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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z); Determining “Underserved” Areas Using Home Mortgage Disclosure Act Data

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interpretive rule.

SUMMARY: This interpretive rule construes the Bureau of Consumer Financial Protection’s (Bureau’s) Regulation Z, which implements the Truth in Lending Act (TILA). The Bureau produces annually a list of rural and underserved counties and areas that is used in applying various Regulation Z provisions, such as the exemption from the requirement to establish an escrow account for a higher-priced mortgage loan and the ability to originate balloon-payment qualified mortgages. Regulation Z states that an area is “underserved” during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in Regulation Z, secured by first liens on properties in the county five or more times. The official commentary provides an interpretation relating to this standard that refers to certain data elements from the previous version of the Bureau’s Regulation C, which implements HMDA, that were modified or eliminated in the 2015 amendments to Regulation C. The Bureau is issuing this interpretive rule to supersede that now outdated interpretation, specifically by describing below the HMDA data that will instead be used in determining that an area is “underserved.”

DATES: This interpretive rule is effective on [INSERT DATE OF PUBLICATION IN THE

FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Waeiz Syed, Counsel, Office of

Regulations, at (202) 435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Definition of “Underserved”

As adopted in the Dodd-Frank Act and further amended by the Helping Expand Lending Practices in Rural Communities Act of 2015, TILA sections 129C(b)(2)(E) and 129D(c) granted the Bureau authority, among other things, to create a special provision allowing the origination of balloon-payment qualified mortgages and an exemption from the requirement to establish an escrow account for higher-priced mortgage loans.¹ Through these amendments, Congress limited the class of creditors to which the Bureau may grant the special provision and exemption to include only certain creditors that operate in “rural” or “underserved” areas.

Section 1026.35(b)(2)(iv)(B) of Regulation Z defines an area as “underserved” during a calendar year if, according to HMDA data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in § 1026.43(b)(1), secured by first liens on properties in the county five or more times.² Section 1026.43(b)(1) of Regulation Z defines a “covered transaction” as a consumer credit transaction that is secured by

¹ Pub. L. 111-203, sections 1412 and 1461(a), 124 Stat. 1376, 2147 and 2179 (2010); Pub. L. 114-94, section 89003, 129 Stat. 1312, 1800 (2015) (codified at 15 U.S.C. 1639c(b)(2)(E) and 15 U.S.C. 1639d(c)).

² Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4725, 4740-41 (Jan. 22, 2013) (noting that the Bureau adopted this definition based on HMDA data to provide an objective, easily administered rule and one that is consistent with the purpose of preserving credit access in underserved areas), as subsequently amended by Amendments to the 2013 Escrows Final Rule under the Truth in Lending Act (Regulation Z), 78 FR 30739 (May 23, 2013), and Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z), 80 FR 59943 (Oct. 2, 2015). 12 CFR 1026.35(b)(2)(iv)(B).

a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than a transaction exempt from coverage under § 1026.43(a).³ Accordingly, in determining the number of first-lien covered transactions in an area for the purposes of determining whether an area is “underserved,” the Bureau would not count transactions that fail to meet the definition of a “covered transaction” as set forth in § 1026.43(b)(1), such as a home equity line of credit subject to § 1026.40.

The Bureau interpreted the definition of “underserved” in the official commentary to Regulation Z. In comment 35(b)(2)(iv)-1.ii, the Bureau stated that a county is an “underserved” area if, in the applicable calendar year’s public HMDA aggregate dataset, no more than two creditors have reported five or more first-lien covered transactions with HMDA geocoding that places the properties in that county. For the purposes of this determination, because only covered transactions as defined in § 1026.43(b)(1) of Regulation Z are counted, all first-lien originations (and only first-lien originations) reported in the HMDA data are counted except those for which the owner-occupancy status is reported as “Not owner-occupied,” the property type is reported as “Multifamily,” the applicant’s or co-applicant’s race is reported as “Not applicable,” or the applicant’s or co-applicant’s sex is reported as “Not applicable.” Comment 35(b)(2)(iv)-1.ii also specified HMDA codes for each of these HMDA reporting categories.

B. Determining “Underserved” Areas Using HMDA Data

In 2015, the Bureau issued a final rule amending Regulation C; for the most part, the 2015 amendments took effect on January 1, 2018.⁴ Among other changes, the 2015 HMDA Final Rule amended Regulation C to include nine new data points as required by the Dodd-Frank

³ 12 CFR 1026.43(b)(1).

⁴ Home Mortgage Disclosure Act (Regulation C), 80 FR 66128, 66256-58 (Oct. 28, 2015).

Act; added a number of additional data points pursuant to the Bureau's discretionary authority under HMDA section 304(b)(5) and (6); and revised certain pre-existing data points to clarify or amend their requirements.

In light of these changes, certain parts of the methodology described in comment 35(b)(2)(iv)-1.ii became obsolete, as they referred to HMDA data points replaced or otherwise modified by the 2015 HMDA Final Rule. To avoid uncertainty concerning how HMDA data is to be used to determine the underserved status of a county, the Bureau is issuing this interpretive rule to supersede the outdated portions of the commentary and identify current HMDA data points it will use to determine whether a county is underserved.

