BILLING CODE: 4810-AM-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 [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. 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;

---

[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) 1.5 percentage points or more for a first-lien transaction at or below the Freddie Mac conforming loan limit; (2) 2.5 percentage points or more for a first-lien transaction above the Freddie Mac conforming loan limit; or (3) 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).

(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

[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.

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 "predominantly" for creditors operating in rural or underserved areas.[15]

B. Economic Growth, Regulatory Relief, and Consumer Protection Act

Congress enacted the EGRRCPA in 2018. In section 108 of the EGRRCPA,[16] Congress directed the Bureau to conduct a rulemaking to create a new exemption, this one to exempt from TILA's escrow requirement loans made by certain creditors with assets of $10 billion or less and meeting other criteria. Specifically, section 108 of the EGRRCPA amended TILA section 129D(c) to require the Bureau to exempt certain loans made by certain insured depository institutions and insured credit unions from the TILA section 129D(a) HPML escrow requirement.

TILA section 129D(c)(2), as amended by the EGRRCPA, requires the Bureau to issue regulations to exempt from the HPML escrow requirement any loan made by an insured

[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).

[15] Public Law 114-94, div. G, tit. LXXXIX, section 89003, 129 Stat. 1799, 1800 (2015). In 2016, the Bureau amended Regulation Z to implement this change. 81 FR 16074 (Mar. 25, 2016).

[16] EGRRCPA section 108, 132 Stat. 1304–05; 15 U.S.C. 1639d(c)(2).

depository institution or insured credit union 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 Regulation Z HPML escrow exemption criteria, or those of any successor regulation, are met. The Regulation Z exemption criteria that the statute includes in the new exemption are: (1) the requirement that the creditor extend credit in a rural or underserved area (§ 1026.35(b)(2)(iii)(A)); (2) the exclusion from exemption eligibility of transactions involving forward purchase commitments (§ 1026.35(b)(2)(v)); and (3) the prerequisite that the institution and its affiliates not maintain an escrow account other than either (a) those established for HPMLs at a time when the creditor may have been required by the HPML escrow rule to do so, or (b) those established after consummation as an accommodation to distressed consumers (§ 1026.35(b)(2)(iii)(D)).

III. Summary of the Rulemaking Process

The Bureau released a proposed rule to implement EGRRCPA section 108 on July 2, 2020, and the proposal was published in the *Federal Register* on July 22, 2020.[17] The comment period closed on September 21, 2020. Twelve commenters explicitly supported the proposed rule and four were generally opposed to it. Almost all of the commenters who supported the rule suggested one or more changes, discussed below in the section-by-section analysis. The commenters were individuals and individual banks and credit unions, as well as State, regional and national trade associations representing banks and credit unions. There were also two anonymous comments. No community or consumer organizations commented on the proposed

[17] 85 FR 44228 (July 22, 2020).

rule. As discussed in more detail below, the Bureau has considered these comments in finalizing this final rule as proposed, except that the final rule provides a transition period of 120 days, rather than the 90 days set forth in the proposed rule.[18]

IV. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under the Dodd-Frank Act and TILA.

A. Dodd-Frank Act Section 1022(b)

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."[19] Among other statutes, TILA and title X of the Dodd-Frank Act are Federal consumer financial laws.[20] Accordingly, in adopting this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA and title X of the Dodd-Frank Act and prevent evasion of those laws.

B. TILA

As amended by the Dodd-Frank Act, TILA section 105(a) directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain

---

[18] The transition period is discussed in the section-by-section analysis of § 1026.35(b)(2)(iii). In addition to the comments described in the paragraph above, three trade association commenters requested that the Bureau reduce the scope of the general HPML definition by changing the interest rate trigger for non-jumbo first liens to 2 percent over the APOR. Because the proposed rule did not propose to change the statutory general HPML definition and doing so would affect regulatory provisions that are not affected by EGRRCPA section 108 or the proposed rule, the Bureau considers these comments beyond the scope of this rulemaking.

[19] 12 U.S.C. 5512(b)(1).

[20] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws" and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining "enumerated consumer laws" to include TILA).

additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[21] A purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."[22] This stated purpose is tied to Congress's finding that "economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit."[23] Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain "additional requirements" that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Dodd-Frank Act amendment clarified that the Bureau has the authority to use TILA section 105(a) to prescribe requirements beyond those specifically listed in TILA that meet the standards outlined in section 105(a). As amended by the Dodd-Frank Act, TILA section

[21] 15 U.S.C. 1604(a).

[22] 15 U.S.C. 1601(a).

[23] *Id.*

105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129 that apply to the high-cost mortgages referred to in TILA section 103(bb).[24]

The Bureau's authority under TILA section 105(a) to make exceptions, adjustments, and additional provisions that the Bureau finds are necessary or proper to effectuate the purposes of TILA applies with respect to the purpose of TILA section 129D. That purpose is to ensure that consumers understand and appreciate the full cost of home ownership. The purpose of TILA section 129D is also informed by the findings articulated in TILA section 129B(a) that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible and affordable mortgage credit remains available to consumers.[25]

For the reasons discussed in this document, the Bureau is amending Regulation Z to implement EGRRCPA section 108 to carry out the purposes of TILA and is adopting such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance. In developing these aspects of the rule pursuant to its authority under TILA section 105(a), the Bureau has considered: (1) the purposes of TILA, including the purpose of TILA section 129D; (2) the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization; and (3) the specific findings of TILA section 129B(a)(1) that economic stabilization would be enhanced by the protection, limitation,

[24] 15 U.S.C. 1602(bb).

[25] *See* 15 U.S.C. 1639b(a).

and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

In addition, in previous rulemakings, the Bureau adopted two of the regulatory provisions this rule now amends. In adopting those provisions, the Bureau relied on one or more of the authorities discussed above, as well as other authority.[26] The Bureau is amending these provisions in reliance on the same authority, as discussed in detail in the Legal Authority or section-by-section analysis parts of the Bureau's final rules titled "Escrow Requirements Under the Truth in Lending Act" and "Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z)."[27]

V. Section-by-Section Analysis

Section 1026.35 Requirements for higher-priced mortgage loans

35(a) Definitions

35(a)(3) and (4)

The escrow requirement exemption in EGRRCPA section 108 is available to "insured credit unions" and "insured depository institutions." Section 108 amends TILA to provide definitions for these two terms, at TILA section 129D(i)(3) and (4). "Insured credit union" has the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), and "insured depository institution" has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

---

[26] Specifically, TILA section 129D(c) authorizes the Bureau to exempt, by regulation, a creditor from the requirement (in section 129D(a)) that escrow accounts be established for higher-priced mortgage loans if the creditor operates in rural or underserved areas, retains its mortgage loans in portfolio, does not exceed (together with all affiliates) a total annual mortgage loan origination limit set by the Bureau, and meets any asset-size threshold, and any other criteria the Bureau may establish. 15 U.S.C. 1639(c)(1).

[27] *See* 78 FR 4726 and 80 FR 59944, 59945–46.

The Bureau proposed to include these definitions with the existing definitions regarding HPMLs, in § 1026.35(a). No commenters discussed these definitions or objected to the EGRRCPA's limitation of eligibility for the new exemption to insured credit unions and insured depository institutions. The Bureau now adopts these definitions as proposed.

35(b) Escrow accounts

35(b)(2) Exemptions

35(b)(2)(iii)

EGRRCPA section 108 amends TILA section 129D to provide that one of the requirements for the new escrow exemption is that an exempted transaction satisfy the criterion previously established by the Bureau and codified at Regulation Z § 1026.35(b)(2)(iii)(D). Section 1026.35(b)(2)(iii)(D) establishes as a prerequisite to the exemption that a creditor or its affiliate is not already maintaining an escrow account for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services.[28] The purpose of this prerequisite is to limit the exemption to institutions that do not already provide escrow accounts and thus would have to incur the initial cost of setting up a system to provide such accounts. Instead, only institutions that are otherwise eligible for the exemption but already provide escrow accounts would bear the burden of providing such accounts, with the overall burden for them being lower because they are continuing to provide them rather than incurring the cost of starting them up. This prerequisite, however, is subject to two exceptions.

First, under § 1026.35(b)(2)(iii)(D)(*2*), a creditor would not lose the exemption for providing escrow accounts as an accommodation to distressed consumers to assist such

[28] 78 FR 4726, 4738–39.

consumers in avoiding default or foreclosure. The Bureau did not propose to and is not amending this exception.

Second, under § 1026.35(b)(2)(iii)(D)(*1*), the Bureau in its original escrow exemption rule[29] granted an exception from the non-escrowing requirement to creditors who established escrow accounts for first-lien HPMLs on or after April 1, 2010 (the effective date of the Board's original HPML escrow rule), and before June 1, 2013 (the effective date of the Bureau's first HPML escrow rule that included the Dodd-Frank exemption for certain creditors (the original escrow exemption)). The purpose of this exception was to avoid penalizing creditors that had not previously provided escrow accounts but established them specifically to comply with the regulation requiring escrows.[30] Over time, as the Bureau amended the HPML escrow exemption criteria and made more creditors eligible, the Bureau also extended the end date for the exception to the non-escrowing requirement in § 1026.35(b)(2)(iii)(D), so that creditors that had established escrow accounts in order to comply with the Bureau's regulations could still benefit from the relief provided by the Bureau's amendments to the exemption criteria.[31] The Bureau most recently extended the date to May 1, 2016, consistent with the effective date of the Bureau's latest amendment to the HPML exemption criteria.[32]

The proposed rule proposed to amend this exception again, explaining that the dates in then-current § 1026.35(b)(2)(iii)(D)(*1*) between which creditors were allowed to maintain

---

[29] The terms "original" and "existing" escrow exemption refer throughout this document to the regulatory exemption at § 1026.35(b)(2)(iii), either as implemented by the January 2013 final rule or as subsequently amended through 2016. They do not refer to the exemptions or exclusions listed at § 1026.35(b)(2)(i).

[30] 78 FR at 4738–39.

[31] *See, e.g.*, 80 FR 59944, 59968 (adjusting end date to January 1, 2016).

[32] *See* Operations in Rural Areas Under the Truth in Lending Act (Regulation Z); Interim Final Rule, 81 FR 16074 (Mar. 25, 2016).

escrow accounts for first-lien HPMLs without losing eligibility for the exemption (April 1, 2010, until May 1, 2016) were necessary to allow creditors to benefit fully from the existing escrow exemption. However, those same dates would have caused most insured depositories and insured credit unions who would otherwise qualify under the EGRRCPA's new exemption criteria to be ineligible for the exemption. The reason they would have been ineligible is that those depositories and credit unions presumably had established escrows for HPMLs after May 1, 2016, in compliance with the then-current escrow rule's requirements.

