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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); Correcting Amendments

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretations; correcting amendments.

SUMMARY: This document corrects the Official Interpretations (Commentary) to Regulation Z. Specifically, the Bureau of Consumer Financial Protection (Bureau) is adding a comment to its Commentary that it included in a recent higher-priced mortgage loan escrow exemption final rule but that was not incorporated into the Code of Federal Regulations (CFR) due to an omission in an amendatory instruction. The Bureau is also revising a comment that it included in the same recent final rule, but that inadvertently did not appear in a subsequently effective final rule.

DATES: The corrections are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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. Background

The Bureau is issuing this document to correct two comments in the Bureau's Commentary to Regulation Z, which implements the Truth in Lending Act.¹ In the final rule titled "Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z)" (Escrow Exemption Final Rule), published in the *Federal Register* on February 17, 2021 (86 FR 9840), the Bureau included *Paragraph 35(b)(2)(vi)(B)* in its commentary text for the rule, but omitted the related amendatory instruction to add that specific paragraph to the Commentary. This omission was a scrivener's error. The Bureau is therefore issuing this correction to ensure that *Paragraph 35(b)(2)(vi)(B)* is incorporated into the Commentary published in the CFR.

Additionally, the Bureau is amending the CFR to revise a comment that the Bureau amended in the Escrow Exemption Rule but that inadvertently did not appear in a subsequently effective final rule. In the Escrow Exemption Rule, the Bureau amended preexisting *Paragraph 43(f)(1)(vi)*. This amended comment was incorporated into the CFR on the February 17, 2021 effective date of the Escrow Exemption Rule; however, an unamended version of the preexisting comment was included in the Bureau's final rule titled "Qualified Mortgage Definition Under the Truth in Lending Act (General QM Loan Definition)" (General QM Rule) (85 FR 86308). The General QM Rule was published in the *Federal Register* on December 29, 2020, but it did not take effect until March 1, 2021.² The unamended version of the preexisting comment therefore inadvertently replaced the amended version when the General QM Rule was incorporated into

¹ 15 U.S.C. 1601 *et seq.*

² 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 CFR. The Bureau is therefore issuing this correction to ensure that the CFR contains the intended version of this comment that the Bureau amended in the Escrow Exemption Final Rule.

Regulatory Requirements: The Bureau finds that public comment on this correction is unnecessary because the Bureau is correcting inadvertent, technical errors, about which there is minimal, if any, basis for substantive disagreement. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.³ The Bureau has determined that these corrections do not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act.⁴

List of Subjects in 12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National Banks, Reporting and recordkeeping requirements, Savings associations, 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, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

2. Amend supplement I to part 1026—Official Interpretations by:

³ 5 U.S.C. 603(a) and 604(a).

⁴ 44 U.S.C. 3501 *et seq.*

- a. Adding *Paragraph 35(b)(2)(vi)(B)*; and
- b. Revising *Paragraph 43(f)(1)(vi)*.

The addition and revision read as follows:

Supplement I to Part 1026—Official Interpretations

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Section 1026.35—Requirements for Higher-Priced Mortgage Loans

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35(b) Escrow Accounts

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35(b)(2) Exemptions

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Paragraph 35(b)(2)(vi)(B)

1. The transaction threshold in § 1026.35(b)(2)(vi)(B) differs from the transaction threshold in § 1026.35(b)(2)(iii)(B) in two ways. First, the threshold in § 1026.35(b)(2)(vi)(B) is 1,000 loans secured by first liens on a principal dwelling, while the threshold in § 1026.35(b)(2)(iii)(B) is 2,000 loans secured by first liens on a dwelling. Second, all loans made by the creditor and its affiliates secured by a first lien on a principal dwelling count toward the 1,000-loan threshold in § 1026.35(b)(2)(vi)(B), whether or not such loans are held in portfolio. By contrast, under § 1026.35(b)(2)(iii)(B), only loans secured by first liens on a dwelling that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, are counted toward the 2,000-loan threshold.

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Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

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43(f) Balloon-Payment qualified mortgages made by certain creditors

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43(f)(1) Exemption

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Paragraph 43(f)(1)(vi).

1. *Creditor qualifications.* Under § 1026.43(f)(1)(vi), to make a qualified mortgage that provides for a balloon payment, the creditor must satisfy three criteria that are also required under § 1026.35(b)(2)(iii)(A), (B) and (C), which require:

i. During the preceding calendar year or during either of the two preceding calendar years if the application for the transaction was received before April 1 of the current calendar year, the creditor extended a first-lien covered transaction, as defined in § 1026.43(b)(1), on a property that is located in an area that is designated either “rural” or “underserved,” as defined in § 1026.35(b)(2)(iv), to satisfy the requirement of § 1026.35(b)(2)(iii)(A) (the rural-or-underserved test). Pursuant to § 1026.35(b)(2)(iv), an area is considered to be rural if it is: A county that is neither in a metropolitan statistical area, nor a micropolitan statistical area adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States. An area is considered to be underserved during a calendar year if, according to HMDA data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions secured by first liens on properties in the county five or more times.

A. The Bureau determines annually which counties in the United States are rural or underserved as defined by § 1026.35(b)(2)(iv)(A)(I) or § 1026.35(b)(2)(iv)(B) and publishes on its public website lists of those counties to assist creditors in determining whether they meet the criterion at § 1026.35(b)(2)(iii)(A). Creditors may also use an automated tool provided on the Bureau’s public website to determine whether specific properties are located in areas that qualify as “rural” or “underserved” according to the definitions in § 1026.35(b)(2)(iv) for a particular calendar year. In addition, the U.S. Census Bureau may also provide on its public website an automated address search tool that specifically indicates if a property address is located in an urban area for purposes of the Census Bureau’s most recent delineation of urban areas. For any calendar year that begins after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is located in an area that qualifies as “rural” according to the definitions in § 1026.35(b)(2)(iv) if the search results provided for the property by any such automated address search tool available on the Census Bureau’s public website do not identify the property as being in an urban area.

B. For example, if a creditor extended during 2017 a first-lien covered transaction that is secured by a property that is located in an area that meets the definition of rural or underserved under § 1026.35(b)(2)(iv), the creditor meets this element of the exception for any transaction consummated during 2018.

C. Alternatively, if the creditor did not extend in 2017 a transaction that meets the definition of rural or underserved test under § 1026.35(b)(2)(iv), the creditor satisfies this criterion for any transaction consummated during 2018 for which it received the application before April 1, 2018, if it extended during 2016 a first-lien covered transaction that is secured by

a property that is located in an area that meets the definition of rural or underserved under § 1026.35(b)(2)(iv).

ii. During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor together with its affiliates extended no more than 2,000 covered transactions, as defined by § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, to satisfy the requirement of § 1026.35(b)(2)(iii)(B).

iii. As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that do not exceed the applicable asset threshold established by the Bureau, to satisfy the requirement of § 1026.35(b)(2)(iii)(C). The Bureau publishes notice of the asset threshold each year by amending comment 35(b)(2)(iii)-1.iii.

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Dated: May 26, 2021.

/s/ David Uejio

David Uejio,
Acting Director, Bureau of Consumer Financial Protection.