TABLE 1.3—EXAMPLE CALCULATION OF THE GROSS AMOUNT OF THE FIRST ADJUSTMENT

[Net increase in affiliated small banks' assessment bases after December 31, 2015]

[$ in billions] *

Affiliated small banks	Assessment base		Growth under a 10% effective annual rate, compounded quarterly	Growth in excess of 10% effective annual rate
	Year-end 2015	First quarter 2017		
	A	B	C = A * 1.1265	D = B − C
X	$2.00	$6.01		
Y	6.00	5.00		
Total	8.00	11.01	$9.01	$2.00

* Some figures are rounded for simplicity of presentation.

TABLE 1.4—EXAMPLE APPORTIONMENT OF THE FIRST ADJUSTMENT AND THE SECOND ADJUSTMENT (THE $10 BILLION DEDUCTION) AMONG THE LARGE BANKS IN A BANKING ORGANIZATION

[$ in billions] *

Affiliated large banks	Assessment base	Share of affiliated large banks' assessment bases (%)	Share of affiliated small banks' assessment bases	Share of $10 billion deduction	Surcharge base
	E	F (E/$113)	G (F * D)	H (F * $10)	E + G − H
#1	$35.0	31.0	$0.62	$3.10	$32.52
#2	22.0	19.5	0.39	1.95	20.44
#3	56.0	49.6	0.99	4.96	52.04
Total	113.0	100.0	2.00	10.00	105.00

* Some figures are rounded for simplicity of presentation.

By order of the Board of Directors.

Dated at Washington, DC, this 15th day of March, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–06770 Filed 3–24–16; 8:45 am]

BILLING CODE 6714–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2016–0013]

RIN 3170–AA59

Operations in Rural Areas Under the Truth in Lending Act (Regulation Z); Interim Final Rule

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: This interim final rule amends certain provisions of Regulation Z in light of title LXXXIX of the Fixing America's Surface Transportation Act, entitled the Helping Expand Lending Practices in Rural Communities Act, Public Law 114–94. The amendments to Regulation Z concern two matters: The eligibility of certain small creditors that operate in rural or underserved areas for special provisions that permit the origination of balloon-payment qualified mortgages and balloon-payment high cost mortgages and for an exemption from the requirement to establish an escrow account for higher-priced mortgage loans and the determination of whether an area is rural for the purposes of Regulation Z.

DATES: This final rule is effective on March 31, 2016. Comments may be submitted on or before April 25, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2016–0013 or RIN 3170–AA59, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0013 or RIN 3170–AA59 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Consumer Financial Protection Bureau (Bureau) is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive

personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Carl Owens, Terry J. Randall, or James Wylie, Counsels, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Interim Final Rule

The Bureau is issuing this interim final rule to amend Regulation Z to address the Helping Expand Lending Practices in Rural Communities Act of 2015 (HELP Rural Communities Act or the Act), which was enacted on December 4, 2015.[1] The Act has two substantive sections. First, the Act broadened the class of creditors that may be eligible under the Truth in Lending Act (TILA) for provisions that relieve burden for small, rural mortgage creditors.[2] Second, it requires the Bureau to establish a process under which a person may apply to have an area designated by the Bureau as a rural area for purposes of a Federal consumer financial law.[3] On March 3, 2016, the Bureau published a rule establishing the application process mandated by the Act.[4] This interim final rule addresses the Act's amendments to TILA and defines the term ''area'' for purposes of the application process.

This interim final rule is implementing Congress's intention to expand the cohort of small creditors that are eligible for a special provision of Regulation Z that permits origination of balloon-payment qualified mortgages under § 1026.43(f) and for an exemption from the requirement to establish an escrow account for higher-priced mortgages (escrow exemption) under § 1026.35(b)(2)(iii). The Act's amendments to TILA authorize the Bureau to extend the special provision and exemption to certain small creditors that operate in rural or underserved areas, and remove TILA's prior limitation that eligible creditors must operate predominantly in such areas.[5] In addition to the special provision and escrow exemption addressed in the Act, to promote consistent regulatory requirements and reduce unwarranted burdens on small creditors, the interim final rule also expands eligibility for a special provision which allows rural, small creditors to originate high cost mortgages with balloon-payment terms (balloon-payment high cost mortgages) under § 1026.32(d)(1)(ii)(C).