In the proposed rule, to assist otherwise exempt institutions to avoid inadvertently making themselves ineligible by establishing escrow accounts before they had heard about the rule and adjusted their compliance, the Bureau proposed to replace the May 1, 2016, end date for the exception to the prerequisite against maintaining escrows with a new end date that was approximately 90 days after the effective date (proposed as the date of publication in the *Federal Register*) of the eventual section 108 escrow exemption final rule. In addition, the Bureau proposed to amend comment 35(b)(2)(iii)-1.iv to conform to this change.

The Bureau also proposed to amend comment 35(b)(2)(iii)(D)(*1*)-1 to address the date change. Comments 35(b)(2)(iii)(D)(*1*)-1 and (*2*)-1 were inadvertently deleted from the *Code of Federal Regulations* in 2019 during an annual inflation adjustment rulemaking, and no change in interpretation of the associated regulatory provisions was intended.[33] The Bureau proposed to correct this deletion by reinserting the two comments back into Supplement I, with comment 35(b)(2)(iii)(D)(*1*)-1 amended from its former language to reflect the date change described above and with no changes being made to comment 35(b)(2)(iii)(D)(*2*)-1. In addition, a sentence

[33] 84 FR 1356 (Feb. 26, 2019).

describing the definition of "affiliate" in comment 35(b)(2)(iii)-1.ii.C was also inadvertently deleted from the *Code of Federal Regulations* in 2019, and no change in interpretation was intended.[34] The Bureau also proposed to add the deleted sentence back into this comment.

Two commenters supported the proposed extension of the non-escrowing date to 90 days beyond the effective (*i.e.*, publication) date of the rule and said they agreed with the Bureau's concern that small institutions might unintentionally become ineligible. Four other commenters requested that the Bureau allow 120 days instead of 90, stating that small institutions often lack the resources to adjust to new compliance requirements quickly and thus the extra time would be very important. Two other commenters asked for a longer transition period than 90 days but did not specify how many days the Bureau should provide. None of the commenters asking for more than 90 days provided factual evidence of the need for more time beyond their stated knowledge of creditor processes.

The Bureau is amending § 1026.35(b)(2)(iii)(D)(*1*) and comments 35(b)(2)(iii)-1.iv and (iii)(D)(*1*)-1 generally as proposed, but finalizing the end date for the exception to the non-escrowing requirement as 120 days from the effective date (date of publication) instead of the proposed end date of 90 days from the effective date. The small- to mid-size institutions affected by the rule may not be immediately aware of the change and might make themselves ineligible for the exemption by establishing escrow accounts before they become aware of the change. With the final rule end date change, such institutions will have 120 days to learn of the amendment. The Bureau has no information that extending the non-escrowing date of the final

[34] *Id.*

rule from 90 to 120 days after the effective date would harm consumers or have an adverse impact on industry.

The Bureau initially adopted the criterion in § 1026.35(b)(2)(iii)(D) under its broad discretionary authority, set forth in 15 U.S.C. 1639d(c)(4), to establish "any other criteria [for the escrow exemption] consistent with the purposes" of the escrow provisions. In establishing the new exemption in EGRRCPA section 108, Congress incorporated as a prerequisite to the new exemption the criterion in § 1026.35(b)(2)(iii)(D) or "any successor regulation." The Bureau interprets the reference to "any successor regulation" to authorize it to make amendments to existing § 1026.35(b)(2)(iii)(D) consistent with the purposes of the escrow provisions, the same standard under which the provision was initially authorized. The Bureau believes the amendment to the end date in § 1026.35(b)(2)(iii)(D)(*1*) is consistent with the purposes of the escrow provisions to avoid disqualifying the majority of institutions that otherwise would qualify for the new exemption. Without this amendment, the Bureau believes that very few insured depository institutions and insured credit unions would have been able to benefit from the new escrow exemption. Such institutions would only have been institutions that (1) together with their affiliates, had more than approximately $2 billion in assets and, without affiliates, less than $10 billion in assets; (2) had not extended any HPMLs since May 1, 2016; and (3) did not offer mortgage escrows in the normal course of business. Because this approach would have restricted access to the new HPML escrow exemption to this limited group of institutions, the usefulness of the exemption would have been extremely limited. The Bureau acknowledges the possibility that creditors outside of the scope of the new escrow exemption might become eligible for the existing escrow exemption as a result of the end-date change. However, any such creditors were able to so during previous date extensions and chose not to. Therefore, the Bureau believes that few, if any, of such creditors would actually take advantage of the existing escrow exemption during this date extension.

In addition, the Bureau's exemption is authorized under the Bureau's TILA section 105(a) authority to make adjustments to facilitate compliance with TILA and effectuate its purposes.[35] Modifying the date will facilitate compliance with TILA for the institutions that would qualify for the exemption but for the previous end date.

Finally, in a recent annual inflation adjustment rulemaking, the Bureau erroneously amended comment 35(b)(2)(iii)-1.iii.E to include a reference to the year "2019" rather than the correct "2020," and also erroneously amended comment 35(b)(2)(iii)-1.iii.E.8 to include a reference to the year "2010" rather than the correct "2021."[36] The Bureau considers these to be scrivener's errors that should be interpreted as references to the year "2020" and "2021" respectively, and the Bureau is now correcting the errors for clarity.

35(b)(2)(iv)

35(b)(2)(iv)(A)

The proposed rule explained that existing § 1026.35(b)(2)(iv)(A)(*3*) provided that a county or census block could be designated as rural using an application process pursuant to section 89002 of the Helping Expand Lending Practices in Rural Communities Act.[37] Because the provision ceased to have any force or effect on December 4, 2017, the Bureau proposed to remove this provision and make conforming changes to § 1026.35(b)(2)(iv)(A). The Bureau also

[35] 15 U.S.C. 1604(a).

[36] Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold, 85 FR 83411, 83415 (Dec. 22, 2020).

[37] 129 Stat. 1799.

proposed to remove references to the obsolete provision in comments 35(b)(2)(iv)(A)-1.i and -2.i, as well as comment 43(f)(1)(vi)-1.

On June 23, 2020, the Bureau issued an interpretive rule that describes the HMDA data to be used in determining whether an area is "underserved."[38] As the interpretive rule explained, 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 the 2015 HMDA Final Rule. In the proposed rule, the Bureau proposed to remove as obsolete the last two sentences from comment 35(b)(2)(iv)-1.ii and to remove references to publishing the annual rural and underserved lists in the *Federal Register*, based on its tentative conclusion that such publication does not increase the ability of financial institutions to access the information, and that posting the lists on the Bureau's public website is sufficient.

The Bureau did not receive comments on these proposed changes to § 1026.35(b)(2)(iv)(A), the related changes to the official commentary, or the changes to comment 35(b)(2)(iv)-1.[39] For the reasons discussed above, the Bureau is finalizing these amendments as proposed.

35(b)(2)(v)

EGRRCPA section 108 further amends TILA section 129D to provide that one of the requirements for the new escrow exemption is that an exempted loan satisfy the criterion in

[38] Bureau of Consumer Fin. Prot., Truth in Lending (Regulation Z); Determining "Underserved" Areas Using Home Mortgage Disclosure Act Data (June 23, 2020), https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/truth-lending-regulation-z-underserved-areas-home-mortgage-disclosure-act-data/.

[39] Although the Bureau did not receive comments about the specific changes regarding rural or underserved status discussed here, commenters did express concern about the general rural or underserved requirement of the new escrow exemption. Those comments are discussed below in the section-by-section analysis of § 1026.35(b)(2)(vi)(C).

Regulation Z § 1026.35(b)(2)(v), a prerequisite to the original escrow exemption. Existing § 1026.35(b)(2)(v) provides that, unless otherwise exempted by § 1026.35(b)(2), the exemption to the escrow requirement would not be available for any first-lien HPML that, at consummation, is subject to a commitment to be acquired by a person that does not satisfy the conditions for an exemption in § 1026.35(b)(2)(iii) (*i.e.*, no forward commitment). In adopting the original escrow exemption, the Bureau stated that the prerequisite of no forward commitments would appropriately implement the requirement in TILA section 129D(c)(1)(C)[40] that the exemption apply only to portfolio lenders.[41] The Bureau also reasoned that conditioning the exemption on a lack of forward commitments, rather than requiring that all loans be held in portfolio, would avoid consumers having to make unexpected lump sum payments to fund an escrow account.[42]

To implement section 108, the Bureau proposed to add references in § 1026.35(b)(2)(v) to the new exemption to make clear that the new exemption would also not be available for transactions subject to forward commitments of the type described in § 1026.35(b)(2)(v). The Bureau also proposed to add similar references to the new exemption in comment 35(b)(2)(v)-1 discussing "forward commitments." The Bureau did not receive comments regarding these provisions and is finalizing them as proposed.

[40] EGRRCPA section 108 redesignated this paragraph. It was previously TILA section 129D(c)(3).

[41] 78 FR 4726, 4741.

[42] *Id.* at 4741–42.

35(b)(2)(vi)

As explained above in part I, section 108 of the EGRRCPA amends TILA section 129D to provide a new exemption from the HPML escrow requirement.[43] The new exemption is narrower than the existing TILA section 129D exemption in several ways, including the following. First, the section 108 exemption is limited to insured depositories and insured credit unions that meet the statutory criteria, whereas the existing escrow exemption applies to any creditor (including a non-insured creditor) that meets its criteria. Second, the originations limit in the section 108 exemption is specified to be 1,000 loans secured by a first lien on a principal dwelling originated by an insured depository institution or insured credit union and its affiliates during the preceding calendar year. In contrast, TILA section 129D(c)(1) (as redesignated) gave the Bureau discretion to choose the originations limit for the original escrow exemption, which the Bureau set at 500 covered transactions, and subsequently amended to 2,000 covered transactions (other than portfolio loans).[44] Third, TILA section 129D(c)(1) also gave the Bureau discretion to determine any asset size threshold (which the Bureau set at $2 billion) and any other criteria the Bureau may establish, consistent with the purposes of TILA. EGRRCPA section 108, on the other hand, specifies an asset size threshold of $10 billion and does not expressly state that the Bureau can establish other criteria. (However, as discussed above, section 108 does appear to allow for a more circumscribed ability to alter certain parameters of the new exemption by referencing the existing regulation "or any successor regulation.").[45]

---

[43] EGRRCPA section 108 designates the new exemption as TILA section 129D(c)(2) and redesignates the paragraph that includes the existing escrow exemption, adopted pursuant to section 1461(a) of the Dodd-Frank Act, as TILA section 129D(c)(1).

