CFPB video guidance to the 2013 Mortgage Servicing Rules

Transcript

Paul Mondor:
Hi, this is Paul Mondor, Managing Counsel in the Office of Regulations at the CFPB. I'm here to talk you through the Bureau's new escrows rule adopted in January 2013. At the outset, I should note that this is staff guidance and not any official interpretation of the Bureau or any legal advice. This is a fairly small rule and there is only the one slide that you see for talking through it.

By way of background, the Federal Reserve Board adopted a final rule in 2008 that imposed an escrow requirement to last at least one year for higher priced mortgage loans. As defined by the Bureau's new rule, higher priced mortgage loans are those with an APR that exceeds certain thresholds. And those thresholds are for first lien mortgages Average Prime Offer Rate plus 1.5. For first lien jumbo's that exceed the maximum purchase balance for Freddy Mac, the threshold is Average Prime Offer Rate plus 2.5. And for subordinate liens, the threshold is Average Prime Offer Rate plus 3.5. But about to be noted, the escrow's requirement applies only to first liens so it's only those first two of the three thresholds that matter for this rule.

The Dodd-Frank Act substantially codified the existing requirements but with several differences. It extends the one-year requirement to five years. It creates an exemption for creditors that operate predominantly in rural or underserved areas. And it created or required certain escrow disclosures, one before consummation and one post-consummation when an escrow account is terminated. Like the Ability-to-Repay and Qualified Mortgage Rule, the Federal Reserve Board proposed an implementing rule before the authority for rulemaking transferred from the Board to the Bureau.

So to drill down a little on the main aspect of this rule, the rural or underserved exemption. The rule creates several criteria for a transaction to be exempt from the escrow requirement. If it is a higher priced mortgage loan it must be made by a small creditor. There are two aspects to being a small creditor, assets and originations. So to meet the small creditor prerequisites, the creditor making the higher priced mortgage loan in question must have assets less than two billion dollars. That is at the outset of this rule's effectiveness. It will be adjusted annually for inflation in the future. And the other prerequisite for a small creditor is annual covered transactions. It must have 500 or fewer first lien covered transactions per year. That is including any affiliates.

The second aspect to this exemption is that the creditor operates predominantly in rural or underserved areas. This is implemented by the rule in the form of more than half of all the creditors covered transactions have to be made in counties that meet the definition of rural or underserved. The definition of rural is structured by using the USDA's urban influence codes. Specifically, a county with the urban influence code 4 or any of 6-12 is considered rural. Underserved is defined by using HMDA data. And based on those data the county has to have two or fewer creditors making five or more covered transactions in a year in that county.

So these tests are a little complicated. And to help with compliance, the Bureau also committed, in the regulation, to publish lists on its website of counties that meet the definition of either rural or underserved and to update those lists annually. Creditors can rely on this list as a safe harbor.

Another prerequisite for the exemption is that the creditor and its affiliates do not escrow for extensions of consumer credit secured by real property or a dwelling that they service. This also includes affiliates. The Bureau created this element of the test. It is not statutory, but it was included in the Board's proposal. The rationale is that any creditor currently servicing does not need the exemption. There are a couple of exemptions, however, where the exemption is not lost even though the creditor may be escrowing or its affiliate may be escrowing. And that is where escrows were established to comply with the existing rule or an escrow is established post-consummation as an accommodation to a distressed consumer. These two exceptions were created in response to comments received on the proposal.

Finally, there was one other statutory pre-requisite for the exemption that the loans be held in portfolio by the creditor. This was not implemented directly by the rule but the rule does effectively implement it in an indirect manner through an additional requirement that at consummation the loan not be subject to a forward commitment for purchase by another entity after the loan is closed if that entity itself is not eligible for the exemption.

I also mentioned the disclosure requirements that the statute created. The final rule does not implement those disclosures but deferred them to be done along with the TILA/RESPA integrated disclosure package and the other Title XIV disclosure requirements, all of which will be handled in a rule-making later in 2013.

The final point on this rule has to do with the effective date. Unlike most of the Title XIV rules adopted in January, this rule goes into effect sooner than most of those, which take effect in January of 2014. This rule takes effect June 1st, 2013. And that is because the Bureau sized up this rule and recognized that the bulk of it is burden relief and that implementation would be not only easy to accomplish on a shorter timeframe but even a welcome thing to small creditors that would like to take advantage of the exemption. That is everything on this rule.