To expand eligibility for the special provisions and exemption, the interim final rule revises § 1026.35(b)(2)(iii)(A), which specifies the level of operations in rural or underserved areas at which a creditor is eligible for the special provisions and exemption. Under the interim final rule, a creditor satisfies the rural-or-underserved component of the eligibility criteria if the creditor originated a covered transaction secured by a property located in a rural or underserved area in the preceding calendar year or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years. The interim final rule also amends the current eligibility criteria for the escrow exemption to ensure that creditors that established escrow accounts solely to comply with the current rule will be eligible for the exemption if they otherwise meet its criteria under this interim final rule.

In addition to addressing the Act's amendments to TILA, this rule also amends § 1026.35(b)(2)(iv)(A), which sets forth the rule for determining whether an area is rural for the purposes of Regulation Z, by inserting a reference to any areas designated as rural through the application process mandated by the Act. This amendment also establishes that, consistent with the current definition of rural area in Regulation Z, only counties or census blocks are eligible areas for the purpose of the application process established by the Bureau pursuant to the Act. The Bureau is soliciting comments on the interim final rule's amendments to Regulation Z.

II. Background

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), signed into law on July 21, 2010.[6] In the Dodd-Frank Act, Congress significantly amended the statutory requirements governing mortgage practices.[7]

As part of these changes, Congress vested the Bureau with specific authority to modify certain requirements with respect to small creditors operating predominantly in rural or underserved areas. TILA sections 129C(b)(2)(E)(iv)(I) and 129D(c)(1) granted the Bureau the discretion to create a special provision allowing origination of balloon-payment qualified mortgages, even though balloon-payment mortgages are otherwise precluded from being considered qualified mortgages, and an exemption from the requirement to establish an escrow account for higher-priced mortgage loans.[8] TILA limited the cohort of creditors to which the Bureau may grant the special provision and exemption to include only small creditors that operate predominantly in rural or underserved areas.

The Bureau issued several rules in early 2013 to implement these new statutory requirements.[9] As directed by Congress, the Bureau considered the issues facing rural, small creditors and determined that it was appropriate to exercise its discretion under TILA to reduce burden on certain small creditors that operate predominantly in rural or underserved areas. Accordingly, the Bureau established a special provision allowing origination of balloon-payment qualified mortgages, even though balloon-payment mortgages are otherwise precluded from being considered qualified mortgages, and an exemption from the pre-existing requirement to establish an escrow account for higher-priced mortgage loans.[10] To synchronize the treatment of balloon-payment loans for purposes of qualified mortgages and high cost mortgages, the Bureau exercised discretionary authority under TILA section 129(p)(1) to establish a special provision allowing creditors that satisfy

[1] Public Law 114–94 (2015).

[2] Public Law 114–94, section 89003 (2015).

[3] Public Law 114–94, section 89002 (2015).

[4] Application Process for Designation of Rural Area under Federal Consumer Financial Law, 81 FR 11099 (Mar. 3, 2016).

[5] Public Law 114–94, section 89003 (2015).

[6] Public Law 111–203, 124 Stat. 1376 (2010).

[7] *See* title XIV of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010) (codified in scattered sections of titles 12, 15, and 42 of the United States Code).

[8] *See* Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4726, 4736 (Jan. 22, 2013) (January 2013 Escrows Final Rule); Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z) January 2013 ATR Final Rule, 78 FR 6408, 6538 (Jan. 30, 2013) (January 2013 ATR Final Rule).

