minimal risk. Moreover, under the Appropriations Act, PPP second draw loans have the same features as PPP loans, except that fewer borrowers are eligible for PPP second draw loans as for PPP loans.[12] Accordingly, for the same reasons cited in the original IFR, the Board has determined that PPP loans and PPP second draw loans appear to pose minimal risk to bank safety and soundness.[13]

SBA lending restrictions continue to apply to certain PPP loans and PPP second draw loans that also would be subject to section 22(h) and the corresponding provisions of Regulation O.[14] Excepting loans that would be prohibited by the SBA lending restrictions from the requirements of section 22(h) and the corresponding provisions in Regulation O would not achieve any meaningful regulatory purpose. Excepting these loans from one regime and not the other also may create confusion because some lenders may mistakenly interpret an exception under one regime to extend to both regimes. Accordingly, the exception continues to apply only for insiders that would not be prohibited from receiving a PPP loan or PPP second draw loan by the SBA lending restrictions.

This interim final rule does not except a PPP loan or PPP second draw loan from other restrictions that may apply to the loan, including section 22(g) of the Federal Reserve Act or section 215.5 of Regulation O.[15] This determination also does not affect application of SBA lending restrictions to a PPP loan or PPP second draw loan. The SBA has stated that ''[f]avoritism by [a PPP] [l]ender in processing time or prioritization of [a] director's or equity holder's PPP application is prohibited.'' [16] The Board will administer the interim final rule accordingly.

Question 1: Are there any additional terms or conditions that should apply to the exception? Why?

Question 2: Based on the experience with the PPP program, what, if any, terms or conditions for PPP second draw loans would make it unreasonable for such loans to be exempted from the requirements of section 22(h)?

III. Administrative Law Matters

A. Administrative Procedure Act

The Board is issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[17] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [18]

The Board believes that the public interest is best served by implementing the interim final rule immediately in light of the short timeframe for execution of the renewed PPP mandated by the Appropriations Act. Accordingly, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.[19]

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good

[7] ''Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks,'' 85 FR 22345 (Apr. 22, 2020)).

[8] ''Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks,'' 85 FR 43119 (July 16, 2020)).

[9] 13 CFR 120.110 (prohibiting an ''Associate'' of a lender from receiving a loan made by the lender pursuant to section 7(a) of the Small Business Act); 13 CFR 120.10 (defining ''Associate of a Lender'' to include ''an officer'').

[10] 12 U.S.C. 375b(9)(D)(ii).

[11] 85 FR 22346.

[12] For example, only borrowers who already have received a PPP loan may obtain a PPP second draw loan. PPP Second draw loans also are only available to employers with 300 or fewer employees. Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong. section 311.

[13] 85 FR 22345, 22346 (Apr. 22, 2020); 85 FR 43119, 43119–20 (July 16, 2020).

[14] Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by the Economic Aid Act, 86 FR 3712 (Jan. 6, 2021).

[15] 12 U.S.C. 375a; 12 CFR 215.5.

[16] *Id.* at 14–15.

[17] 5 U.S.C. 553.

[18] 5 U.S.C. 553(b)(B).

[19] 5 U.S.C. 553(b)(B); 553(d)(3).

cause.[20] Because the rules relieve a restriction by providing an exception to the definition of ''extension of credit'' in section 22(h) and Regulation O, the interim final rule is exempt from the APA's delayed effective date requirement.[21]

While the Board believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the Board is interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) (PRA) 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 OMB control number. On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board, as well as the authority to temporarily approve a new collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation.

This interim final rule does not contain any collections of information subject to the PRA.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [22] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[23] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the Board has determined for good cause that general notice and opportunity for public comment are unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the Board seeks comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[24] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), the federal banking agencies must consider, consistent with the principle 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 requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs 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, with certain exceptions, including for good cause.[25] The Board believes that the public interest is best served by implementing the interim final rule immediately. As discussed in the original IFR, the COVID event has disrupted economic activity in the United States and other countries. The magnitude and persistence of the COVID event on the economy remain uncertain. In light of the substantial disruptions in the economy, and the likelihood that this interim final rule would help ameliorate those disruptions by promoting lending to small businesses, the Board finds good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date.

As such, the interim final rule will be effective immediately on publication. Nevertheless, the Board seeks comment on RCDRIA.

E. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [26] requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the interim final rule in a simple and straightforward manner. The Board invites comments on whether there are additional steps it could take to make the rule easier to understand. For example:

- *Have we organized the material to suit your needs? If not, how could this material be better organized?*
- *Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?*
- *Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?*
- *What else could we do to make the regulation easier to understand?*

List of Subjects in 12 CFR Part 215

Credit, Penalties, Reporting and Recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

■ 1. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 375a(10), 375b(9) and (10), 1468, 1817(k), 5412; and Pub. L. 102–242, 105 Stat. 2236 (1991) (12 U.S.C. 1811 note).

■ 2. In § 215.3, revise paragraphs (b)(8)(i) through (iii) to read as follows:

§ 215.3 Extension of credit.

* * * * *

(b) * * *

(8) * * *

(i) Made pursuant to the ''Paycheck Protection Program'' in which the participation by the Small Business Administration on a deferred basis is 100 percent pursuant to section 1102 of Public Law 116–136 or section 311 of Public Law 116–260;

(ii) That is made during the period beginning on February 15, 2020, and ending on March 31, 2021; and

(iii) That would not be prohibited by 13 CFR 120.110(o) or rules or

[20] 5 U.S.C. 553(d).

[21] 5 U.S.C. 553(d)(1).