[44] 12 CFR 1026.35(b)(2)(iii)(B).

[45] TILA section 129D(c)(2)(C).

As explained in the proposed rule, EGRRCPA section 108 carves out a carefully circumscribed exemption available to insured depository institutions and insured credit unions that do not pursue mortgage lending as a major business line. Congress provided an asset size limit of $10 billion, approximately eight billion dollars above the existing escrow exemption, but reduced the originations limit to 1,000 loans.

The Bureau proposed to implement the EGRRCPA section 108 exemption consistent with this understanding of its limited scope. Proposed new § 1026.35(b)(2)(vi) would have codified the section 108 exemption by imposing as a precondition a bar on its use with transactions involving forward commitments, as explained above in the discussion of the forward commitments provision, § 1026.35(b)(2)(v), and limiting its use to insured depository institutions and insured credit unions. The other requirements for the exemption would have been implemented in proposed subparagraphs (A), (B) and (C), discussed below.

Only one commenter, a national trade association, referred to the proposal's discussion of the nature and purpose of the new exemption. That commenter agreed with the Bureau's reading of the statute and supported the Bureau's implementation of the new exemption.

To facilitate compliance, the Bureau also proposed to provide three-month grace periods[46] for the annually applied requirements for the EGRRCPA section 108 escrow exemption, in § 1026.35(b)(2)(vi)(A), (B), and (C). The grace periods would allow exempt creditors to continue using the exemption for three months after they exceed a threshold in the previous year, to allow a transition period and facilitate compliance.[47] The new proposed

[46] See the discussion of § 1026.35(b)(2)(vi)(A) below for further explanation of the Bureau's adoption of grace periods in the exemption.

[47] *See* 80 FR 59944, 59948–49, 59951, 59954.

exemption would have used the same type of grace periods as in the existing escrow exemption at § 1026.35(b)(2)(iii).

Three commenters supported the proposed grace periods, citing compliance uncertainty and volume and asset fluctuations. Two of these commenters discussed the general use of grace periods for the different thresholds in the rule, and one discussed the use of a grace period with the 1,000-loan threshold specifically. No commenters opposed the use of grace periods. As explained further below in the section-by-section analysis of § 1026.35(b)(2)(vi)(A), the Bureau is now adopting the grace periods as proposed.

In addition to the three-month grace periods, the proposed exemption had other important provisions in common with the existing escrow exemption, including the rural or underserved test, the definition of affiliates, and the application of the non-escrowing time period requirement. Thus, the Bureau proposed to add new comment 35(b)(2)(vi)-1, which cross-references the commentary to § 1026.35(b)(2)(iii). Specifically, proposed comment 35(b)(2)(vi)-1 explained that for guidance on applying the grace periods for determining asset size or transaction thresholds under § 1026.35(b)(2)(vi)(A) or (B), the rural or underserved requirement, or other aspects of the exemption in § 1026.35(b)(2)(vi) not specifically discussed in the commentary to § 1026.35(b)(2)(vi), an insured depository institution or insured credit union may, where appropriate, refer to the commentary to § 1026.35(b)(2)(iii).

No commenters discussed proposed comment 35(b)(2)(vi)-1 and its cross reference to the commentary to § 1026.35(b)(2)(iii). For the reasons discussed above, the Bureau now adopts the comment as proposed.

35(b)(2)(vi)(A)

EGRRCPA section 108(1)(D) amends TILA section 129D(c)(2)(A) to provide that the new escrow exemption is available only for transactions by an insured depository or credit union that "has assets of $10,000,000,000 or less." The Bureau proposed to implement this provision in new § 1026.35(b)(2)(vi)(A) by: (1) using an institution's assets during the previous calendar year to qualify for the exemption, but allowing for a three-month grace period at the beginning of a new year if the institution loses the exemption it previously qualified for; and (2) adjusting the $10 billion threshold annually for inflation using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars.

Two commenters opposed the $10 billion asset threshold, arguing that larger financial institutions should have access to the exemption. One of these commenters suggested that the Bureau make the exemption available to financial institutions with assets of $4 billion dollars *or more* that originate 100 *or more* mortgages per year. However, section 108 of the EGRRCPA specifically sets a threshold of $10 billion as a maximum. The comment provided no basis for the Bureau to ignore the express language of the statute in its implementing regulations.

The existing escrow exemption at § 1026.35(b)(2)(iii) includes three-month grace periods for determination of asset size, loan volume, and rural or underserved status. As explained above in the section-by-section analysis of § 1026.35(b)(2)(vi), those grace periods allow exempt creditors to continue using the exemption for three months after they exceed a threshold in the previous year, so that there will be a transition period to facilitate compliance when they no longer qualify for the exemption.[48] The use of grace periods therefore addresses potential concerns regarding the impact of asset size and origination volume fluctuations from year to year.[49] As with the grace periods in the existing escrow exemption, the new proposed grace period in § 1026.35(b)(2)(vi)(A) would cover applications received before April 1 of the year following the year that the asset threshold is exceeded, and allow institutions to continue to use their asset size from the year before the previous year.

The Bureau has determined that, although new TILA section 129D(c)(2)(A) does not expressly provide for a grace period, the Bureau is justified in using the same type of grace period in the new exemption as provided for in the existing regulatory exemption. EGRRCPA section 108 specifically cites to and relies on aspects of the existing regulatory exemption, which uses grace periods for certain factors. In fact, section 108 incorporates one requirement from the existing escrow exemption, the rural or underserved requirement at § 1026.35(b)(2)(iii)(A), that uses a grace period. The Bureau believes that grace periods are authorized under its TILA section 105(a) authority.[50] The Bureau concludes that the proposed grace periods for the asset threshold, and the loan origination limit in § 1026.35(b)(2)(vi)(B),[51] would facilitate compliance with TILA for institutions that formerly qualified for the exemption but then exceeded the threshold in the previous year. Those institutions would have three months to adjust their compliance management systems to come into compliance and provide the required escrow

---

[48] 80 FR 59944, 59948–49, 59951, 59954.

[49] *See* 80 FR 7770, 7781 (Feb. 11, 2015).

[50] 15 U.S.C. 1604(a).

[51] The Bureau also believes that the use of a grace period with the rural or underserved requirement is appropriate and the Bureau is proposing to include one by citing to existing § 1026.35(b)(2)(iii)(A). However, because the regulation already provides for that grace period, the discussion of the use of exception and adjustment authority does not list it.

accounts. The grace periods would reduce uncertainties caused by yearly fluctuations in assets or originations and make the timing of the new and existing exemptions consistent. They would also ease the aggregate compliance burden of the escrow provisions, consistent with the overall purpose of the statutory amendments.

As explained in the section-by-section analysis of § 1026.35(b)(2)(vi), all comments received that referred to grace periods supported their use. For the reasons discussed in that section-by-section analysis and immediately above, the Bureau now finalizes as proposed the three-month grace period for the asset threshold provision in § 1026.35(b)(2)(vi)(A).

Congress restricted the EGRRCPA section 108 exemption to insured depositories and credit unions with assets of $10 billion or less. Although section 108 does not expressly state that this figure should be adjusted for inflation, the Bureau proposed this adjustment to effectuate the purposes of TILA and facilitate compliance with TILA. EGRRCPA section 108 specifically cites to and relies on criteria in the existing escrow exemption, whose asset threshold is adjusted for inflation. Furthermore, monetary threshold amounts are adjusted for inflation in numerous places in Regulation Z.[52] In addition, inflation adjustment keeps the threshold value at the same level in real terms as when adopted, thereby ensuring the same effect over time as provided for initially in the statute. Therefore, adjusting the threshold value to account for inflation is necessary or proper under TILA section 105(a) to effectuate the purposes of TILA and facilitate compliance with TILA.[53] The Bureau believes that adjusting the threshold for inflation would facilitate compliance by allowing the institutions to remain exempt despite inflation, and that

[52] *See, e.g.*, § 1026.3(b)(1)(ii) (Regulation Z exemption for credit over applicable threshold), § 1026.35(c)(2)(ii) (appraisal exemption threshold); § 1026.6(b)(2)(iii) (CARD Act minimum interest charge threshold); § 1026.43(e)(3)(ii)(points and fees thresholds for qualified mortgage status).

[53] 15 U.S.C. 1604(a).

failure to adjust for inflation would interfere with the purpose of TILA by reducing the availability of the exemption over time to fewer institutions than the provision was meant to cover.

In order to facilitate compliance with § 1026.35(b)(2)(vi)(A), the Bureau proposed to add comment 35(b)(2)(vi)(A)-1. Comment 35(b)(2)(vi)(A)-1 would explain the method by which the asset threshold will be adjusted for inflation, that the assets of affiliates are not considered in calculating compliance with the threshold (consistent with EGRRCPA section 108), and that the Bureau will publish notice of the adjusted asset threshold each year.

The Bureau did not receive any comments on the proposed annual inflation adjustment to the asset threshold. For the reasons discussed above, the Bureau now is finalizing this provision and comment 35(b)(2)(vi)(A)-1 as proposed.

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

EGRRCPA section 108 limits use of its escrow exemption to insured depositories and insured credit unions that, with their affiliates, "during the preceding calendar year . . . originated 1,000 or fewer loans secured by a first lien on a principal dwelling." This threshold is half the limit in the existing regulatory exemption and does not exclude portfolio loans from the total.

The Bureau proposed to implement the 1,000-loan threshold in new § 1026.35(b)(2)(vi)(B), with a three-month grace period similar to the one provided in proposed § 1026.35(b)(2)(vi)(A) and the "rural or underserved" requirement in proposed § 1026.35(b)(2)(vi)(C) (discussed in more detail in the relevant section-by-section analysis below). (For the Bureau's reasoning regarding the adoption of grace periods with the new exemption, see the section-by-section analyses of § 1026.35(b)(2)(vi) and (vi)(A) above.)

There are important differences between the 2,000-loan transaction threshold in existing § 1026.35(b)(2)(iii)(B) and the 1,000-loan transaction threshold in proposed § 1026.35(b)(2)(vi)(B). Proposed comment 35(b)(2)(vi)(B)-1 would aid compliance by explaining the differences between the transactions to be counted toward the two thresholds for their respective exemptions.

Four commenters discussed the proposed loan-limit threshold. As explained above in the section-by-section analysis of § 1026.35(b)(2)(vi)(A), one commenter suggested that the Bureau make the exemption available to financial institutions with assets of $4 billion dollars *or more* that originate 100 *or more* mortgages per year. Two commenters stated that the threshold should be 2,000 loans a year, the same as the existing escrow exemption, in order to reduce costs and allow them to better serve their customers. However, EGRRCPA section 108 specifies the 1,000 loan limit, and does not cite to the 2,000 loan limit in the existing escrow exemption, even though it does cite to the existing escrow exemption for other requirements.[54] In other words, Congress specifically addressed this issue and chose not to use the numbers suggested by the commenters.

