

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Consumer Financial Protection Bureau (Bureau) is amending the official commentary to its Regulation Z in order to make annual adjustments to the asset-size thresholds exempting certain creditors from the requirement to establish an escrow account for a higher-priced mortgage loan (HPML). These changes reflect updates to the exemption from the escrow requirement in the Truth in Lending Act (TILA) for creditors that, together with their affiliates that regularly extended covered transactions secured by first liens, had total assets of less than \$2 billion (adjusted annually for inflation). They also reflect updates to the exemption the Bureau added, by implementing section 108 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), for certain insured depository institutions and insured credit unions with assets of \$10 billion or less (adjusted annually for inflation). These amendments are based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Based on the 8.6 percent increase in the average of the CPI-W for the 12-month period ending in November 2022, the exemption threshold for creditors and their affiliates that regularly extended covered transactions secured by first liens is adjusted to \$2.537 billion from \$2.336 billion and the exemption threshold for certain insured depository institutions and insured credit unions with assets of \$10 billion or less is adjusted to \$11.374 billion from \$10.473 billion.

DATES: This rule is effective on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Adrien Fernandez, Counsel, Thomas Dowell, Senior Counsel, Office of Regulations, at (202) 435-7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 129D of TILA generally requires creditors to establish escrow accounts for certain first-lien higher-priced mortgage loan transactions. However, TILA section 129D also permits the Bureau to exempt creditors from this higher-priced mortgage loan escrow requirement if they meet certain requirements, including any asset-size threshold that the Bureau may establish.

In the 2013 Escrows Final Rule,¹ the Bureau established an asset-size threshold of \$2 billion, which would adjust automatically each year, based on the year-to-year change in the average of the CPI-W for each 12-month period ending in November, with rounding to the nearest million dollars.² In 2015, the Bureau revised the asset-size threshold for small creditors and how it applies. The Bureau included in the calculation of the asset-size threshold the assets of the creditor's affiliates that regularly extended covered transactions secured by first liens during the applicable period and added a grace period to allow an otherwise eligible creditor that exceeded the asset limit in the preceding calendar year (but not in the calendar year before the preceding year) to continue to operate as a small creditor with respect to transactions with

¹ 78 FR 4726 (Jan. 22, 2013).

² See 12 CFR 1026.35(b)(2)(iii)(C).

applications received before April 1 of the current calendar year.³ For 2022, the threshold was \$2.336 billion.

During the 12-month period ending in November 2022, the average of the CPI-W increased by 8.6 percent. As a result, the exemption threshold is increased to \$2.537 billion for 2023. Thus, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2022 are less than \$2.537 billion on December 31, 2022, and it meets the other requirements of § 1026.35(b)(2)(iii), the creditor will be exempt from the escrow-accounts requirement for higher-priced mortgage loans in 2023 and will also be exempt from the escrow-accounts requirement for higher-priced mortgage loans for purposes of any loan consummated in 2024 with applications received before April 1, 2024. The adjustment to the escrows asset-size exemption threshold also will increase the threshold for small-creditor portfolio and balloon-payment qualified mortgages under Regulation Z. The requirements for small-creditor portfolio qualified mortgages at § 1026.43(e)(5)(i)(D) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Likewise, the requirements for balloon-payment qualified mortgages at § 1026.43(f)(1)(vi) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Under § 1026.32(d)(1)(ii)(C), balloon-payment qualified mortgages that satisfy all applicable criteria in § 1026.43(f)(1)(i) through (vi) and (f)(2), including being made by creditors that have (together with certain affiliates) total assets below the threshold in

³ See 80 FR 59943, 59951 (Oct. 2, 2015). The Bureau also issued an interim final rule in March 2016 to revise certain provisions in Regulation Z to effectuate the Helping Expand Lending Practices in Rural Communities Act's amendments to TILA (Pub. L. 114-94, section 89003, 129 Stat. 1312, 1800-01 (2015)). The rule broadened the cohort of creditors that may be eligible under TILA for the special provisions allowing origination of balloon-payment qualified mortgages and balloon-payment high-cost mortgages, as well as for the escrow exemption. See 81 FR 16074 (Mar. 25, 2016).