[9] *See, e.g.,* January 2013 Escrows Final Rule, 78 FR 4726 (Jan. 22, 2013); January 2013 ATR Final Rule, 78 FR 6408 (Jan. 30, 2013); High Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6856 (Jan. 31, 2013) (2013 HOEPA Final Rule); Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 35430 (June 12, 2013) (May 2013 ATR Final Rule); Amendments to the 2013 Mortgage Rules Under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z), 78 FR 60382, 60416 (Oct. 1, 2013) (September 2013 Final Rule).

[10] *See* January 2013 Escrows Final Rule, 78 FR 4726, 4736 (Jan. 22, 2013); January 2013 ATR Final Rule, 78 FR 6408, 6538 (Jan. 30, 2013).

the same eligibility criteria as the special provision and exemption to originate high cost mortgages with balloon-payment features.[11]

The Bureau adopted a single test to determine whether a small creditor operated predominantly in rural or underserved areas for the purposes of eligibility for the special provisions and exemption.[12] In adopting this test, the Bureau stated that it interpreted the use of ''predominantly'' in the statute to ''[indicate] a portion greater than half'' [13] and therefore conditioned eligibility on whether the small creditor extended more than 50 percent of its total first-lien covered transactions [14] on properties that are located in areas designated as either rural or underserved.[15]

In the spring of 2013, the Bureau adopted provisions establishing a two-year transition period during which small creditors that did not operate predominantly in rural or underserved areas could originate balloon-payment qualified mortgages. The Bureau explained that the transition period provided time for small creditors to make changes to their business practices, and noted the particular challenges posed by existing balloon-payment loans that would be due for renewal in the near term. The Bureau also stated that the transition period would give it time to study whether the definitions of rural or underserved should be adjusted.[16] In the fall of 2013, the Bureau extended the same two-year transition period to balloon-payment high cost mortgages for the same reasons that it established the transition period for balloon-payment qualified mortgages.[17] The Bureau did not make any changes to the escrow exemption in these rules.

In the fall of 2015, the Bureau adopted revisions that affected the special provisions and the escrow exemption.[18] As part of these revisions, the Bureau expanded eligibility for the exemption and special provisions by raising the loan origination limit for determining eligibility for small creditor status from no more than 500 applicable loans to no more than 2,000 applicable loans. In addition, the Bureau broadened the definition of ''rural'' by adding census blocks that are not in urban areas as defined by the U.S. Census Bureau to the existing county-based definition. The Bureau noted that the special provisions and exemption facilitate the ability of rural, small creditors to provide access to mortgage credit for consumers they serve. At that time, the Bureau also extended the temporary provisions that allow certain small creditors to make balloon-payment qualified mortgages and balloon-payment high cost mortgages regardless of whether they operated predominantly in rural or underserved areas for an additional three and a half months.[19] The Bureau explained that it extended the temporary provisions to provide time for small creditors to understand how the changes that the Bureau was making to the definition of rural would affect their status and to make any necessary adjustments to their business practices. The transition period expires on April 1, 2016.

Just over two months after the Bureau adopted these revisions, on December 4, 2015, the HELP Rural Communities Act was enacted into law.[20] The Act broadened the class of creditors that may be eligible under TILA for the special provision allowing origination of balloon-payment qualified mortgages and for the escrow exemption.[21] Prior to the HELP Rural Communities Act amendments, both TILA sections 129C(b)(2)(E)(iv)(I) and 129D(c)(1), the sections under which the Bureau exercised its authority to create the special provision and exemption, limited eligibility to small creditors that ''operate predominantly in rural or underserved areas.'' The Act struck the term ''predominantly'' from both sections.[22] In addition, the Act requires the Bureau to establish a temporary application process to have an area designated by the Bureau as a rural area for purposes of a Federal consumer financial law.[23]

On March 3, 2016, the Bureau published a procedural rule in the **Federal Register** to establish the application process mandated by the Act.[24] Pursuant to that process, the Bureau will begin accepting applications for areas to be designated as rural areas on March 31, 2016, and the application process will terminate on December 4, 2017.[25] The Bureau is issuing this interim final rule to amend Regulation Z to exercise the authority granted to the Bureau by the Act's amendments to TILA and to insert a reference to rural areas designated through the application process mandated by the Act.

III. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under TILA and the Dodd-Frank Act. TILA, as amended by the Dodd-Frank Act and the HELP Rural Communities Act, provides specific statutory bases for the Bureau's interim final rule. TILA section 129D(c) authorizes the Bureau to exempt, by regulation, a creditor from the requirement (in section 129D(a)) that escrow accounts be established for higher-priced mortgage loans if the creditor operates in rural or underserved areas, retains its mortgage loans in portfolio, does not exceed (together with all affiliates) a total annual mortgage loan origination limit set by the Bureau, and meets any asset-size threshold, and any other criteria, the Bureau may establish. TILA section 129C(b)(2)(E) authorizes the Bureau to provide, by regulation, that certain balloon-payment mortgages originated by small creditors receive qualified mortgage status, even though qualified mortgages are otherwise prohibited from having balloon-payment features.

With respect to the high cost mortgage provisions of TILA section 129, TILA section 129(p), as amended by the Dodd-Frank Act, grants the Bureau the

[11] Section 1026.32(d)(1)(ii)(C); 2013 HOEPA Final Rule, 78 FR 6856, 6921–22 (Jan. 31, 2013) (adopting same criteria for eligibility as the 2013 ATR Final Rule to promote consistency and facilitate compliance).

[12] *See* §§ 1026.35(b)(2)(iii)(A) (establishing test to determine whether the creditor operates predominantly in a rural or underserved area for purposes of escrow exemption); 1026.43(f)(1)(vi) (referring to criterion set forth in § 1026.35(b)(2)(iii)(A) for purposes of eligibility to originate balloon-payment qualified mortgages); § 1026.32(d)(1) (referring to the criteria set forth in § 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2)).

[13] 2013 Escrows Final Rule, 78 FR 4726, 4736 (Jan. 22, 2013).

[14] ''Covered transaction'' is defined in § 1026.43(b)(1) to mean a consumer credit transaction that is secured by 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).

[15] 2013 Escrows Final Rule, 78 FR 4726, 4736 (Jan. 22, 2013).

[16] May 2013 ATR Final Rule, 78 FR 35430, 35488–89 (June 12, 2013) (adopting § 1026.43(e)(6)).

[17] September 2013 Final Rule, 78 FR 60382, 60413 (Oct. 1, 2013) (amending § 1026.32(d)(1)(ii)(C)).

[18] Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z), 80 FR 59944 (Oct. 2, 2015) (October 2015 Small Creditor Final Rule).

[19] *Id.*

[20] Public Law 114–94 (2015).

[21] Public Law 114–94, section 89003 (2015); *see also* Joint Explanatory Statement of the Committee of the Conference, H.R. 22, *Title LXXXIX—Helping Expand Lending Practices in Rural Communities* at 55–56, *http://transportation.house.gov/uploadedfiles/joint_explanatory_statement.pdf.*

[22] Public Law 114–94, section 89003 (2015).

[23] Public Law 114–94, section 89002 (2015).

[24] Application Process for Designation of Rural Area under Federal Consumer Financial Law, 81 FR 11099 (Mar. 3, 2016).

[25] The Bureau will consider any application received before April 8, 2017. The Bureau may not consider an application received on or after April 8, 2017, if it determines that it is not possible to complete the statutorily designed potential 240-day application process for that application by the sunset date, based on the time remaining, the complexity of the application, and any other relevant factors. *Id.*

authority to create exemptions to the restrictions on high cost mortgages and to expand the protections that apply to high cost mortgages. Under TILA section 129(p)(1), the Bureau may exempt specific mortgage products or categories from any or all of the prohibitions specified in TILA section 129(c) through (i), if the Bureau finds that the exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen homeownership and equity protections. Among these referenced provisions of TILA is section 129(e), the prohibition on balloon payments for high cost mortgages.