For the reasons discussed above, the Bureau is finalizing § 1026.35(b)(2)(vi)(B) and comment 35(b)(2)(vi)(B)-1 as proposed.

35(b)(2)(vi)(C)

EGRRCPA section 108 requires that, in order to be eligible for the new exemption, an insured depository institution or insured credit union must, among other things, satisfy the

[54] A different commenter acknowledged that the statute would not allow an increase to a 2,000 loan limit, but requested that the Bureau support future legislation that would do so. The Bureau generally does not take a position on pending or future legislation.

criteria in § 1026.35(b)(2)(iii)(A) and (D), or any successor regulation. The Bureau proposed to implement these requirements in new § 1026.35(b)(2)(vi)(C).

Section 1026.35(b)(2)(iii)(A) requires that 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, a creditor has extended a covered transaction, as defined by § 1026.43(b)(1), secured by a first lien on a property that is located in an area that is either "rural" or "underserved," as set forth in § 1026.35(b)(2)(iv). As discussed above in the section-by-section analysis of § 1026.35(b)(2)(vi)(A), the current regulation includes a three-month grace period at the beginning of a calendar year to allow a transition period for institutions that lose the existing escrow exemption, and EGRRCPA section 108 incorporates that provision, including the grace period, into the new exemption. By following the EGRRCPA and citing to the current regulation, the Bureau proposed to include the criteria for extending credit in a rural or underserved area, including the grace period, in the new exemption.

Four commenters stated that the final rule should exclude small manufactured housing loans from the "rural or underserved" requirement. These commenters raised concerns that the cost of escrowing was taking lenders out of this market and making these loans less available, and they indicated that the requirement would interfere with many institutions' ability to make appropriate use of the new exemption. Two of these commenters suggested that the Bureau eliminate the rural or underserved requirement for loans under $100,000, which they said would generally be manufactured housing loans, as long as the lender meets all of the other requirements for the new HPML escrow exemption. The commenters did not provide any data or specific information to support their statements.

The rural or underserved provision is a TILA statutory requirement incorporated in the existing regulatory exemption.[55] EGRRCPA section 108 expressly cites to and adopts this requirement,[56] and the proposed rule proposed to do the same. The Bureau does not believe that partial elimination of this statutory requirement would implement EGRRCPA section 108 appropriately. Furthermore, the statutory EGRRCPA provision did not differentiate between manufactured housing and other real estate, the Bureau's proposal did not discuss the rule's potential effects on manufactured housing loans, and the proposal did not consider or include a loan amount based carve-out. The commenters did not provide any evidence that Congress intended a carve-out targeted at manufactured housing as they propose, and such a carve-out could affect the existing escrow exemption if adopted fully. Moreover, these commenters did not provide data demonstrating that the escrow requirement interferes with the availability of manufactured housing loans, and the Bureau does not have such data. For these reasons, the Bureau declines to alter the rural or underserved requirement for the new exemption and finalizes the provision as proposed. However, the Bureau will continue to monitor the market regarding this issue.

Section 1026.35(b)(2)(iii)(D) of the existing escrow exemption, which EGRRCPA section 108 makes a requirement for the new exemption, generally provides that a creditor may not use the exemption if it or its affiliate maintains an escrow account for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services. The Bureau proposed to implement this requirement in § 1026.35(b)(2)(vi)(C). See the

[55] 12 CFR 1026.35(b)(2)(iii)(A).

[56] TILA section 129D(c)(2)(C).

section-by-section analysis of § 1026.35(b)(2)(iii) above for a discussion of this requirement and the exception to this requirement for escrows established between certain dates.

One mortgage lender commenter stated that it now uses escrows often for its customers, because it did not previously qualify for an exemption from the escrow rule. The commenter further stated that stopping all escrows would interfere with its current level of service, and that the customer and the lender should decide if an escrow is appropriate for a given loan. For these reasons, the commenter suggested that the Bureau eliminate the non-escrowing requirement from the new exemption.

EGRRCPA section 108 cites to and adopts the non-escrowing requirement in the Bureau's existing regulation, making the non-escrowing requirement in the new exemption statutory. The commenter did not provide any factual or legal evidence to support its suggestion that the Bureau's regulations not follow the statutory requirement. For these reasons and the reasons explained above in the discussion of § 1026.35(b)(2)(iii)(D), the Bureau declines to eliminate the non-escrowing requirement in this final rule. The Bureau will, however, continue to monitor the market regarding this issue. The Bureau now finalizes the provision as proposed, with the extension of the end date for non-escrowing described below and discussed above in regard to § 1026.35(b)(2)(iii)(D)(*1*).

There are two exclusions from the non-escrowing requirement in the existing escrow exemption and that, therefore, were proposed for the new escrow exemption. First, escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure are excluded from this prohibition. In addition, escrow accounts established between certain dates during which the creditor would have been required to provide escrows to comply with the regulation are also excluded. As explained in the section-by-section analysis of § 1026.35(b)(2)(iii)(D) above, the Bureau proposed to change the end date of this second exclusion to accommodate the new section 108 exemption. Because the Bureau proposed to make the final rule effective upon publication in the *Federal Register* (*see* part VI below), the Bureau proposed to extend the end date in § 1026.35(b)(2)(iii)(D)(*1*) to 90 days after such publication. The Bureau believed that the extra 90 days would help potentially exempt institutions avoid inadvertently making themselves ineligible.

As explained above in regard to § 1026.35(b)(2)(iii)(D)(*1*), the Bureau is adopting an end date for the non-escrowing requirement that is 120 days after the effective date (*i.e.*, publication date).

Section 1026.43 Minimum standards for transactions secured by a dwelling

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

43(f)(1) Exemption

43(f)(1)(vi)

As explained above in the section-by-section analysis of § 1026.35(b)(2)(iv)(A), the Bureau proposed to remove an obsolete provision from that section and remove references to that obsolete provision in comments 35(b)(2)(iv)-1.i and -2.i, as well as comment 43(f)(1)(vi)-1. The Bureau did not receive any comments on this change. For the reasons described in that section-by-section analysis and immediately above, the Bureau now removes the obsolete language in comment 43(f)(1)(vi)-1.

VI. Effective Date

The Bureau proposed that the amendments included in the proposed rule would take effect for mortgage applications received by an exempt institution on the date of the final rule's publication in the *Federal Register*. Under section 553(d) of the Administrative Procedure Act, the required publication or service of a substantive rule must be made not less than 30 days before its effective date except for certain instances, including when a substantive rule grants or recognizes an exemption or relieves a restriction.[57] The final rule will grant an exemption from a requirement to provide escrow accounts for certain HPMLs and relieve a restriction against providing certain HPMLs without such accounts. The final rule is therefore a substantive rule that grants an exemption and relieves requirements and restrictions.

Two commenters discussed the proposal to make the rule effective upon publication and supported it. Another commenter requested that the Bureau extend the effective date indefinitely and study the effect of the escrow rule on community banks. To make the benefits of the new EGRRCPA section 108 exemption available to eligible financial institutions as soon as possible, the Bureau is making this final rule effective on the date of its publication in the *Federal Register*.

VII. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

The Bureau is finalizing this rule to implement EGRRCPA section 108. See the section-by-section analysis above for a full description of the final rule. In developing the final rule, the Bureau has considered the rule's potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[58] In addition, the Bureau has consulted, or offered to

[57] 5 U.S.C. 553(d).

[58] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of proposed rules on insured depository institutions and insured credit unions with less than $10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

consult, with the appropriate prudential regulators and other Federal agencies, including regarding consistency of this final rule with any prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

B. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion in this part VII relies on information that the Bureau has obtained from industry, other regulatory agencies, and publicly available sources. These sources form the basis for the Bureau's consideration of the likely impacts of the final rule. The Bureau provides the best estimates possible of the potential benefits and costs to consumers and covered persons of this rule given available data. However, as discussed further below in this part VII, the data with which to quantify the potential costs, benefits, and impacts of the final rule are generally limited.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the final rule. General economic principles and the Bureau's expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

C. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the final rule, the Bureau takes as a baseline the existing regulations requiring the establishment of escrow accounts for certain HPMLs and the existing exemption from these regulations. The final rule will create a new exemption so that some entities that are currently subject to the regulations requiring the establishing of these escrow accounts will no longer be subject to those regulations. Therefore, the baseline for the analysis of the final rule is those entities remaining subject to those requirements. The Bureau received no comments regarding this choice of baseline for its section 1022(b) analysis.

The final rule should affect the market as described in part VII.D below as long as it is in effect. However, the costs, benefits, and impacts of any rule are difficult to predict far into the future. Therefore, the analysis in part VII.D of the benefits, costs, and impacts of the final rule is most likely to be accurate for the first several years following implementation of the final rule.

D. Benefits and Costs to Consumers and Covered Persons

The Bureau has relied on a variety of data sources to analyze the potential benefits, costs, and impacts of the final rule. To estimate the number of mortgage lenders that may be impacted by the rule and the number of HPMLs originated by those lenders, the Bureau has analyzed the 2019 HMDA data.[59] While the HMDA data have some shortcomings that are discussed in more detail below, they are the best source available to the Bureau to quantify the impact of the final rule. For some portions of the analysis, the requisite data are not available or are quite limited. As a result, portions of this analysis rely in part on general economic principles to provide a qualitative discussion of the benefits, costs, and impacts of the final rule.

For entities that currently exist, the final rule will have a direct effect mainly on those entities that are not currently exempt and will become exempt under the final rule. The Bureau estimates that in the 2019 HMDA data there are 154 insured depositories or insured credit unions with assets between $2 billion and $10 billion that originated at least one mortgage in a rural or underserved area and originated fewer than 1,000 mortgages secured by a first lien on a primary dwelling, and as a result are likely to be impacted by the final rule. Together, these institutions

[59] For information on the 2019 HMDA data, *see* Feng Liu *et al.*, *An Updated Review of the New and Revised Data Points in HMDA: Further Observations using the 2019 HMDA Data* (Aug. 2020), https://files.consumerfinance.gov/f/documents/cfpb_data-points_updated-review-hmda_report.pdf. The section 1022(b) analysis of the proposal for this rule analyzed 2018 HMDA data.

reported originating 120,904 mortgages in 2019. The Bureau estimates that less than 3,000 of these were HPMLs.[60]

Because of the amendment to the end date in proposed 1026.35(b)(2)(iii)(D)(*1*), it is possible that the final rule will also affect entities that established escrow accounts after May 1, 2016, but would otherwise already be exempt under existing regulations. These could be entities that voluntarily established escrow accounts after May 1, 2016, even though they were not required to, or entities that, together with certain affiliates, had more than $2 billion in total assets, adjusted for inflation, before 2016 but less than $2 billion, adjusted for inflation, afterwards. The Bureau does not possess the data to evaluate the number of such creditors but believes there to be very few of them.