§ 1026.35(b)(2)(iii)(C), are also excepted from the prohibition on balloon payments for high-cost mortgages.

In the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),⁴ 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.⁵ In 2021, the Bureau issued a final rule implementing this exemption in § 1026.35(b)(2)(vi) (2021 Escrows Rule).⁶ The final rule exempted 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; (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. In the 2021 Escrows Rule, the Bureau established an asset-size threshold of \$10 billion or less in § 1026.35(b)(2)(vi)(A), which will adjust automatically each year, based on the year-to-year change in the average of the CPI-W, 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 asset threshold. For calendar year 2022, the asset threshold was \$10.473 billion.

During the 12-month period ending in November 2022, the average of the CPI-W increased by 8.6 percent. As a result, the exemption threshold is increased to \$11.374 billion for 2023. Thus, a creditor that is an insured depository institution or insured credit union that during

⁴ Pub. L. 115–174, 132 Stat. 1296(2018).

⁵ EGRRCPA section 108, 132 Stat. 1304-05; 15 U.S.C. 1639d(c)(2).

⁶ 86 FR 9840 (Feb. 17, 2021).

calendar year 2022 had assets of \$11.374 billion or less on December 31, 2022, satisfies this criterion for purposes of any loan consummated in 2023 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2024 for which the application was received before April 1, 2024.

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 35(b)(2)(iii)-1 in Regulation Z is amended to update the exemption threshold in § 1026.35(b)(2)(iii) and comment 35(b)(2)(vi)(A)-1 in Regulation Z is amended to update the exemption threshold in § 1026.35(b)(2)(vi). The amendments in this final rule are technical and merely apply the formulae previously established in Regulation Z for determining any adjustments to the exemption thresholds. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2023. The amendment in this final rule is technical and non-discretionary, and it

merely applies the method previously established in the agency's regulations for automatic adjustments to the threshold.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.⁷ As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule.

Accordingly, the RFA's requirement relating to an initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,⁸ the Bureau reviewed this final rule. The Bureau has determined that this rule does not create any new information collections or substantially revise any existing collections.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a "major rule" as defined by 5 U.S.C. 804(2).

E. Signing Authority

Senior Advisor Brian Shearer, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal

⁷ 5 U.S.C. 603(a), 604(a).

⁸ 44 U.S.C. 3506; 5 CFR part 1320.

Register Liaison, 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.*

2. In supplement I to part 1026, under § 1026.35—*Requirements for Higher-Priced Mortgage Loans, 35(b)(2) Exemptions, Paragraphs 35(b)(2)(iii) and (vi)(A)* are revised to read as follows:

Supplement I to Part 1026—Official Interpretations

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 1026.35—Requirements for Higher-Priced Mortgage Loans

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35(b)(2) Exemptions.

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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 2023, the asset threshold is \$2,537,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2022 has total assets of less than \$2,537,000,000 on December 31, 2022, satisfies this criterion for purposes of any loan consummated in 2023 and for purposes of any loan consummated in 2024 for which the application was received before April 1, 2024. 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.

9. For calendar year 2021, the asset threshold was \$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 had total assets of less than \$2,230,000,000 on December 31, 2020, satisfied 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.

10. For calendar year 2022, the asset threshold was \$2,336,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2021 had total assets of less than \$2,336,000,000 on December 31, 2021,

satisfied this criterion for purposes of any loan consummated in 2022 and for purposes of any loan consummated in 2023 for which the application was received before April 1, 2023.

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 exemption 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.

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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 2023, the asset threshold is \$11,374,000,000. A creditor that is an insured depository institution or insured credit union that during calendar year 2022 had assets of \$11,374,000,000 or less on December 31, 2022, satisfies this criterion for purposes of any loan consummated in 2023 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2024 for which the application was received before April 1, 2024. For historical purposes:

1. For calendar year 2021, the asset threshold was \$10,000,000,000. Creditors that had total assets of 10,000,000,000 or less on December 31, 2020, satisfied 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.

2. For calendar year 2022, the asset threshold was \$10,473,000,000. Creditors that had total assets of \$10,473,000,000 or less on December 31, 2021, satisfied this criterion for purposes of any loan consummated in 2022 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2023 for which the application was received before April 1, 2023.

/s/ Laura Galban

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