In addition, as amended by the Dodd-Frank Act, TILA section 105(a) authorizes the Bureau to prescribe regulations to carry out the purposes of TILA. Under section 105(a), such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. Dodd-Frank Act section 1100A clarified the Bureau's TILA section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain ''additional requirements'' that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

In addition, section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board of Governors of the Federal Reserve System (Board). The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [26] Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with TILA and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[27] In addition, section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' TILA is a Federal consumer financial law. Accordingly, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to issue rules that carry out the purposes and objectives of TILA.

IV. Administrative Procedure Act

To the extent that notice and comment would otherwise be required, the Bureau finds that there is good cause due to the exigencies created by the HELP Rural Communities Act to publish this interim final rule without notice and comment and for the rule to be effective less than 30 days after publication.[28] It is necessary to finalize the interim final rule before April 1, 2016, for the reasons discussed below. As a result, the Bureau finds that it is impracticable both to provide notice and accept comment on the amendments to Regulation Z before finalizing the rule and to provide a 30-day period between publication and when the rule is effective.[29]

A. Revisions to Effectuate the Amendments to TILA

This interim final rule revises certain provisions in Regulation Z to effectuate the HELP Rural Communities Act's amendments to TILA, which broadened the cohort of creditors that may be eligible under TILA for the special provision permitting origination of balloon-payment qualified mortgages and for the escrow exemption.[30] Prior to these amendments to TILA, eligibility was limited to creditors that operate predominantly in rural or underserved areas. Congress struck the word ''predominantly'' from the TILA sections.[31]

These amendments to TILA, which were effective upon enactment on December 4, 2015, create uncertainty and confusion for creditors that are not currently eligible for the special provisions and exemption. For example, these creditors may question how the Act changes their eligibility for the special provisions and exemption. This uncertainty may lead these creditors to change their business practices, potentially imposing burden and costs on creditors to update their policies and procedures, make changes to their technology, and train staff. This uncertainty also creates legal risks for these creditors. They may mistakenly believe that the amendments to TILA automatically broadened the regulatory exemption and may take steps that might lead them out of compliance with the requirements in Regulation Z.

With respect to the special provisions pertaining to balloon-payment features, the consequences of this confusion can be avoided if the interim final rule is effective before April 1, 2016. Currently, the rural-or-underserved aspect of the eligibility criteria for the special provisions has no practical effect because, under temporary provisions that expire on April 1, 2016, creditors that meet all of the other eligibility criteria for the special provisions may originate balloon-payment qualified mortgages and balloon-payment high cost mortgages even if they do not satisfy the rural-or-underserved component of the test.[32] If the temporary provisions expire before the Bureau resolves the uncertainty created by the amendments to TILA by revising the rural-or-underserved component of the eligibility criteria in § 1026.35(b)(2)(iii)(A), creditors face significant confusion about the status of the exemptions, which may cause the potential legal risks described above and may impose unnecessary burden and costs on newly eligible creditors. The amendment to TILA, striking ''predominantly,'' suggests that Congress intended to expand eligibility for the special provision to additional creditors that operate in rural or underserved areas, but that do not operate ''predominantly'' in rural or underserved areas, and thereby reduce burden on this expanded cohort of small creditors. To exercise the Bureau's authority consistent with that intent while avoiding imposing unnecessary burden and costs on newly eligible small creditors, the revisions to the rural-or-underserved test in § 1026.35(b)(2)(iii)(A) must take effect prior to the April 1, 2016, expiration of the temporary provisions. If new § 1026.35(b)(2)(iii)(A) is not effective

[26] Dodd-Frank Act section 1061(a)(1)(A), 12 U.S.C. 5581(a)(1)(A).

