



March 22, 2016

Executive Summary of the Rules Implementing the Helping Expand Lending Practices in Rural Communities Act

On March 22, 2016, the Consumer Financial Protection Bureau issued an Interim Final Rule (Interim Final Rule) to implement certain portions of the Helping Expand Lending Practices in Rural Communities Act (HELP Act). This Interim Final Rule is effective on March 31, 2016.

The Bureau separately issued a final rule (Procedural Rule), which was effective on March 3, 2016, to implement the portions of the HELP Act that directed the Bureau to establish an application process to have an area designated as rural under Federal consumer financial laws. The Bureau will begin accepting applications pursuant to the Procedural Rule on March 31, 2016. Because the HELP Act includes a sunset date for the application process, the Procedural Rule shall cease to have any force or effect on December 4, 2017.

Background

In the fall of 2015, the Bureau issued a final rule (2015 Final Rule) that revised the Regulation Z definitions of “small creditor” and “rural area” and made technical changes and clarifications to other sections of Regulation Z. These revisions affected which creditors were eligible to rely on certain special provisions, including special provisions allowing balloon-payment qualified mortgages and high-cost mortgages, and an exemption to an escrow requirement under Regulation Z.

Prior to the January 1, 2016 effective date of the 2015 Final Rule, Congress enacted the HELP Act, which broadened the class of creditors which may be eligible under the Truth in Lending Act (TILA) for the special provision that permits a qualified mortgage to have a balloon-payment feature and the exemption from the escrow requirement for certain higher-priced mortgage loans (HPMLs) under Regulation Z. The pertinent sections of TILA previously permitted the Bureau to grant the special provision and exemption to certain small creditors that operate predominantly in rural or underserved areas. The HELP Act removed the “predominantly” requirement from those provisions, giving the Bureau authority to extend those provisions to certain small creditors who operate in rural or underserved areas, even if they do not operate predominantly in such areas. The HELP Act also directed the Bureau to establish a process for

individuals and entities to apply to have the Bureau designate an area as rural for purposes of Federal consumer financial laws.

Operate in a Rural or Underserved Area: Originated One First Lien Covered Loan in a Rural or Underserved Area in the Preceding Calendar Year

In response to the HELP Act, the Bureau issued the Interim Final Rule, which expands eligibility for the special provisions allowing balloon-payment qualified mortgages and balloon-payment high-cost mortgages and for the escrow exemption. Pursuant to the Interim Final Rule, a small creditor is no longer required to extend more than 50 percent of its covered transactions secured by first liens on properties located in rural or underserved areas in order to be eligible for either of the two special balloon-payment provisions or the exemption to the escrow requirement under Regulation Z. Effective March 31, 2016, a small creditor may be eligible to rely on those special provisions and the exemption if it originated at least one covered transaction^a secured by a first lien on a property located in a rural or underserved area in the preceding calendar year.

The Interim Final Rule does not alter the grace period adopted in the 2015 Final Rule for applications received before April 1 of a given year. Even if a creditor did not originate a covered loan secured by a first lien on a property in a rural or underserved area in the prior calendar year, the creditor may still rely on the special provisions and exemption for applications received before April 1 of a particular year if it originated a covered transaction secured by a first lien on property in a rural or underserved area in either of the two preceding calendar years. To illustrate, assume a small creditor did not originate any loans secured by property in rural or underserved areas in 2016. However, the small creditor did originate a covered transaction secured by a property in a rural area in 2015. This small creditor may rely on the special provisions and may be able to rely on the escrow exemption (if other requirements are met) for applications received before April 1, 2017.

^a For this purpose, a “covered transaction” is generally a consumer credit transaction that is secured by a first-lien on a dwelling, other than a transaction exempt from the Ability to Repay Rule under 12 CFR 1026.43(a), such as a reverse mortgage, a temporary or bridge loan with a term of 12 months, an extension of credit pursuant to a program administered by a Housing Finance Agency, *etc.*

Special Provisions and Exemption Affected by the Interim Final Rule

A small creditor^b that extends a covered transaction secured by a first lien on a property located in a rural or underserved area may originate qualified mortgages and high-cost mortgages with balloon-payment features. Additionally, a small creditor that operates in a rural or underserved area may be exempt from establishing escrows for certain HPMLs.