[22] 5 U.S.C. 601 *et seq.*

[23] Under regulations issued by the SBA, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. *See* 13 CFR 121.201.

[24] 12 U.S.C. 4802(a).

[25] 12 U.S.C. 4802.

[26] 12 U.S.C. 4809.

interpretations thereof issued by the Small Business Administration.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 9, 2021.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–02966 Filed 2–16–21; 8:45 am]

BILLING CODE 6210–01–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: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule 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 exempt certain insured depository institutions and insured credit unions from the requirement to establish escrow accounts for certain higher-priced mortgage loans.

DATES: This rule is effective on February 17, 2021.

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 Final 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),[1] and also provides for certain exemptions from this requirement.[2] In the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[3] Congress directed 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. This final rule implements the EGRRCPA section 108 statutory directive, removes certain obsolete text from the Official Interpretations to Regulation Z (commentary),[4] and also corrects prior inadvertent deletions from and two scrivener's errors in existing commentary.[5]

New § 1026.35(b)(2)(vi) exempts from the Regulation Z HPML escrow requirement any loan made by an insured depository institution or insured credit union and secured by a first lien on the principal dwelling of a consumer if: (1) The institution has assets of $10 billion or less; (2) the institution and its affiliates originated 1,000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year; and (3) certain of the existing HPML escrow exemption criteria are met, as described below in part V.[6]

II. Background

A. Federal Reserve Board Escrow Rule and the Dodd-Frank Act

Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[7] the Board of Governors of the Federal Reserve System (Board) issued a rule[8] requiring, among other things, the establishment of escrow accounts for payment of property taxes and insurance for certain ''higher-priced mortgage loans,'' a category which the Board defined to capture what it deemed to be subprime loans.[9] The Board explained that this rule was intended to reduce consumer and systemic risks by requiring the subprime market to structure loans and disclose their pricing similarly to the prime market.[10]

In 2010, Congress enacted the Dodd-Frank Act, which amended TILA and transferred TILA rulemaking authority and other functions from the Board to the Bureau.[11] The Dodd-Frank Act added TILA section 129D(a), which adopted the Board's rule requiring that creditors establish an escrow account for higher-priced mortgage loans.[12] The Dodd-Frank Act also excluded certain loans, such as reverse mortgages, from this escrow requirement. The Dodd-Frank Act further granted the Bureau authority to structure an exemption based on asset size and mortgage lending activity for creditors operating predominantly in rural or underserved areas.[13] In 2013, the Bureau exercised this authority to exempt from the escrow requirement creditors with under $2 billion in assets and meeting other criteria.[14] In the Helping Expand Lending Practices in Rural Communities Act of 2015, Congress amended TILA section 129D again by striking the term

[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: 1.5 percentage points or more for a first-lien transaction at or below the Freddie Mac conforming loan limit; 2.5 percentage points or more for a first-lien transaction above the Freddie Mac conforming loan limit; or 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).

[3] Public Law 115–174, 132 Stat. 1296 (2018).

[4] As discussed in more detail in the section-by-section analysis of § 1026.35(b)(2)(iv), this obsolete text includes, among other text, language related to a recently issued interpretive rule. On June 23, 2020, the Bureau issued an interpretive rule that describes the Home Mortgage Disclosure Act of 1975 (HMDA), Public Law 94–200, 89 Stat. 1125 (1975), data to be used in determining that an area is ''underserved.'' 85 FR 38299 (June 26, 2020). As the Bureau explained in the interpretive rule, certain parts of the methodology described in comment 35(b)(2)(iv)–1.ii became obsolete because they referred to HMDA data points replaced or otherwise modified by a 2015 Bureau final rule (2015 HMDA Final Rule). 80 FR 66128, 66256–58 (Oct. 28, 2015). The Bureau stated that it was issuing the interpretive rule to supersede the outdated portions of the commentary and to identify current HMDA data points it will use to determine whether a county is underserved. 85 FR at 38299. In this final rule the Bureau amends the comment to remove the obsolete text.

[5] As discussed in more detail in the section-by-section analysis of § 1026.35(b)(2)(iii), the scrivener's errors that this rule corrects were in the commentary from Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold, 85 FR 83411 (Dec. 22, 2020).

[6] When amending commentary, the Office of the Federal Register requires reprinting of certain subsections being amended in their entirety rather than providing more targeted amendatory instructions and related text. The sections of commentary text included in this document show the language of those sections with the changes as adopted in this final rule. In addition, the Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes this final rule makes to the regulatory and commentary text of Regulation Z. This redline is posted on the Bureau's website with the final rule. If any conflicts exist between the redline and the text of Regulation Z or this final rule, the documents published in the **Federal Register** and the *Code of Federal Regulations* are the controlling documents.

[7] Public Law 111–203, 124 Stat. 1376 (2010).

[8] 73 FR 44522 (July 30, 2008).

[9] *Id.* at 44532.

[10] *Id.* at 44557–61. Prime market loans generally include an escrow account, which may make the monthly payment appear higher than for a higher-priced loan that does not include an escrow account.

[11] Dodd-Frank Act sections 1022, 1061, 1100A and 1100B, 124 Stat. 1980, 2035–39, 2107–10.

[12] Dodd-Frank Act section 1461(a); 15 U.S.C. 1639d.

[13] *Id.*

[14] 78 FR 4726 (Jan. 22, 2013). This rule was subsequently amended several times, including in 2013 and 2015. *See* 78 FR 30739 (May 23, 2013) and 80 FR 59944 (Oct. 2, 2015).