[27] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws,'' the provisions of title X of the Dodd-Frank Act, and the laws for which authorities are transferred under title X subtitles F and H of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include TILA); Dodd-Frank section 1400(b), 12 U.S.C. 5481(12) note (defining ''enumerated consumer laws'' to include certain subtitles and provisions of Dodd-Frank Act title XIV).

[28] 5 U.S.C. 553(b)(3)(B); 5 U.S.C. 553(d)(3).

[29] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the interim final rule to become effective notwithstanding the requirements of 5 U.S.C. 801 for the same reasons discussed in this section.

[30] Public Law 114–94, section 89003 (2015).

[31] *Id.*

[32] 12 CFR 1026.43(e)(6); 1026.32(d)(1)(ii)(C).

before the temporary provisions expire, newly eligible small creditors would have to change their business practices temporarily to comply with the requirements imposed by the current rule and then, later, when the revisions to the rule were effective, would have to change their business practices again to reverse course. To avoid imposing these unnecessary burdens and costs, the amendment to the rural-or-underserved test under § 1026.35(b)(2)(iii)(A) and conforming changes to the commentary must take effect before April 1, 2016.

The need to clarify the amendment to TILA's effect on the escrow exemption is also urgent because the requirement that creditors operate predominantly in rural or underserved areas to be eligible for the escrow exemption currently applies and will continue to apply as long as the current version of § 1026.35(b)(2)(iii)(A) is still in effect. In light of the Act, creditors now face uncertainty surrounding the status of their eligibility for the exemption. As noted above, some creditors that are not eligible for the current exemption may be under the mistaken impression that the amendments to TILA automatically broadened the regulatory exemption and that they are no longer required to establish escrow accounts for higher-priced mortgage loans. This confusion creates legal risks for these creditors. In addition, some creditors may be uncertain about whether establishing an escrow account to comply with current law will disqualify them from the escrow exemption in the future, because creditors generally are not eligible for the escrow exemption if they maintain escrow accounts for any extension of consumer credit secured by real property or a dwelling that it or its affiliate currently services that were established after January 1, 2016.[33] Some creditors may be adjusting their business practices as a result of this uncertainty. To resolve this uncertainty, the interim final rule's revisions to both the rural-or-underserved test under § 1026.35(b)(2)(iii)(A), discussed above, and the ''no harm'' provision under § 1026.35(b)(2)(iii)(D)(*1*) must be effective. The ''no harm'' provision ensures that any creditors that are currently ineligible for the escrow exemption, but that would qualify under the interim final rule, do not lose eligibility for the escrow exemption because of escrow accounts they established pursuant to requirements in the current rule. The amendments to both sections must take effect urgently to resolve the uncertainty surrounding the exemption and eliminate the legal risks described above.

B. Amendments Related to the Application Process

The amendment to the definition of rural area under § 1026.35(b)(2)(iv)(A) must take effect by March 31, 2016. New § 1026.35(b)(2)(iv)(A)(*3*) amends Regulation Z to refer to the application process mandated by the Act, which requires the Bureau to establish the application process by March 3, 2016.[34] The statute's inclusion of a deadline for establishing the application process suggests that Congress intended the Bureau to begin accepting applications as promptly after March 3, 2016, as possible. Accordingly, the Bureau's procedural rule established March 31, 2016, as the date when it would begin accepting applications. To provide potential applicants with notice of the types of areas for which they may submit applications before the Bureau begins accepting applications, it is necessary for new § 1026.35(b)(2)(iv)(A)(*3*) to be effective by March 31, 2016.