The final rule could encourage entry into the HPML market, expanding the number of entities exempted. However, the limited number of existing insured depository institutions and insured credit unions who will be exempt under the final rule may be an indication that the total potential market for such institutions of this size engaging in mortgage lending of less than 1,000 loans per year is small. This could indicate that few such institutions would enter the market due to the final rule.[61] Moreover, the volume of lending they could engage in while maintaining the

---

[60] Some of the 154 entities described above were exempt under the EGRRCPA from reporting many variables for their loans. Non-exempt entities originated 2,601 first-lien closed-end mortgages with APOR spreads above 150 basis points. Such mortgages below the conforming loan limit were HPMLs. Such mortgages above the conforming limit loan limit may not have been HPMLs if their APOR spreads were less than 250 basis points. To derive an upper limit on the number of HPMLs originated, all such mortgages are included in the calculations. The Bureau does not have data on the number of potential HPMLs originated by entities exempt under the EGRRCPA from reporting rate spread data. Assuming the ratio of HPMLs to first-lien mortgages is the same for these entities as it was for non-exempt entities yields an estimate of 347 HPMLs originated by exempt entities, for a total conservative estimate of 2,948 HPMLs in the sample.

[61] For evidence that the original escrow requirement did not cause many lenders to exit the market, *see* Alexei Alexandrov & Xiaoling Ang, *Regulations, Community Bank and Credit Union Exits, and Access to Mortgage Credit* (rev. Oct. 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2462128. This provides suggestive evidence that a limited exemption from the escrow requirement will cause few lenders to enter the market.

exemption is limited. The impact of this final rule on such institutions that are not exempt and would remain not exempt, or that are already exempt, will likely be very small. The impact of this final rule on consumers with HPMLs from institutions that are not exempt and will remain not exempt, or that are already exempt, will also likely be very small. Therefore, the analysis in this part VII.D focuses on entities that will be affected by the final rule and consumers at those entities. Because few entities are likely to be affected by the final rule, and these entities originate a relatively small number of mortgages, the Bureau notes that the benefits, costs, and impacts of the final rule are likely to be small. However, in localized areas some newly exempt community banks and small credit unions may increase mortgage lending to consumers who may be underserved at present.

1. Benefits and Costs to Consumers

For consumers with HPMLs originated by affected insured depository institutions and insured credit unions, the main effect of the final rule will be that those institutions will no longer be required to provide escrow accounts for HPMLs. As described in part VII.D above, the Bureau estimates that fewer than 3,000 HPMLs were originated in 2019 by institutions likely to be impacted by the rule. Institutions that will be affected by the final rule could choose to provide or not provide escrow accounts. If affected institutions decide not to provide escrow accounts, then consumers who would have escrow accounts under the baseline will instead not have escrow accounts. Affected consumers will experience both benefits and costs as a result of the final rule. These benefits and costs will vary across consumers. The discussion of these benefits and costs below focuses on the effects of escrow accounts on monthly payments. However, one commenter noted that, because creditors often require borrowers to make two upfront monthly payments of escrowed items when obtaining a loan, escrow accounts also increase the amount consumers must pay upfront to obtain a loan (although these upfront payments can often themselves be financed). Therefore, many of the costs and benefits discussed in this part VII.D.1 should also be interpreted as applying to these upfront payments.

Affected consumers would have mortgage escrow accounts under the baseline but will not under the final rule. The potential benefits to consumers of not having mortgage escrow accounts include: (1) more budgetary flexibility, (2) interest or other earnings on capital,[62] (3) decreased prices passed through from decreased servicing costs, and (4) greater access to credit resulting from lower mortgage servicing costs.

Escrow accounts generally require consumers to save for infrequent liabilities, such as property tax and insurance, by making equal monthly payments. Standard economic theory predicts that many consumers may value the budgetary flexibility to manage tax and insurance payments in other ways. Even without an escrow account, those consumers who prefer to make equal monthly payments towards escrow liabilities may still do so by, for example, creating a savings account for the purpose. Other consumers who do not like this payment structure can come up with their own preferred payment plans. For example, a consumer with $100 per month in mortgage escrow payments and $100 per month in discretionary income might have to resort to taking on high-interest debt to cover an emergency $200 expense. If the same consumer were not required to make escrow payments, she could pay for the emergency expense immediately without taking on high-interest debt and still afford her property tax and insurance payments by increasing her savings for that purpose by an additional $100 the following month.

[62] Some States require the paying of interest on escrow account balances. But even in those States the consumer might be able to arrange a better return than the escrow account provides.

Another benefit for consumers may be the ability to invest their money and earn a return on amounts that might, depending on State regulations, be forgone when using an escrow. The Bureau does not have the data to estimate the interest consumers forgo because of escrow accounts, but numerical examples may be illustrative. Assuming a 0 percent annual interest rate on savings, a consumer forgoes no interest because of escrow. Assuming a 5 percent annual interest rate on savings, a consumer with property tax and insurance payments of $2,500 every six months forgoes about $65 per year in interest because of escrow.

Finally, consumers may benefit from the final rule from the pass-through of lower costs incurred in servicing the loan under the final rule compared to under the baseline. The benefit to consumers will depend on whether fixed or marginal costs, or both, fall because of the final rule. Typical economic theory predicts that existing firms should pass through only decreases in marginal rather than fixed costs. The costs to servicers of providing escrow accounts for consumers are likely to be predominantly fixed rather than marginal, which may limit the pass-through of lower costs on to consumers in the form of lower prices or greater access to credit. Research also suggests that the mortgage market may not be perfectly competitive and therefore that creditors may not fully pass through reductions even in marginal costs.[63] Therefore, the benefit to consumers from receiving decreased costs at origination because decreased servicing costs are passed through is likely to be small. Lower servicing costs could also benefit consumers by encouraging new originators to enter the market. New exempt originators may be better able to compete with incumbent originators and potentially provide mortgages to underserved consumers because they will not have to incur the costs of establishing and

[63] Jason Allen *et al.*, *The Effect of Mergers in Search Markets: Evidence from the Canadian Mortgage Industry*, Am. Econ. Rev. 2013, 104(10), at 3365–96.

maintaining escrow accounts. They in turn could provide more credit at lower costs to consumers. However, recent research suggests that the size of this benefit may be small.[64]

One commenter suggested an additional benefit to consumers of not having escrow accounts. This commenter noted that some consumers with escrow accounts may erroneously believe they still have to make their property insurance or tax payments themselves. Consumers who unnecessarily make these payments may then have to spend time and effort to get their payments refunded. The commenter did not provide, and the Bureau does not have, data to quantify this benefit.

The potential costs to consumers of not having access to an escrow account include: (1) the difficulty of paying several bills instead of one, (2) a loss of a commitment and budgeting device, and (3) reduced transparency of mortgage costs potentially leading some consumers to spend more on house payments than they want, need, or can afford.

Consumers may find it less convenient to separately pay a mortgage bill, an insurance bill, and potentially several tax bills, instead of one bill from the mortgage servicer with all required payments included. Servicers who maintain escrow accounts effectively assume the burden of tracking whom to pay, how much, and when, across multiple payees. Consumers without escrow accounts assume this burden themselves. This cost varies across consumers, and there is no current research to estimate it. An approximation may be found, however, in an estimate of around $20 per month per consumer, depending on the household's income, coming from the value of paying the same bill for phone, cable television, and internet.[65]

---

[64] *See* Alexandrov & Ang, *supra* note 61.

[65] Hongju Liu *et al.*, *Complementarities and the Demand for Home Broadband Internet Services*, Marketing Science, 29(4), 701-20 (Feb. 2010), https://pubsonline.informs.org/doi/abs/10.1287/mksc.1090.0551.

The loss of escrow accounts may hurt consumers who value the budgetary predictability and commitment that escrow accounts provide. Recent research finds that many homeowners do not pay full attention to property taxes,[66] and are more likely to pay property tax bills on time if sent reminders to plan for these payments.[67] Other research suggests that many consumers, in order to limit their spending, prefer to pay more for income taxes than necessary through payroll deductions and receive a tax refund check from the IRS in the spring, even though consumers who do this forgo interest they could have earned on the overpaid taxes.[68] This could suggest that some consumers may value mortgage escrow accounts because they provide a form of savings commitment. The Bureau recognizes that the budgeting and commitment benefits of mortgage escrow accounts vary across consumers. These benefits will be particularly large for consumers who would otherwise miss payments or even experience foreclosure. Research suggests that a nontrivial fraction of consumers may be in this group.[69] One commenter who argued against the general escrow requirement reported that none of its customers defaulted on property taxes or insurance payments, but that commenter currently provides escrow accounts for its customers with HPMLs, and so the commenter provided little evidence regarding tax and insurance default rates when escrows are not established. As discussed previously, some

---

[66] Francis Wong, *Mad as Hell: Property Taxes and Financial Distress* (Dec. 15, 2020), *available at* https://www.dropbox.com/sh/55dcwuztmo8bwuv/AADfEOFVXZ8zVGzj0-Od5GCKa?dl=0.

[67] Stephanie Moulton *et al.*, *Reminders to Pay Property Tax Payments: A Field Experiment of Older Adults with Reverse Mortgages* (Sept. 6, 2019), https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3445419_code1228972.pdf?abstractid=3445419&mirid=1.

[68] Michael S. Barr & Jane K. Dokko, *Paying to Save: Tax Withholding and Asset Allocation Among Low- and Moderate-Income Taxpayers*, Finance and Economics Discussion Series, Federal Reserve Board (2008), http://www.federalreserve.gov/pubs/feds/2008/200811/200811pap.pdf.

[69] Moulton *et al.*, *supra* note 67. *See also* Nathan B. Anderson & Jane K. Dokko, *Liquidity Problems and Early Payment Default Among Subprime Mortgages*, Finance and Economics Discussion Series, Federal Reserve Board (2011), http://www.federalreserve.gov/pubs/feds/2011/201109/201109pap.pdf.

consumers may assign no benefit to escrow accounts, or even consider the budgeting and commitment aspects of escrow accounts to be a cost to them.

