

ICBA Summary of Small Creditor Home Mortgage Lending Operations in Rural Areas under the TILA (Regulation Z) Interim Final Rule

Contact:

Joe Gormley
Assistant Vice President & Regulatory Counsel
joseph.gormley@icba.org



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I. BACKGROUND

On March 22, 2016, the Consumer Financial Protection Bureau issued an Interim Final Rule to implement certain portions of the ICBA-advocated Helping Expand Lending Practices in Rural Communities (HELP) Act which were passed by Congress in December 2015 as part of the Fixing America's Surface Transportation (FAST) Act. Under the Interim Final Rule, a small creditor¹ operating in rural² or underserved areas is no longer required to extend more than 50 percent of its first lien home mortgages in rural or underserved areas in order to be eligible for two exemptions regarding balloon-payments and escrow requirements for loans held in portfolio.

Interim Final Rule in Brief

Effective March 31, 2016, community banks that are small creditors (less than \$2 billion in assets and originating fewer than 2,000 loans per year, excluding portfolio loans) *and* that make at least one covered mortgage loan³ in a rural or underserved area in the previous calendar year can take advantage of both:

- Qualified Mortgage safe harbor treatment of balloon payment loans retained in portfolio; and
- The higher-priced loan escrow exemption for loans retained in portfolio.

The HELP Act broadens the class of small creditors eligible under the Truth in Lending Act (TILA) for the special provision that permits a qualified mortgage to have a balloon-payment feature and the exemption from the escrow requirement for certain higher-priced mortgage loans (HPMLs) under Regulation Z. Previously, TILA required that small creditors operate “predominantly” in rural or underserved areas in order to be eligible for these exceptions. The HELP Act removed the “predominantly” requirement from those provisions, giving the CFPB authority to extend those provisions to small creditors who do not meet a “predominantly” test.

Link to the CFPB press release and Interim Final Rule -

http://www.consumerfinance.gov/newsroom/cfpb-rule-broadens-qualified-mortgage-coverage-of-lenders-operating-in-rural-and-underserved-areas/?utm_source=newsletter&utm_medium=email&utm_term=032316_a2&utm_campaign=RegIMP

¹ The Interim Final Rule does not change the definition of small creditor. A creditor is a small creditor if, during the preceding calendar year: (1) the creditor and its affiliates together extended no more than 2,000 first-lien covered loans that were transferred by the creditor or affiliate to another person or that were subject to commitment to be acquired by another person at consummation; and (2) the assets of the creditor and its affiliates that regularly extended first-lien covered loans are less than \$2 billion, as adjusted annually.

² In the fall of 2015, the CFPB issued a final rule effective Jan. 1, 2016, which expanded the definition of “rural” by including all census blocks that are not in an urban area as defined by the U.S. Census Bureau (Census Bureau).

³ A “covered mortgage loan” is generally a consumer credit transaction that is secured by a first-lien on a dwelling, other than a transaction exempt from the Ability to Repay Rule under 12 CFR 1026.43(a).

II. Provisions of the Interim Final Rule

Balloon Loans

A small creditor that extended at least one covered transaction secured by a first-lien on a property located in a rural or underserved area in the previous calendar year may originate qualified mortgages and high-cost mortgages with balloon-payment features if the loan is retained in portfolio.

Escrow Requirements

A small creditor that extended a covered transaction secured by a first-lien on a property located in a rural or underserved area in the previous calendar year can rely on the exemption to the escrow requirement for portfolio loans if the small creditor does not maintain an escrow account for real estate- or dwelling-secured consumer credit that it or an affiliate services, unless the escrow was established as an accommodation to a distressed consumer or for a first-lien HPML between April 1, 2010 and May 1, 2016.

Other Features

The Interim Final Rule also does not alter the grace period for applications received before April 1 of a given year. Even if a small creditor did not originate a covered loan secured by a first lien on a property in a rural or underserved area in the prior calendar year, the creditor may still rely on the special provisions and exemption for applications received before April 1 of a particular year if it originated a covered transaction secured by a first lien on property in a rural or underserved area in either of the two preceding calendar years.

- Example: Assume a small creditor did not originate any loans secured by property in rural or underserved areas in 2016. However, the small creditor did originate a covered transaction secured by a property in a rural area in 2015. This small creditor may rely on the balloon-payment loan special provisions and may be able to rely on the escrow exemption (if other requirements are met) for applications received before April 1, 2017.

Note: The temporary provisions that permit any small creditor, regardless of where it operates, to originate balloon-payment qualified mortgages and balloon-payment high-cost mortgages only applies to applications received before April 1, 2016.