V. Section-by-Section Analysis

Section 1026.35 Requirements for Higher-Priced Mortgage Loans

35(b) Escrow Accounts

35(b)(2)(iii)

35(b)(2)(iii)(A)

Section 1026.35(b)(2)(iii) currently provides that an escrow account need not be established for a higher-priced mortgage loan by small creditors if four conditions identified in § 1026.35(b)(2)(iii)(A) through (D) are satisfied at the time of consummation. Under current § 1026.35(b)(2)(iii)(A), a creditor satisfies the rural-or-underserved component of the eligibility criteria if, during the preceding calendar year or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, a creditor extended more than 50 percent of its total covered transactions secured by first liens on properties that are located in rural or underserved areas. This provision is consistent with the statutory provision as adopted by the Dodd-Frank Act requiring that, in order for the Bureau to have the authority to grant the exemption, the creditor must operate predominantly in rural or underserved areas. The Bureau is revising § 1026.35(b)(2)(iii)(A) to remove the ''more than 50 percent'' aspect of the test and condition eligibility on a creditor extending one covered transaction secured by a first lien on a property located in a rural or underserved area.

The Bureau is revising § 1026.35(b)(2)(iii)(A) to reflect Congress's intent to expand the cohort of small creditors eligible for the special provision and exemptions by amending TILA sections 129C(b)(2)(E)(iv)(I) and 129D(c)(1) by removing ''predominantly'' from the statute. These sections of TILA relate to special provisions and an exemption that applies to certain small creditors operating in rural or underserved areas. Previously, TILA section 129C(b)(2)(E)(iv)(I) permitted the Bureau, by regulation, to define qualified mortgage as including a balloon loan for certain small creditors that operate predominantly in rural or underserved areas. Similarly, TILA section 129D(c)(1) permitted the Bureau, by regulation, to exempt certain small creditors that operate predominantly in rural or underserved areas from the requirement to establish an escrow account under TILA section 129D(a) in certain circumstances. The Act amended both provisions of TILA by striking the word ''predominantly'' and thereby extending the class of eligible creditors under TILA for the special provisions that permit balloon-payment qualified mortgages and for the escrow exemption.[35]

The Bureau previously issued regulations exercising its authority under TILA sections 129C(b)(2)(E)(iv)(I) and 129D(c)(1).[36] In addition, the Bureau also issued regulations using discretionary authority under TILA section 129(p)(1) to allow certain small creditors that operate predominantly in rural or underserved areas to originate balloon-payment high cost mortgages.[37] In October 2015, the Bureau finalized amendments to Regulation Z that broadened the definition of small creditor and rural area and thereby expanded the number of eligible creditors.[38]

Regulation Z uses a single test to determine whether a small creditor

[33] 12 CFR 1026.35(b)(2)(iii)(D)(*1*).

[34] Public Law 114–94, section 89002 (2015).

[35] Public Law 114–94, section 89003 (2015).

[36] *See* January 2013 Escrows Final Rule, 78 FR 4726 (Jan. 22, 2013); January 2013 ATR Final Rule, 78 FR 6408 (Jan. 30, 2013); May 2013 ATR Final Rule, 78 FR 35430 (June 12, 2013); October 2015 Small Creditor Final Rule, 80 FR 59944 (Oct. 2, 2015).

[37] Section 1026.32(d)(1)(ii)(C); 2013 HOEPA Final Rule, 78 FR 6856, 6921–22 (Jan. 31, 2013) (adopting same criteria for eligibility as the 2013 ATR Final Rule to promote consistency and ''facilitate compliance'').

[38] October 2015 Small Creditor Final Rule, 80 FR 59944 (Oct. 2, 2015).

operates predominantly in rural or underserved areas for the purposes of eligibility for the two balloon-payment special provisions and the escrow exemption.[39] In adopting this test, the Bureau stated that it interpreted the use of ''predominantly'' in the statute to ''[indicate] a portion greater than half'' and therefore conditioned eligibility on whether the small creditor extended more than 50 percent of its total first-lien covered transactions on properties that are located in areas designated as either rural or underserved.[40] The Bureau is revising § 1026.35(b)(2)(iii)(A) to remove the ''more than 50 percent'' aspect of the current test for purposes of the eligibility for the escrow exemption, the eligibility to originate balloon-payment qualified mortgages, and the eligibility to originate balloon-payment high cost mortgages.[41] Under these revisions, a creditor operates in a rural or underserved area if the creditor extended at least one first-lien covered transaction on a property that is located in a rural or underserved area in the previous calendar year, or if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years. The Bureau is also making conforming revisions to comment 35(b)(2)(iii)–1.

