



Credit Union National Association

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734

cuna.org

May 3, 2013

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Amendments to the 2013 Escrow Final Rule under Regulation Z;
Docket No. CFPB-2013-0009

Dear Ms. Jackson:

The Credit Union National Association (CUNA) appreciates the opportunity to provide comments to the Consumer Financial Protection Bureau (CFPB) regarding proposed amendments to the agency's 2013 Escrow Final Rule (Escrow Rule), which was adopted in January of this year. By way of background, CUNA is the largest credit union advocacy organization in the country, representing approximately 90% of the nation's 7,000 state and federal credit unions, which serve over 96 million members.

“Rural” & “Underserved” Exemptions from Escrow Requirement (§ 1026.35(b)(2))

Four of the CFPB's January 2013 mortgage rules include provisions that provide for special treatment under various Regulation Z requirements for credit transactions made by creditors operating predominantly in “rural” or “underserved” areas. These provisions are: (1) an exemption from the Escrow Rule's escrow requirement for higher-priced mortgage loans (HPML);¹ (2) an allowance to originate balloon-payment qualified mortgages under the 2013 Ability-to-Repay Final Rule;² (3) an exemption from the balloon-payment prohibition on high-cost mortgages under the 2013 HOEPA Final Rule;³ and (4) an exemption from the requirement to obtain a second appraisal for certain HPMLs under the 2013 Interagency Appraisals Final Rule.⁴

Through the Escrow Rule, the CFPB defined “rural” and “underserved” for the purposes of the four rules noted above. In advance of the Escrow Rule's June 1 effective date, the CFPB is proposing to amend the Escrow Rule to clarify how to determine whether a county is “rural” or “underserved” for purposes of these four provisions.

¹ § 1026.35(b)(2)(iii).

² § 1026.43(f).

³ § 1026.32(d)(1)(ii)(C).

⁴ § 1026.35(c)(4)(vii)(H).



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Designation of “Rural” and “Underserved” Counties (§ 1026.35(b)(2)(iii))

Section § 1026.35(b)(2)(iii) of the Escrow Rule states that the CFPB will designate or determine which counties are “rural” or “underserved” for the purposes of the special provisions of the four rules noted above. This was not the CFPB’s intent, according to the proposal’s supplementary information. Rather, the CFPB intended to require determinations of “rural” or “underserved” status to be made by creditors as prescribed by § 1026.35(b)(2)(iv). However, the CFPB also intended for the agency to apply both tests to each U.S. county and publish an annual list of counties that satisfy either test for a given calendar year, which creditors may rely upon as a safe harbor. Thus, the CFPB proposes amending the Escrow Rule to make it consistent with its stated intent.

We support this proposed change, as we believe it provides greater flexibility for creditors when assessing whether a county is “rural” or “underserved.” For example, under the current provision, a creditor is bound by the CFPB’s determination of a county’s status. However, under the proposed approach, a creditor could conceivably determine a county to be “rural” or “underserved,” even though that county is not included on the CFPB’s published list. Further, if a particular county is included on the CFPB’s list, the creditor may rely on such inclusion as a safe harbor for purposes of the relevant rule’s exemption from the escrow requirement.

“Rural” Definition (§ 1026.35(b)(2)(iv)(A))

The Escrow Rule defines “rural” based on currently applicable Urban Influence Codes (UIC) established by the U.S. Department of Agriculture, Economic Research Service (USDA–ERS).⁵ Based on these definitions, § 1026.35(b)(2)(iv)(A) states that a county is “rural” during a calendar year if it is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area.

As adopted, the commentary explains that, for the purposes of the provision, the terms “metropolitan statistical areas” and “micropolitan statistical areas adjacent to a metropolitan statistical area” are given the same meanings used by USDA–ERS for the purposes of determining UICs.⁶ To facilitate compliance, the CFPB is proposing additional commentary that explains the meaning of “adjacent,” which would entail “physical contiguity with a metropolitan statistical area where certain minimum commuting standards are also met, as defined by the USDA–ERS.”

⁵ The UICs are based on the definitions of “metropolitan statistical area” and “micropolitan statistical area” as developed by the Office of Management and Budget (OMB), along with other factors reviewed by the ERS that place counties into twelve separately defined UICs depending on the size of the largest city and town in the county.

⁶ The USDA–ERS considers micropolitan counties as “adjacent” to a metropolitan statistical area for this purpose if they abut a metropolitan statistical area and have at least 2% of employed persons commuting to work in the core of the metropolitan statistical area.