Finally, escrow accounts may make it easier for consumers to shop for mortgages by reducing the number of payments consumers have to compare. Consumers considering mortgages without escrow accounts may not be fully aware of the costs they would be assuming and may end up paying more on mortgage and housing costs than they want, need, or can afford. Research suggests that some consumers make suboptimal decisions when obtaining a mortgage, in part because of the difficulty of comparing different mortgage options across a large number of dimensions, and that consumers presented with simpler mortgage choices make better decisions.[70] For example, if a consumer compares a monthly mortgage payment that includes an escrow payment, as most consumer mortgages do, with a payment that does not include an escrow payment, the consumer may mistakenly believe the non-escrow loan is less expensive, even though the non-escrow loan may in fact be more expensive. In practice, the magnitude and frequency of these mistakes likely depend in part on the effectiveness of cost disclosures consumers receive while shopping for mortgages. As one commenter noted, estimated insurance and tax payments must be disclosed under existing regulations.

2. Costs and Benefits to Affected Creditors

For affected creditors, the main effect of the final rule is that they will no longer be required to establish and maintain escrow accounts for HPMLs. As described in part VII.D above, the Bureau estimates that fewer than 3,000 HPMLs were originated in 2019 by institutions likely to be impacted by the rule. Of the 154 institutions that are likely to be

[70] Susan E. Woodward & Robert E. Hall, *Consumer Confusion in the Mortgage Market: Evidence of Less than a Perfectly Transparent and Competitive Market*, Am. Econ. Rev.: Papers & Proceedings, 100(2), 511–15 (2010).

impacted by the final rule as described above, 103 were not exempt under the EGRRCPA from reporting APOR rate spreads. Of these 103, no more than 70 originated at least one HPML in 2019.

The main benefit of the rule on affected entities will be cost savings. There are startup and operational costs of providing escrow accounts.

Operational costs of maintaining escrow accounts for a given time period (such as a year) can be divided into costs associated with maintaining any escrow account for that time period and marginal costs associated with maintaining each escrow account for that time period. The cost of maintaining software to analyze escrow accounts for under- or overpayments is an example of the former. Because the entities affected by the rule are small and do not originate large numbers of mortgages, this kind of cost will not be spread among many loans. The per-letter cost of mailing consumers escrow statements is an example of the latter. The Bureau does not have data to estimate these costs.

The startup costs associated with creating the infrastructure to establish and maintain escrow accounts may be substantial. However, many creditors who will not be required to establish and maintain escrow accounts under the final rule are currently required to do so under the existing regulation. These creditors have already paid these startup costs and will therefore not benefit from lower startup costs under the final rule. However, the final rule will lower startup costs for new firms that enter the market. The final rule will also lower startup costs for insured depositories and insured credit unions that are sufficiently small that they are currently exempt from mortgage escrow requirements under the existing regulation, but that will grow in size such that they would no longer be exempt under the existing regulation, but will still be exempt under the final rule.

Affected creditors could still provide escrow accounts for consumers if they choose to do so. Therefore, the final rule will not impose any cost on creditors. However, the benefits to firms of the final rule will be partially offset by forgoing the benefits of providing escrow accounts. The two main benefits to creditors of providing escrow accounts to consumers are (1) decreased default risk for consumers, and (2) the loss of interest income from escrow accounts.

As noted previously, research suggests that escrow accounts reduce mortgage default rates.[71] Eliminating escrow accounts may therefore increase default rates, offsetting some of the benefits to creditors of lower servicing costs.[72] In the event of major damage to the property, the creditor might end up with little or nothing if the homeowner had not been paying home insurance premiums. If the homeowner had not been paying taxes, there might be a claim or lien on the property interfering with the creditor's ability to access the full collateral. Therefore, the costs to creditors of foreclosures may be especially severe in the case of homeowners without mortgage escrow accounts.

The other cost to creditors of eliminating escrow accounts is the interest that they otherwise would have earned on escrow account balances. Depending on the State, creditors might not be required to pay interest on the money in the escrow account or might be required to pay a fixed interest rate that is less than the market rate.[73] The Bureau does not have the data to determine the interest that creditors earn on escrow account balances, but numerical examples

[71] *See* Moulton *et al.*, *supra* note 67; *see also* Anderson & Dokko, *supra* note 69.

[72] Because of this potential, many creditors currently verify that consumers without escrow accounts make the required insurance and tax payments. The final rule may increase these monitoring costs for creditors by increasing the number of consumers without escrow accounts, even if many of these consumers do not default.

[73] Some States may require interest rates that are higher than market rates, imposing a cost on creditors who provide escrow accounts.

may be illustrative. One commenter reported earning interest of around 0.1 percent on escrow account balances. Assuming a 0 percent annual interest rate, the servicer earns no interest because of escrow. Assuming a 5 percent annual interest rate and a mortgage account with property tax and insurance payments of $2,500 every six months, the servicer earns about $65 a year in interest because of escrow.

The Bureau does not have the data to estimate the benefits of lower default rates or escrow account interest for creditors. However, the Bureau believes that for most lenders the marginal benefits of maintaining escrow accounts outweigh the marginal costs, on average, because in the current market lenders and servicers often do not relieve consumers of the obligation to have escrow accounts unless those consumers meet requirements related to credit scores, home equity, and other measures of default risk. In addition, creditors often charge consumers a fee for eliminating escrow accounts, in order to compensate the creditors for the increase in default risk associated with the removal of escrow accounts. However, for small lenders that do not engage in a high volume of mortgage lending and could benefit from the final rule, the analysis may be different.

E. Specific Impacts of the Final Rule

1. Insured Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, As Described in Section 1026

The final rule will apply only to insured depository instructions and credit unions with $10 billion or less in assets. Therefore, the consideration of the benefits, costs, and impacts of the final rule on covered persons presented in part VII.D represents in full the Bureau’s analysis of the benefits, costs, and impacts of the final rule on insured depository institutions and credit unions with $10 billion or less in assets.

2. Impact of the Final Provisions on Consumer Access to Credit and on Consumers in Rural Areas

The final rule will affect insured depositories and insured credit unions that operate at least in part in rural or underserved areas. As discussed in part VII.D, the Bureau does not expect the costs, benefits, or impacts of the rule to be large in aggregate, but because affected entities must operate in rural or underserved areas, the costs, benefits, and impacts of the rule may be expected to be larger in rural areas. Entities likely to be affected by the final rule originated roughly 0.6 percent of all mortgages reported to HMDA in 2019. Such entities originated roughly 1.0 percent of all mortgages in rural areas reported to HMDA in 2019.[74] Therefore, entities likely to be affected by the final rule have a small share of the overall market, and a small but somewhat larger share of the rural market. This suggests the costs, benefits, and impacts of the rule will be small in rural areas, but larger in rural areas than in other areas.

As discussed in part VII.D, the final rule may increase consumer access to credit. It may also present other costs, benefits, and impacts for affected consumers. Because creditors likely to be affected by this rule have a disproportionately large market share in rural areas, the Bureau expects that the costs, benefits, and impacts of the final rule on rural consumers will be proportionally larger than the costs, benefits, and impacts of the final rule on other consumers.

[74] In 2018, entities likely to be affected by the final rule originated roughly 0.9 percent of all mortgages reported to HMDA. In 2018, such entities originated roughly 1.6 percent of all mortgages in rural areas reported to HMDA.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA),[75] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[76] generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[77]

A depository institution is considered "small" if it has $600 million or less in assets.[78] Under existing regulations, most depository institutions with less than $2 billion in assets are already exempt from the mortgage escrow requirement, and there would be no difference if they chose to use the new exemption. The final rule will affect only insured depository institutions and insured credit unions, and in general will affect only certain of such institutions with over approximately $2 billion in assets. Since depository institutions with over $2 billion in assets are not small under the SBA definition, the final rule will affect very few, if any, small entities.

Furthermore, affected institutions could still provide escrow accounts for their consumers if they chose to. Therefore, the final rule will not impose any substantial burden on any entities, including small entities.

---

[75] 5 U.S.C. 601 *et seq*.

[76] Public Law 104-121, tit. II, 110 Stat. 857 (1996).

[77] 5 U.S.C. 609.

[78] The current SBA size standards can be found on SBA's website at https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.

Accordingly, the Director hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, a FRFA of the final rule is not required.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[79] Federal agencies are generally required to seek the Office of Management and Budget's (OMB's) approval for information collection requirements prior to implementation. The collections of information related to Regulation Z have been previously reviewed and approved by OMB and assigned OMB Control number 3170–0015. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this final rule will not impose any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA.

X. Congressional Review Act

Pursuant to the Congressional Review Act,[80] the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's taking effect. The Office of Information and Regulatory Affairs has designated this rule as not a "major rule" as defined by 5 U.S.C. 804(2).

---

[79] 44 U.S.C. 3501 *et seq.*

[80] 5 U.S.C. 801 *et seq.*

XI. Signing Authority

Director of the Bureau Kathleen L. Kraninger, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, Bureau Federal Register Liaisons, for purposes of publication in the *Federal Register*.

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 above, 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*.

Subpart E—Special Rules for Certain Home Mortgage Transactions

2. Amend § 1026.35 by:

a. Adding paragraphs (a)(3) and (4);

b. Revising paragraphs (b)(2)(iii)(D)(*1*), (iv)(A), and (v); and

c. Adding paragraph (b)(2)(vi).

The additions and revisions read as follows:

§ 1026.35 Requirements for higher-priced mortgage loans.

(a) * * *

(3) “Insured credit union” has the meaning given in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(4) “Insured depository institution” has the meaning given in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(b) * * *

(2) * * *

(iii) * * *

(D) * * *

(*1*) Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]; or

* * * * *

(iv) * * *

(A) An area is “rural” during a calendar year if it is:

(*1*) A county that 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 as they are applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture’s Economic Research Service (USDA-ERS); or

(*2*) 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.

* * * * *

(v) Notwithstanding paragraphs (b)(2)(iii) and (vi) 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) or (vi) of this section, unless otherwise exempted by this paragraph (b)(2).

(vi) Except as provided in paragraph (b)(2)(v) of this section, an escrow account need not be established for a transaction made by a creditor that is an insured depository institution or insured credit union if, at the time of consummation:

(A) 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 insured depository institution or insured credit union had assets of $10,000,000,000 or less, adjusted annually for inflation using the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November (see comment 35(b)(2)(vi)(A)-1 for the applicable threshold);

(B) 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 and its affiliates, as defined in § 1026.32(b)(5), together extended no more than 1,000 covered transactions secured by a first lien on a principal dwelling; and

(C) The transaction satisfies the criteria in paragraphs (b)(2)(iii)(A) and (D) of this section.