Generally, a small creditor cannot rely on the exemption to the escrow requirement if the small creditor maintains an escrow account for real estate- or dwelling-secured consumer credit that it or an affiliate services, unless the escrow was established as an accommodation to a distressed consumer or for a first-lien HPML during a period designated in Regulation Z. The 2015 Final Rule set that period as April 1, 2010 to January 1, 2016. To prevent a small creditor that has not been able to rely on the escrow exemption (and has been required to establish escrow accounts) from losing the ability to rely on the exemption in the future, the Interim Final Rule revises the period designated in Regulation Z. A small creditor that extends a covered transaction secured by a first lien on a property located in a rural or underserved area will be able to rely on the exemption from the escrow requirement even if it continues to maintain escrow accounts established for first-lien HPMLs if the applications for such HPMLs were received between April 1, 2010 and May 1, 2016 or if the escrow account was established as an accommodation to a distressed consumer.

As a reminder, the temporary provisions that permit any small creditor, regardless of where it operates, to originate balloon-payment qualified mortgages and balloon-payment high-cost mortgages only applies to applications received before April 1, 2016.

^b A creditor is a small creditor if, during the preceding calendar year: (1) the creditor and its affiliates together extended no more than 2,000 first-lien covered loans that were transferred by the creditor or affiliate to another person or that were subject to commitment to be acquired by another person at consummation; and (2) the assets of the creditor and its affiliates that regularly extended first-lien covered loans are less than \$2 billion, as adjusted annually. Additionally, for applications received prior to April 1, a creditor is a small creditor, if during either of the two preceding calendar years: (1) the creditor and its affiliates together extended no more than 2,000 first-lien covered loans that were transferred by the creditor or affiliate to another person or that were subject to commitment to be acquired by another person at consummation; and (2) the assets of the creditor and its affiliates that regularly extended first-lien covered loans are less than \$2 billion, as adjusted annually. The Interim Final Rule does not change the definition of small creditor.

The Application Process and the Definition of Rural Area

The Interim Final Rule revises Regulation Z's definition of "rural area" to include a county or census block that the Bureau has designated as rural under the new application procedure set forth in the Procedural Rule. If the Bureau designates an area as rural through the application procedure, the designation is only effective before December 4, 2017. The Interim Final Rule also establishes that, consistent with the interpretation of rural area already set forth in Regulation Z, only counties or census blocks are eligible for designation as rural under the application procedure.

A person, including but not limited to a natural person, may submit an application to the Bureau to have a census block or county designated as "rural" for purposes of Federal consumer financial laws, including eligibility for the balloon-payment special provisions and the escrow exemption. The application must: (1) specifically identify the census block or county that the person wants to be designated as rural and the name of the state in which the block or county is located; (2) provide certain information to support a designation of the area as rural; and (3) include certain applicant information. The applicant must submit the application by email, mail, courier, or hand delivery to the applicable address provided in the **Procedural Rule**. Upon receipt, the Bureau shall review the application for certain preliminary matters. If it determines that the application is not complete, the Bureau shall notify the applicant and specify the additional information required to complete the application. The Bureau will notify the applicant that it will not consider the application if the area identified in the application is already designated as rural, is an area for which an application is already pending, or is an area for which an application has been denied less than 90 days before the applicant's application. The Bureau will also notify the applicant that it will not consider the application if the Bureau determines that the applicant does not live or do business in the state in which the area is located. Otherwise, within 60 days of receiving a complete application, the Bureau shall publish the application in the *Federal Register* and accept public comment for not fewer than 90 days. Within 90 days of the end of the public comment period, the Bureau shall grant or deny the application, in whole or in part, and publish its decision in the *Federal Register*.