

## List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Mortgages, Recordkeeping requirements, Reporting, Truth in lending.

### Authority and Issuance

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

### PART 1026—TRUTH IN LENDING (REGULATION Z)

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

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

\* \* \* \* \*

### Subpart E—Special Rules for Certain Home Mortgage Transactions

2. Section 1026.35 is amended by revising its heading and paragraphs (a) and (b), adding and reserving paragraph (c), and adding paragraph (d), to read as follows:

#### § 1026.35 Requirements for higher-priced mortgage loans.

(a) *Definitions.* For purposes of this section:

(1) “Higher-priced mortgage loan” means a closed-end consumer credit transaction secured by the consumer’s principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

(i) By 1.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction’s interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;

(ii) By 2.5 or more percentage points for loans secured by a first lien with a principal

obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or

(iii) By 3.5 or more percentage points for loans secured by a subordinate lien.

(2) "Average prime offer rate" means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Bureau publishes average prime offer rates for a broad range of types of transactions in a table updated at least weekly as well as the methodology the Bureau uses to derive these rates.

(b) *Escrow accounts.* (1) *Requirement to escrow for property taxes and insurance.*

Except as provided in paragraph (b)(2) of this section, a creditor may not extend a higher-priced mortgage loan secured by a first lien on a consumer's principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. For purposes of this paragraph (b), the term "escrow account" has the same meaning as under Regulation X (24 CFR 3500.17(b)), as amended.

(2) *Exemptions.* Notwithstanding paragraph (b)(1) of this section:

(i) An escrow account need not be established for:

(A) A transaction secured by shares in a cooperative;

(B) A transaction to finance the initial construction of a dwelling;

(C) A temporary or "bridge" loan with a loan term of twelve months or less, such as a

loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months; or

(D) A reverse mortgage transaction subject to § 1026.33(c).

(ii) Insurance premiums described in paragraph (b)(1) of this section need not be included in escrow accounts for loans secured by dwellings in condominiums, planned unit developments, or other common interest communities in which dwelling ownership requires participation in a governing association, where the governing association has an obligation to the dwelling owners to maintain a master policy insuring all dwellings.

(iii) Except as provided in paragraph (b)(2)(v) of this section, an escrow account need not be established for a transaction if, at the time of consummation:

(A) During the preceding calendar year, the creditor extended more than 50 percent of its total covered transactions, as defined by § 1026.43(b)(1), secured by a first lien, on properties that are located in counties designated either “rural” or “underserved” by the Bureau, as set forth in paragraph (b)(2)(iv) of this section;

(B) During the preceding calendar year, the creditor and its affiliates together originated 500 or fewer covered transactions, as defined by § 1026.43(b)(1), secured by a first lien; and

(C) As of the end of the preceding calendar year, the creditor had total assets of less than \$2,000,000,000; this asset threshold shall adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (see comment 35(b)(2)(iii)-1.iii for the current threshold); and

(D) Neither the creditor nor its affiliate maintains an escrow account of the type described in paragraph (b)(1) of this section for any extension of consumer credit secured by real property

or a dwelling that the creditor or its affiliate currently services, other than:

(1) Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before June 1, 2013; or

(2) Escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.

(iv) For purposes of paragraph (b)(2)(iii)(A) of this section:

(A) A county is “rural” during a calendar year if it is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget and applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture’s Economic Research Service (USDA-ERS). A creditor may rely as a safe harbor on the list of counties published by the Bureau to determine whether a county qualifies as “rural” for a particular calendar year.

(B) A county is “underserved” during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for that year, no more than two creditors extend covered transactions, as defined in § 1026.43(b)(1), secured by a first lien five or more times in the county. A creditor may rely as a safe harbor on the list of counties published by the Bureau to determine whether a county qualifies as “underserved” for a particular calendar year.

(v) Notwithstanding paragraph (b)(2)(iii) of this section, an escrow account must be established pursuant to paragraph (b)(1) of this section for any first-lien higher-priced mortgage loan that, at consummation, is subject to a commitment to be acquired by a person that does not satisfy the conditions in paragraph (b)(2)(iii) of this section, unless otherwise exempted by this paragraph (b)(2).

(3) *Cancellation.* (i) *General.* Except as provided in paragraph (b)(3)(ii) of this section, a creditor or servicer may cancel an escrow account required in paragraph (b)(1) of this section only upon the earlier of:

(A) Termination of the underlying debt obligation; or

(B) Receipt no earlier than five years after consummation of a consumer's request to cancel the escrow account.

(ii) *Delayed cancellation.* Notwithstanding paragraph (b)(3)(i) of this section, a creditor or servicer shall not cancel an escrow account pursuant to a consumer's request described in paragraph (b)(3)(i)(B) of this section unless the following conditions are satisfied:

(A) The unpaid principal balance is less than 80 percent of the original value of the property securing the underlying debt obligation; and

(B) The consumer currently is not delinquent or in default on the underlying debt obligation.

(c) [Reserved]

(d) *Evasion; open-end credit.* In connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit in § 1026.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of this section.