We are not able to support or oppose this proposed change based on the information available in the proposal. Therefore, we ask the CFPB to provide an analysis of the impact on the prevalence of “rural” areas under the proposed approach. It is not possible for CUNA, and likely other commenters, to provide informed input to the CFPB without data on the potential effect of this proposed change. In that connection, we ask to the CFPB to refrain from finalizing this aspect of the proposal until it has made that data available and allowed for adequate public comment in light of such data.

Similarly, the Bureau is proposing language to specify under § 1026.35(b)(2)(iv)(A) how “rural” status should be determined for a county that does not have a currently applicable UIC because it was created after the USDA–ERS last categorized counties by UIC. Because the USDA–ERS only updates UICs decennially based on the most recent census, it is possible that new counties may be created that will not have a designated UIC until after the next census. To address such instances, the CFPB is proposing to amend comment 35(b)(2)(iv)–1.i to clarify that any such county is considered “rural” for the purposes of § 1026.35(b)(2)(iv) only if all counties from which the new county’s land was taken are themselves rural under the rule.

We do not support the proposed requirement that “any such county is considered ‘rural’ for the purposes of § 1026.35(b)(2)(iv) only if all counties from which the new county’s land was taken are themselves rural under the rule.” We believe the “all counties” requirement would reduce any flexibility in the rule. Instead, we ask the CFPB to consider a change, such as the following, that would retain this flexibility:

“any such county is considered ‘rural’ for the purposes of § 1026.35(b)(2)(iv) only if 50% or more of all counties from which the new county’s land was taken are themselves rural under the rule.”

“Underserved” Definition (§ 1026.35(b)(2)(iv)(A))

Section 1026.35(b)(2)(iii)(A) of the Escrow Rule creates an exemption from the HPMML escrow requirement for transactions by creditors serving rural or underserved counties, if they meet certain criteria involving the loans they originated during the preceding year. Thus, the availability of the rural or underserved exemption always follows a year after the origination activity that makes a creditor eligible for the exemption.

Current § 1026.35(b)(2)(iv)(B) states that a county is “underserved” during a calendar year if, “according to Home Mortgage Disclosure Act (HMDA) data for that year,” no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by a first lien, five or more times in the county. However, HMDA data typically are released for a given calendar year during the third or fourth quarter of each subsequent calendar year. It is thus not generally possible for creditors to make determinations concerning whether a county was underserved during the preceding calendar year based on that preceding year’s HMDA data, because such data likely will not be available until late in the following year. In wording § 1026.35(b)(2)(iv)(B) as it did, the CFPB did not intend to require the use of HMDA data that is not yet available at

the time the determination of a county's "underserved" status is made; the CFPB's intent was to provide for the use of the most recent HMDA data available at the time of the determination, according to the proposal's supplementary information.

We support the CFPB's proposal to amend § 1026.35(b)(2)(iv)(B) to clarify that a county is considered "underserved" during a given calendar year based on HMDA data for "the preceding calendar year" as opposed to "that calendar year." This look-back feature coordinates with the look-back feature in the exemption itself at § 1026.35(b)(2)(iii)(A), so that a creditor would rely on the underserved status of a county based on HMDA data from two years previous to the use of the exemption, which is the most recent data available for use as the CFPB intended.

Repayment Ability, Prepayment Penalties (§ 1026.35(e))

In addition, the proposal would restore certain existing Regulation Z requirements related to the consumer's ability to repay and prepayment penalties for HPMLs. The scope of these protections is being expanded in connection with the 2013 Title XIV Final Rules to apply to most mortgage transactions, rather than just HPMLs. For this reason, the Escrow Rule removed the regulatory text providing these protections solely to HPMLs. That final rule, however, takes effect on June 1, 2013, whereas the new ability-to-repay and prepayment penalty provisions do not take effect until January 10, 2014. To prevent any interruption in applicable protections, the CFPB is proposing a temporary provision to ensure the protections remain in place for HPMLs until the expanded provisions take effect in January 2014.

We support establishing a temporary provision to ensure these existing protections are kept in place until accompanying provisions become effective in January 2014.

Thank you for the opportunity to express our views on the CFPB's proposed changes to its Escrow Rule. If you have any questions about our comments, please do not hesitate to give Senior Vice President and Deputy General Counsel Mary Mitchell Dunn or me a call at (202) 508-6743.

Sincerely,



Luke Martone
Sr Asst General Counsel for Regulatory Advocacy