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July 2, 2020

Unofficial Redline of the 2020 Higher-Priced Mortgage Loan Escrow Exemption Proposed Rule

On July 2, 2020, the Consumer Financial Protection Bureau (Bureau) issued a proposed rule (2020 Higher-Priced Mortgage Loan Escrow Exemption Proposed Rule) that would implement section 108 of the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which amended section 129D of the Truth in Lending Act (TILA). This proposed rule would create a new exemption from the requirement to establish escrow accounts for certain higher-priced mortgage loans (HPMLs). The Bureau is releasing this unofficial, informal redline to assist industry and other stakeholders in reviewing and providing comments on the changes that the 2020 Higher-Priced Mortgage Loan Escrow Exemption Proposed Rule would make to Regulation Z's regulatory text and commentary. The deadline for comments is 60 days after the proposed rule is published in the *Federal Register*.

The underlying (unmarked) text in this document reflects the existing text of the relevant provisions of Regulation Z and its commentary that would be affected by the proposal. The changes that the proposed rule would make to Regulation Z and its commentary, if the Bureau were to adopt the changes as proposed, are marked in red.

This redline is not a substitute for reviewing Regulation Z, its commentary, or the 2020 Higher-Priced Mortgage Loan Proposed Rule. If any conflicts exist between this redline and the text of Regulation Z, its commentary, or the 2020 Higher-Priced Mortgage Loan Escrow Exemption Proposed Rule, the documents published in the *Federal Register* are the controlling documents. The redline includes asterisks to indicate where it omits text from current Regulation Z that the 2020 Higher-Priced Mortgage Loan Escrow Exemption Proposed Rule would not change. The redline also includes extra text from Regulation Z and its commentary that will not be changed, to provide context for the changes.

PART 1026—TRUTH IN LENDING (REGULATION Z)

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601, *et seq.*

Proposed changes

§ 1026.35 Requirements for higher-priced mortgage loans.

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

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

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

(ii) By 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or

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

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

(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) *Escrow accounts* —

(1) *Requirement to escrow for property taxes and insurance.* Except as provided in paragraph (b)(2) of this section, a creditor may not extend a higher-priced mortgage

loan secured by a first lien on a consumer's principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. For purposes of this paragraph (b), the term “escrow account” has the same meaning as under Regulation X (12 CFR 1024.17(b)), as amended.

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

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

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

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

(C) A temporary or “bridge” loan with a loan term of twelve months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within twelve months; or

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

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

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

(A) During the preceding calendar year, 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 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 paragraph (b)(2)(iv) of this section;

(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 together 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;

(C) 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, as defined by § 1026.43(b)(1), secured by first liens, together, had total assets of less than \$2,000,000,000; this asset threshold shall adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (see comment 35(b)(2)(iii)-1.iii for the applicable threshold); and

(D) Neither the creditor nor its affiliate maintains an escrow account of the type described in paragraph (b)(1) of this section for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than:

(1) Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before [INSERT DATE 90 DAYS AFTER FINAL RULE PUBLICATION IN THE FEDERAL REGISTER]~~May 1, 2016~~; or

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

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

(A) 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; ~~or~~

~~(3) A county or a census block that has been designated as rural by the Bureau pursuant to the application process established under section 89002 of the Helping Expand Lending Practices in Rural Communities Act, Public Law 114-94, title LXXXIX (2015). The provisions of this paragraph (b)(2)(iv)(A)(3) shall cease to have any force or effect on December 4, 2017.~~

(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 on properties in the county five or more times.

(C) A property shall be deemed to be in an area that is rural or underserved in a particular calendar year if the property is:

(1) Located in a county that appears on the lists published by the Bureau 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 that calendar year,

(2) Designated as rural or underserved for that calendar year by any automated tool that the Bureau provides on its public Web site, or

(3) Not designated as located in an urban area, as defined by the most recent delineation of urban areas announced by the Census Bureau, by any automated address search tool that the U.S. Census Bureau provides on its public Web site for that purpose and that specifically indicates the urban or rural designations of properties.

(v) Notwithstanding paragraphs (b)(2)(iii) and (b)(2)(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 paragraphs (b)(2)(iii) or (b)(2)(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 (b)(2)(iii)(D) of this section.

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Supplement I to part 1026—Official Interpretations

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Section 1026.35—Requirements for higher-priced mortgage loans.

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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 2020, the asset threshold is \$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 has total assets of less than \$2,202,000,000 on December 31, 2019, satisfies 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. For historical purposes:

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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 90 DAYS AFTER PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], are not counted for purposes of § 1026.35(b)(2)(iii)(D). For applications received on and after [INSERT DATE 90 DAYS AFTER PUBLICATION OF FINAL RULE 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 90 DAYS AFTER PUBLICATION OF FINAL RULE 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 90 DAYS AFTER PUBLICATION OF FINAL RULE 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; ~~or a county or a census block that has been designated as “rural” by the Bureau pursuant to the application process established in 2016. See Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (Mar. 3, 2016).~~ 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 Web site 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. ~~For purposes of this determination, because only covered transactions are~~

~~counted, all first lien originations (and only first lien originations) reported in the HMDA data are counted except those for which the owner-occupancy status is reported as “Not owner-occupied” (HMDA code 2), the property type is reported as “Multifamily” (HMDA code 3), the applicant’s or co-applicant’s race is reported as “Not applicable” (HMDA code 7), or the applicant’s or co-applicant’s sex is reported as “Not applicable” (HMDA code 4). The most recent HMDA data are available at <http://www.ffiec.gov/hmda>.~~

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 ~~published~~ list of counties that are rural or underserved as defined by § 1026.35(b)(2)(iv)(A)(I) 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 entirety. The Bureau will post on its public Web site the applicable lists for each calendar year by the end of that year ~~and publish such lists in the *Federal Register*,~~ to assist creditors in ascertaining the availability to them of the exemption during the following year. Any county that the Bureau includes on ~~its published~~ 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.

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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 ~~published by~~ posted on the Bureau’s public Web site, the automated tool on its public Web site, and the automated address search tool available on the Census Bureau’s public Web site, 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). ~~In addition, an area is considered “rural” if it is a county or a census block that has been designated as rural by the Bureau using the application process established in 2016. See Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (Mar. 3, 2016). Designations under this process are time-limited and expire on December 4, 2017.~~

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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~~the 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~~the 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~~the 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~~the 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 2020, the asset threshold is \$10,000,000,000. A creditor that during calendar year 2019 had assets of \$10,000,000,000 or less on December 31, 2019, satisfies this criterion for purposes of any loan consummated in 2020 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2021 for which the application was received before April 1, 2021.

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

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

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Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

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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; ~~or a county or a census block that has been designated as “rural” by the Bureau pursuant to the application process established in 2016. See Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (Mar. 3, 2016).~~ 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 Web site 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 Web site 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 Web site 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 Web site do not identify the property as being in an urban area. ~~A property is also located in an area that qualifies as “rural,” if the Bureau has designated that area as rural under § 1026.35(b)(2)(iv)(A)(3) and published that determination in the Federal Register. See Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (Mar. 3, 2016).~~

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