Under this interpretive rule, the determination will be made by counting first-lien originations from HMDA data for the preceding calendar year, except those for which any of the following HMDA data points are reported with values we interpret as being inconsistent with Regulation Z's definition of a "covered transaction."

1. Construction Method and Total Units

Because a "covered transaction," as defined in § 1026.43(b)(1) of Regulation Z, includes loans secured by residential structures that contain one to four units, the Bureau will not count first-lien originations reported in HMDA data for which the construction method status is reported as "Site-built" (HMDA Code 1) and the total units (i.e., number of individual dwelling units related to the property) is reported as being greater than "4."

2. Open-End Line of Credit and Reverse Mortgage

The definition of a "covered transaction" in § 1026.43(b)(1) of Regulation Z excludes specific categories of loans, such as a home equity line of credit subject to § 1026.40. The definition of a "covered transaction" also excludes, for example, a reverse mortgage subject to

§ 1026.33, for the purposes of § 1026.43(f), which is the provision that permits creditors operating in underserved areas to originate qualified mortgages with balloon payments.

For these reasons, the Bureau will not count first-lien originations reported in HMDA data for which the open-end line of credit status is reported as “Open-end line of credit” (HMDA Code 1) or the reverse mortgage status is reported as “Reverse mortgage” (HMDA Code 1).

3. Business or Commercial Purpose

Regulation Z’s “covered transaction” definition also excludes an extension of credit primarily for a business or commercial purpose. Accordingly, the Bureau will not count first-lien originations reported in HMDA data for which the business or commercial purpose status is reported as “Primarily for a business or commercial purpose” (HMDA Code 1).

4. Demographic Information of Applicant and Co-Applicant

As defined in § 1026.43(b)(1) of Regulation Z, a “covered transaction” is limited to transactions made to consumers, which § 1026.2(a)(11) of Regulation Z defines, in part, as a natural person to whom consumer credit is offered or extended.

Appendix B and comment 4(a)(10)(ii)-4 of Regulation C instruct covered financial institutions to report the applicant’s or co-applicant’s ethnicity, race, sex, and age as “not applicable” if the applicant or co-applicant is not a natural person. For these reasons, the Bureau will not count first-lien originations reported in HMDA data for which both the applicant’s and co-applicant’s ethnicity, race, sex, and age all are reported as follows: (1) the applicant’s ethnicity is reported as “Not applicable” (HMDA Code 4); (2) the applicant’s race is reported as “Not applicable” (HMDA Code 7); (3) the applicant’s sex is reported as “Not applicable” (HMDA Code 4); (4) the applicant’s age is reported as “Not applicable” (HMDA Code 8888); (5) the co-applicant’s ethnicity is reported as “Not applicable” (HMDA Code 4) or “No co-

applicant” (HMDA Code 5); (6) the co-applicant’s race is reported as “Not applicable” (HMDA Code 7) or “No co-applicant” (HMDA Code 8); (7) the co-applicant’s sex is reported as “Not applicable” (HMDA Code 4) or “No co-applicant” (HMDA Code 5); and (8) the co-applicant’s age is reported as “Not applicable” (HMDA Code 8888) or “No co-applicant” (HMDA Code 9999).

The underserved counties list, using the HMDA data described above, can be found on the Bureau’s public website at <https://www.consumerfinance.gov/policy-compliance/guidance/mortgage-resources/rural-and-underserved-counties-list/>, where, consistent with past practice, the list is made available along with historical lists.

C. Legal Authority

The Bureau is issuing this interpretive rule based on its authority to interpret Regulation Z, including under section 1022(b)(1) of the Dodd-Frank Act, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.⁵

By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or 112 imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.⁶

⁵ 12 U.S.C. 5512(b)(1). The relevant provisions of Regulation Z form part of Federal consumer financial law. 12 U.S.C. 5481(12)(O), (14).

⁶ 15 U.S.C. 1640(f).

II. Effective Date

Because this rule is solely interpretive, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act.⁷ Therefore, this rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the same date that it is published in the *Federal Register*.

III. Regulatory Requirements

This rule articulates the Bureau’s interpretation of Regulation Z and TILA. As an interpretive rule, it is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.⁸ Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.⁹

The Bureau has determined that this interpretive rule does not impose any new requirements or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.¹⁰

IV. Congressional Review Act

Pursuant to the Congressional Review Act,¹¹ the Bureau will submit a report containing this interpretive 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’s published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a “major rule” as defined by 5 U.S.C. 804(2).

⁷ 5 U.S.C. 553(d).

⁸ 5 U.S.C. 553(b).

⁹ 5 U.S.C. 603(a), 604(a).

¹⁰ 44 U.S.C. 3501 *et seq.*

¹¹ 5 U.S.C. 801 *et seq.*

V. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

Dated: June 23, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

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