



April 19, 2013

CFPB Proposal to Amend the 2013 Escrows Final Rule

SUMMARY OF PROPOSAL

- The Consumer Financial Protection Bureau (CFPB) has proposed clarifying and technical amendments to a final rule issued by the Bureau on January 10, 2013, which, among other things, lengthens the time for which a mandatory escrow account established for a higher-priced mortgage loan (HPML) must be maintained. The 2013 Escrows Rule also established an exemption from the escrow requirement for certain creditors that operate predominantly in “rural” or “underserved” areas.
- The proposed amendments clarify the determination method for the “rural” and “underserved” designations and keep in place certain existing protections for HPMLs until other similar provisions take effect in January 2014.
- CFPB is accepting comments until May 3, 2013; please send your comments to CUNA by April 30.

DESCRIPTION OF PROPOSAL

Section 1026.35(b) Escrow Accounts: 35(b)(2) Exemptions

“Rural” or “Underserved” Designation

Four of the CFPB’s January 2013 mortgage rules included provisions that provide for special treatment under various Reg Z requirements for certain credit transactions made by creditors operating predominantly in “rural” or “underserved” areas: (1) an exemption to the 2013 Escrows Rule’s escrow requirement for HPMLs; (2) an allowance to originate balloon-payment qualified mortgages under the 2013 Ability-to-Repay Final Rule; (3) an exemption from the balloon payment prohibition on high-cost mortgages under the 2013 HOEPA Final Rule; and (4) an exemption from a requirement to obtain a second appraisal for certain HPMLs under the 2013 Interagency Appraisals Final Rule. These provisions rely on the criteria for “rural” and/or “underserved” counties set forth in § 1026.35(b)(2)(iv)(A) and (B), respectively, of the 2013 Escrows Final Rule, which takes effect on June 1, 2013.

Through the 2013 Escrows Final Rule, the CFPB adopted § 1026.35(b)(2)(iv)(A) and (B) to define “rural” and “underserved” respectively for the purposes of the four rules discussed above that contain special provisions that use one or both of those terms. In advance of the rule’s June 1 effective date, the CFPB is proposing to amend the 2013 Escrows Rule to clarify how to determine whether a county is rural or underserved for the purposes of these provisions.

“Rural”

As adopted, § 1026.35(b)(2)(iv)(A) of the 2013 Escrows Rule defines “rural” based on currently applicable UICs established by the US Department of Agriculture, Economic Research Service (USDA-ERS). The Urban Influence Codes (UIC) 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. Based on these definitions, § 1026.35(b)(2)(iv)(A) as adopted 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. 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.

Nevertheless, the CFPB believes additional commentary that explains the meaning of “adjacent” more directly would be useful to facilitate compliance with § 1026.35(b)(2)(iv) and the provisions that rely on it. Accordingly, the CFPB is proposing to amend the commentary to state expressly that “adjacent” entails physical contiguity with a metropolitan statistical area where certain minimum commuting standards are also met, as defined by the USDA–ERS. The CFPB believes this is consistent with USDA–ERS’s use of “adjacent” and better explains the rule for compliance purposes.

Similarly, the CFPB 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. In such instances, clarification is needed to explain how “rural” status would be determined. The CFPB is proposing to amend the commentary to address this issue and explain 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.

CUNA Question: Do you support the proposed changes in regard to “rural” areas? Do you foresee any unintended consequences—negative or positive—with these changes?

“Underserved”

Section 1026.35(b)(2)(iii)(A) of the 2013 Escrows Rule creates an exemption from the HPLM escrow requirement for transactions by creditors operating in rural or underserved counties, if they meet certain criteria involving the loans they originated during the preceding calendar 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.

As adopted by the 2013 Escrows Rule, § 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.

The CFPB therefore is proposing 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 are the most recent data available for use as the CFPB intended.

CUNA Question: Do you support the proposed changes in regard to “underserved” areas? Do you foresee any unintended consequences—negative or positive—with these changes?

Section 1026.35(e) Repayment Ability, Prepayment Penalties

The CFPB is proposing language in § 1026.35(e) to keep in place existing requirements contained in § 1026.35(b) concerning assessment of consumers' ability to repay an HPML and limitations on prepayment penalties for HPMLs. These provisions were originally adopted by the Federal Reserve Board in 2008, and will be supplanted by the CFPB's new rules implementing similar Dodd-Frank requirements in § 1026.43 on January 10, 2014.

The 2013 Escrows Rule inadvertently removed the existing language of § 1026.35(b) between June 1, 2013 and the January 10, 2014, effective date for the ability-to-repay and prepayment penalty provisions in § 1026.43. This proposed rule would restore this language at § 1026.35(e) and keep it in effect during that intervening period.

CUNA Question: Do you support the proposed change regarding the effective dates? Do you believe the proposed change will achieve its intended purpose?

**Please send comments and questions to Senior Assistant
General Counsel [Luke Martone](#).
[Here](#) is the proposal in the *Federal Register*.**