*   *   *   *   *

3. Amend supplement I to part 1026 by:

a. Under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans*:

i. Revising *paragraph 35(b)(2)(iii);*

ii. Adding *paragraphs 35(b)(2)(iii)(D)(*1*)* and *35(b)(2)(iii)(D)(*2*);*

iv. Revising *paragraphs 35(b)(2)(iv)* and *35(b)(2)(v);*

vi. Adding *paragraphs 35(b)(2)(vi)* and *35(b)(2)(vi)(A).*

b. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling*, revising *paragraph 43(f)(1)(vi).*

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b) Escrow Accounts

* * * * *

35(b)(2) Exemptions

* * * * *

Paragraph 35(b)(2)(iii).

1. *Requirements for exemption.* Under § 1026.35(b)(2)(iii), except as provided in § 1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During the preceding calendar year, or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, a creditor extended a first-lien covered transaction, as defined in § 1026.43(b)(1), secured by a property located in an area that is either “rural” or “underserved,” as set forth in § 1026.35(b)(2)(iv).

A. In general, whether the rural-or-underserved test is satisfied depends on the creditor’s activity during the preceding calendar year. However, if the application for the loan in question was received before April 1 of the current calendar year, the creditor may instead meet the rural-or-underserved test based on its activity during the next-to-last calendar year. This provides creditors with a grace period if their activity meets the rural-or-underserved test (in § 1026.35(b)(2)(iii)(A)) in one calendar year but fails to meet it in the next calendar year.

B. A creditor meets the rural-or-underserved test for any higher-priced mortgage loan consummated during a calendar year if it extended a first-lien covered transaction in the preceding calendar year secured by a property located in a rural-or-underserved area. If the creditor does not meet the rural-or-underserved test in the preceding calendar year, the creditor meets this condition for a higher-priced mortgage loan consummated during the current calendar year only if the application for the loan was received before April 1 of the current calendar year and the creditor extended a first-lien covered transaction during the next-to-last calendar year that is secured by a property located in a rural or underserved area. The following examples are illustrative:

1. Assume that a creditor extended during 2016 a first-lien covered transaction that is secured by a property located in a rural or underserved area. Because the creditor extended a first-lien covered transaction during 2016 that is secured by a property located in a rural or underserved area, the creditor can meet this condition for exemption for any higher-priced mortgage loan consummated during 2017.

2. Assume that a creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area. Assume further that the same creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area. Assume further that the creditor consummates a higher-priced mortgage loan in 2017 for which the application was received in November 2017. Because the creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area, and the application was received on or after April 1, 2017, the creditor does not meet this condition for exemption. However, assume instead that the creditor consummates a higher-priced mortgage loan in 2017 based on an application received in February 2017. The creditor meets this condition for exemption for this loan because the application was received before April 1, 2017, and the creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area.

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

A. In general, whether this condition is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question is received before April 1 of the current calendar year, the creditor may instead meet this condition based on activity during the next-to-last calendar year. This provides creditors with a grace period if their activity falls at or below the threshold in one calendar year but exceeds it in the next calendar year.

B. For example, assume that in 2015 a creditor and its affiliates together extended 1,500 loans that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, and 2,500 such loans in 2016. Because the 2016 transaction activity exceeds the threshold but the 2015 transaction activity does not, the creditor satisfies this condition for exemption for a higher-priced mortgage loan consummated during 2017 if the creditor received the application for the loan before April 1, 2017, but does not satisfy this condition for a higher-priced mortgage loan consummated during 2017 if the application for the loan was received on or after April 1, 2017.

C. For purposes of § 1026.35(b)(2)(iii)(B), extensions of first-lien covered transactions, during the applicable time period, by all of a creditor's affiliates, as "affiliate" is defined in § 1026.32(b)(5), are counted toward the threshold in this section. "Affiliate" is defined in § 1026.32(b)(5) as "any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*)." Under the Bank Holding Company Act, a company has control over a bank or another company if it directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company; it controls in any manner the election of a majority of the directors or trustees of the bank or company; or the Federal Reserve Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company. 12 U.S.C. 1841(a)(2).

iii. As of the end of the preceding calendar year, or as of the end of either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that are less than the applicable annual asset threshold.

A. For purposes of § 1026.35(b)(2)(iii)(C), in addition to the creditor's assets, only the assets of a creditor's "affiliate" (as defined by § 1026.32(b)(5)) that regularly extended covered transactions (as defined by § 1026.43(b)(1)) secured by first liens, are counted toward the applicable annual asset threshold. *See* comment 35(b)(2)(iii)-1.ii.C for discussion of definition of "affiliate."

B. Only the assets of a creditor's affiliate that regularly extended first-lien covered transactions during the applicable period are included in calculating the creditor's assets. The meaning of "regularly extended" is based on the number of times a person extends consumer credit for purposes of the definition of "creditor" in § 1026.2(a)(17). Because covered transactions are "transactions secured by a dwelling," consistent with § 1026.2(a)(17)(v), an affiliate regularly extended covered transactions if it extended more than five covered transactions in a calendar year. Also consistent with § 1026.2(a)(17)(v), because a covered transaction may be a high-cost mortgage subject to § 1026.32, an affiliate regularly extends covered transactions if, in any 12-month period, it extends more than one covered transaction that is subject to the requirements of § 1026.32 or one or more such transactions through a mortgage broker. Thus, if a creditor's affiliate regularly extended first-lien covered transactions during the preceding calendar year, the creditor's assets as of the end of the preceding calendar year, for purposes of the asset limit, take into account the assets of that affiliate. If the creditor, together with its affiliates that regularly extended first-lien covered transactions, exceeded the asset limit in the preceding calendar year—to be eligible to operate as a small creditor for transactions with applications received before April 1 of the current calendar year—the assets of the creditor's affiliates that regularly extended covered transactions in the year before the preceding calendar year are included in calculating the creditor's assets.

C. If multiple creditors share ownership of a company that regularly extended first-lien covered transactions, the assets of the company count toward the asset limit for a co-owner creditor if the company is an "affiliate," as defined in § 1026.32(b)(5), of the co-owner creditor. Assuming the company is not an affiliate of the co-owner creditor by virtue of any other aspect of the definition (such as by the company and co-owner creditor being under common control), the company's assets are included toward the asset limit of the co-owner creditor only if the company is controlled by the co-owner creditor, "as set forth in the Bank Holding Company Act." If the co-owner creditor and the company are affiliates (by virtue of any aspect of the definition), the co-owner creditor counts all of the company's assets toward the asset limit, regardless of the co-owner creditor's ownership share. Further, because the co-owner and the company are mutual affiliates the company also would count all of the co-owner's assets towards its own asset limit. *See* comment 35(b)(2)(iii)-1.ii.C for discussion of the definition of "affiliate."

D. A creditor satisfies the criterion in § 1026.35(b)(2)(iii)(C) for purposes of any higher-priced mortgage loan consummated during 2016, for example, if the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2015. A creditor that (together with its affiliates that regularly extended first-lien covered transactions) did not meet the applicable asset threshold on December 31, 2015 satisfies this criterion for a higher-priced mortgage loan consummated during 2016 if the application for the loan was received before April 1, 2016 and the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2014.

E. Under § 1026.35(b)(2)(iii)(C), the $2,000,000,000 asset threshold adjusts 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. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2021, the asset threshold is $2,230,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2020 has total assets of less than $2,230,000,000 on December 31, 2020, satisfies this criterion for purposes of any loan consummated in 2021 and for purposes of any loan consummated in 2022 for which the application was received before April 1, 2022. For historical purposes:

1. For calendar year 2013, the asset threshold was $2,000,000,000. Creditors that had total assets of less than $2,000,000,000 on December 31, 2012, satisfied this criterion for purposes of the exemption during 2013.

2. For calendar year 2014, the asset threshold was $2,028,000,000. Creditors that had total assets of less than $2,028,000,000 on December 31, 2013, satisfied this criterion for purposes of the exemption during 2014.

3. For calendar year 2015, the asset threshold was $2,060,000,000. Creditors that had total assets of less than $2,060,000,000 on December 31, 2014, satisfied this criterion for purposes of any loan consummated in 2015 and, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2014 were less than that amount, for purposes of any loan consummated in 2016 for which the application was received before April 1, 2016.

4. For calendar year 2016, the asset threshold was $2,052,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2015 had total assets of less than $2,052,000,000 on December 31, 2015, satisfied this criterion for purposes of any loan consummated in 2016 and for purposes of any loan consummated in 2017 for which the application was received before April 1, 2017.

5. For calendar year 2017, the asset threshold was $2,069,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2016 had total assets of less than $2,069,000,000 on December 31, 2016, satisfied this criterion for purposes of any loan consummated in 2017 and for purposes of any loan consummated in 2018 for which the application was received before April 1, 2018.

6. For calendar year 2018, the asset threshold was $2,112,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2017 had total assets of less than $2,112,000,000 on December 31, 2017, satisfied this criterion for purposes of any loan consummated in 2018 and for purposes of any loan consummated in 2019 for which the application was received before April 1, 2019.

7. For calendar year 2019, the asset threshold was $2,167,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2018 had total assets of less than $2,167,000,000 on December 31, 2018, satisfied this criterion for purposes of any loan consummated in 2019 and for purposes of any loan consummated in 2020 for which the application was received before April 1, 2020.

8. For calendar year 2020, the asset threshold was $2,202,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2019 had total assets of less than $2,202,000,000 on December 31, 2019, satisfied this criterion for purposes of any loan consummated in 2020 and for purposes of any loan consummated in 2021 for which the application was received before April 1, 2021.

iv. The creditor and its affiliates do not maintain an escrow account for any mortgage transaction being serviced by the creditor or its affiliate at the time the transaction is consummated, except as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*). Thus, the exemption applies, provided the other conditions of § 1026.35(b)(2)(iii) (or, if applicable, the conditions for the exemption in § 1026.35(b)(2)(vi)) are satisfied, even if the creditor previously maintained escrow accounts for mortgage loans, provided it no longer maintains any such accounts except as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*). Once a creditor or its affiliate begins escrowing for loans currently serviced other than those addressed in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*), however, the creditor and its affiliate become ineligible for the exemptions in § 1026.35(b)(2)(iii) and (vi) on higher-priced mortgage loans they make while such escrowing continues. Thus, as long as a creditor (or its affiliate) services and maintains escrow accounts for any mortgage loans, other than as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*), the creditor will not be eligible for the exemption for any higher-priced mortgage loan it may make. For purposes of § 1026.35(b)(2)(iii) and (vi), a creditor or its affiliate "maintains" an escrow account only if it services a mortgage loan for which an escrow account has been established at least through the due date of the second periodic payment under the terms of the legal obligation.

*Paragraph 35(b)(2)(iii)(D)(*1*).*

1. *Exception for certain accounts*. Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], are not counted for purposes of § 1026.35(b)(2)(iii)(D). For applications received on and after [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], creditors, together with their affiliates, that establish new escrow accounts, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), do not qualify for the exemptions provided under § 1026.35(b)(2)(iii) and (vi). Creditors, together with their affiliates, that continue to maintain escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], still qualify for the exemptions provided under § 1026.35(b)(2)(iii) and (vi) so long as they do not establish new escrow accounts for transactions for which they received applications on or after [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], other than those described in § 1026.35(b)(2)(iii)(D)(*2*), and they otherwise qualify under § 1026.35(b)(2)(iii) or (vi).

*Paragraph 35(b)(2)(iii)(D)(*2*)*

1. *Exception for post-consummation escrow accounts for distressed consumers*. An escrow account established after consummation for a distressed consumer does not count for purposes of § 1026.35(b)(2)(iii)(D). Distressed consumers are consumers who are working with the creditor or servicer to attempt to bring the loan into a current status through a modification, deferral, or other accommodation to the consumer. A creditor, together with its affiliates, that

establishes escrow accounts after consummation as a regular business practice, regardless of whether consumers are in distress, does not qualify for the exception described in § 1026.35(b)(2)(iii)(D)(*2*).

Paragraph 35(b)(2)(iv).

1. *Requirements for "rural" or "underserved" status.* An area is considered to be "rural" or "underserved" during a calendar year for purposes of § 1026.35(b)(2)(iii)(A) if it satisfies either the definition for "rural" or the definition for "underserved" in § 1026.35(b)(2)(iv). A creditor's extensions of covered transactions, as defined by § 1026.43(b)(1), secured by first liens on properties located in such areas are considered in determining whether the creditor satisfies the condition in § 1026.35(b)(2)(iii)(A). *See* comment 35(b)(2)(iii)-1.

i. Under § 1026.35(b)(2)(iv)(A), an area is rural during a calendar year if it is: A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area; 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. Metropolitan statistical areas and micropolitan statistical areas are defined by the 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). For purposes of § 1026.35(b)(2)(iv)(A)(*1*), "adjacent" has the meaning applied by the USDA-ERS in determining a county's UIC; as so applied, "adjacent" entails a county not only being physically contiguous with a metropolitan statistical area but also meeting certain minimum population commuting patterns. A county is a "rural" area under § 1026.35(b)(2)(iv)(A)(*1*) if the USDA-ERS categorizes the county under UIC 4, 6, 7, 8, 9, 10, 11, or 12. Descriptions of UICs are available on the USDA-ERS website at *http://www.ers.usda.gov/data-products/urban-influence-codes/documentation.aspx*. A county for which there is no currently applicable UIC (because the county has been created since the USDA-ERS last categorized counties) is a rural area only if all counties from which the new county's land was taken are themselves rural under currently applicable UICs.

ii. Under § 1026.35(b)(2)(iv)(B), an area is underserved during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by first liens, five or more times on properties in the county. Specifically, a county is an "underserved" area if, in the applicable calendar year's public HMDA aggregate dataset, no more than two creditors have reported five or more first-lien covered transactions, with HMDA geocoding that places the properties in that county.

iii. A. Each calendar year, the Bureau applies the "underserved" area test and the "rural" area test to each county in the United States. If a county satisfies either test, the Bureau will include the county on a list of counties that are rural or underserved as defined by § 1026.35(b)(2)(iv)(A)(*1*) or § 1026.35(b)(2)(iv)(B) for a particular calendar year, even if the county contains census blocks that are designated by the Census Bureau as urban. To facilitate compliance with appraisal requirements in § 1026.35(c), the Bureau also creates a list of those counties that are rural under the Bureau's definition without regard to whether the counties are underserved. To the extent that U.S. territories are treated by the Census Bureau as counties and are neither metropolitan statistical areas nor micropolitan statistical areas adjacent to metropolitan statistical areas, such territories will be included on these lists as rural areas in their entireties. The Bureau will post on its public website the applicable lists for each calendar year by the end of that year to assist creditors in ascertaining the availability to them of the exemption during the following year. Any county that the Bureau includes on these lists of counties that are rural or underserved under the Bureau's definitions for a particular year is deemed to qualify as a rural or underserved area for that calendar year for purposes of § 1026.35(b)(2)(iv), even if the county contains census blocks that are designated by the Census Bureau as urban. A property located in such a listed county is deemed to be located in a rural or underserved area, even if the census block in which the property is located is designated as urban.

B. A property is deemed to be in a rural or underserved area according to the definitions in § 1026.35(b)(2)(iv) during a particular calendar year if it is identified as such by an automated tool provided on the Bureau's public website. A printout or electronic copy from the automated tool provided on the Bureau's public website designating a particular property as being in a rural or underserved area may be used as "evidence of compliance" that a property is in a rural or underserved area, as defined in § 1026.35(b)(2)(iv)(A) and (B), for purposes of the record retention requirements in § 1026.25.

C. The U.S. Census Bureau may provide on its public website an automated address search tool that specifically indicates if a property is located in an urban area for purposes of the Census Bureau's most recent delineation of urban areas. For any calendar year that began after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is deemed to be in a rural area 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 designate the property as being in an urban area. A printout or electronic copy from such an automated address search tool available on the Census Bureau's public website designating a particular property as not being in an urban area may be used as "evidence of compliance" that the property is in a rural area, as defined in § 1026.35(b)(2)(iv)(A), for purposes of the record retention requirements in § 1026.25.

D. For a given calendar year, a property qualifies for a safe harbor if any of the enumerated safe harbors affirms that the property is in a rural or underserved area or not in an urban area. For example, the Census Bureau's automated address search tool may indicate a property is in an urban area, but the Bureau's rural or underserved counties list indicates the property is in a rural or underserved county. The property in this example is in a rural or underserved area because it qualifies under the safe harbor for the rural or underserved counties list. The lists of counties posted on the Bureau's public website, the automated tool on its public website, and the automated address search tool available on the Census Bureau's public website, are not the exclusive means by which a creditor can demonstrate that a property is in a rural or underserved area as defined in § 1026.35(b)(2)(iv)(A) and (B). However, creditors are required to retain "evidence of compliance" in accordance with § 1026.25, including determinations of whether a property is in a rural or underserved area as defined in § 1026.35(b)(2)(iv)(A) and (B).

2. *Examples.* i. An area is considered "rural" for a given calendar year based on the most recent available UIC designations by the USDA-ERS and the most recent available delineations of urban areas by the U.S. Census Bureau that are available at the beginning of the calendar year. These designations and delineations are updated by the USDA-ERS and the U.S. Census Bureau respectively once every ten years. As an example, assume a creditor makes first-lien covered transactions in Census Block X that is located in County Y during calendar year 2017. As of January 1, 2017, the most recent UIC designations were published in the second quarter of 2013, and the most recent delineation of urban areas was announced in the *Federal Register* in 2012, *see* U.S. Census Bureau, *Qualifying Urban Areas for the 2010 Census*, 77 FR 18652 (Mar. 27,

2012). To determine whether County Y is rural under the Bureau's definition during calendar year 2017, the creditor can use USDA-ERS's 2013 UIC designations. If County Y is not rural, the creditor can use the U.S. Census Bureau's 2012 delineation of urban areas to determine whether Census Block X is rural and is therefore a "rural" area for purposes of § 1026.35(b)(2)(iv)(A).

ii. A county is considered an "underserved" area for a given calendar year based on the most recent available HMDA data. For example, assume a creditor makes first-lien covered transactions in County Y during calendar year 2016, and the most recent HMDA data are for calendar year 2015, published in the third quarter of 2016. The creditor will use the 2015 HMDA data to determine "underserved" area status for County Y in calendar year 2016 for the purposes of qualifying for the "rural or underserved" exemption for any higher-priced mortgage loans consummated in calendar year 2017 or for any higher-priced mortgage loan consummated during 2018 for which the application was received before April 1, 2018.

Paragraph 35(b)(2)(v).

1. *Forward commitments.* A creditor may make a mortgage loan that will be transferred or sold to a purchaser pursuant to an agreement that has been entered into at or before the time the loan is consummated. Such an agreement is sometimes known as a "forward commitment." Even if a creditor is otherwise eligible for an exemption in § 1026.35(b)(2)(iii) or § 1026.35(b)(2)(vi), a first-lien higher-priced mortgage loan that will be acquired by a purchaser pursuant to a forward commitment is subject to the requirement to establish an escrow account under § 1026.35(b)(1) unless the purchaser is also eligible for an exemption in § 1026.35(b)(2)(iii) or § 1026.35(b)(2)(vi), or the transaction is otherwise exempt under § 1026.35(b)(2). The escrow requirement applies to any such transaction, whether the forward

commitment provides for the purchase and sale of the specific transaction or for the purchase and sale of mortgage obligations with certain prescribed criteria that the transaction meets. For example, assume a creditor that qualifies for an exemption in § 1026.35(b)(2)(iii) or § 1026.35(b)(2)(vi) makes a higher-priced mortgage loan that meets the purchase criteria of an investor with which the creditor has an agreement to sell such mortgage obligations after consummation. If the investor is ineligible for an exemption in § 1026.35(b)(2)(iii) or § 1026.35(b)(2)(vi), an escrow account must be established for the transaction before consummation in accordance with § 1026.35(b)(1) unless the transaction is otherwise exempt (such as a reverse mortgage or home equity line of credit).

Paragraph 35(b)(2)(vi)

1. For guidance on applying the grace periods for determining asset size or transaction thresholds under § 1026.35(b)(2)(vi)(A), (B) and (C), the rural or underserved requirement, or other aspects of the exemption in § 1026.35(b)(2)(vi) not specifically discussed in the commentary to § 1026.35(b)(2)(vi), an insured depository institution or insured credit union may refer to the commentary to § 1026.35(b)(2)(iii), while allowing for differences between the features of the two exemptions.

Paragraph 35(b)(2)(vi)(A)

1. The asset threshold in § 1026.35(b)(2)(vi)(A) will 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. Unlike the asset threshold in § 1026.35(b)(2)(iii) and the other thresholds in § 1026.35(b)(2)(vi), affiliates are not considered in calculating compliance with this threshold. The Bureau will publish notice of the asset

threshold each year by amending this comment. For calendar year 2021, the asset threshold is $10,000,000,000. A creditor that during calendar year 2020 had assets of $10,000,000,000 or less on December 31, 2020, satisfies this criterion for purposes of any loan consummated in 2021 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2022 for which the application was received before April 1, 2022.

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.

*   *   *   *   *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

*   *   *   *   *

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

*   *   *   *   *

43(f)(1) Exemption

*   *   *   *   *

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)(*1*) 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.

Dated: January 19, 2021.

/s/Grace Feola

____

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.