When the Bureau adopted the ''more than 50 percent'' aspect of the test, it stated that it was implementing the use of ''predominantly'' in the statute.[42] The amendments in section 89003 of the Act, striking ''predominantly,'' suggest that Congress intended to expand eligibility for the exemption to additional creditors that operate in rural or underserved areas, but that do not operate ''predominantly'' in those areas by currently making ''more than 50 percent'' of their covered transactions in such areas, and to thereby reduce burden on this expanded cohort of small creditors.

The Bureau believes that TILA sections 129C(b)(2)(E)(iv)(I) and 129D(c)(1), as revised by the Act, are ambiguous with respect to what it means to ''operate in a rural area,'' and are subject to various possible reasonable interpretations. The Bureau believes that the one-loan test adopted by revised § 1026.35(b)(2)(iii)(A) is a reasonable interpretation of these provisions of TILA and is appropriate at this time in light of the recent regulatory context, including Congress's decision to remove the term that the Bureau had relied on to establish the ''more than 50 percent'' aspect of the test from the statute and the limited data currently available upon which to base consideration of other potentially reasonable interpretations. Furthermore, as discussed above in part IV, the Bureau believes that the amendments must take effect before April 1, 2016, to provide timely guidance for creditors who may have uncertainty about the effect of the Act on § 1026.35(b)(2)(iii)(A) and need to make prompt decisions for the near term about their business operations in light of the Act's amendments, including whether to apply for an area to be designated as rural.[43] This certainty is critical to such creditors now, for purposes of making near-term business decisions, notwithstanding the Bureau's intent to monitor and potentially to revisit this interpretation in the future, as discussed below. The Bureau requests comment concerning any information or data relevant to the revisions to § 1026.35(b)(2)(iii)(A) in addition to the information or data discussed in part VII below.

The nearer term practical effect of the revisions to § 1026.35(b)(2)(iii)(A) is that they will likely preserve, for the most part, the current status of many small creditors eligible for the special provisions. As discussed above, under temporary provisions that expire on April 1, 2016, creditors that meet all of the other eligibility criteria for the special provisions may originate balloon-payment qualified mortgages and balloon-payment high cost mortgages even if they do not satisfy the rural-or-underserved component of the test.[44] Consequently, this final rule effectively adds to the special provisions' eligibility criteria a new prerequisite that the entity issue at least one loan in a rural or underserved area.

The Bureau intends to monitor the market closely and thoroughly for negative effects on consumers or unintended effects on the mortgage market as a result of these revisions to § 1026.35(b)(2)(iii)(A). The Bureau expects to have better information available for analyzing these effects and considering other potentially reasonable interpretations of ''operates in rural or underserved areas'' in the future, including more data available from the National Survey of Mortgage Borrowers (NSMB), as well as the National Mortgage Database (NMDB).[45]

At least one year after the effective date of this rule, and further dependent on when the Bureau believes newly available information may support considering additional rulemaking related to § 1026.35(b)(2)(iii)(A), the Bureau intends to invite public comment on the effect of these revisions to § 1026.35(b)(2)(iii)(A). If better information available to the Bureau, including further information provided by the public, shows that the revisions to § 1026.35(b)(2)(iii)(A) have had unintended effects on the mortgage market or negative effects on consumers, the Bureau intends to publish a notice of proposed rulemaking to exercise its authority to implement a revised test under § 1026.35(b)(2)(iii)(A). The Bureau requests comment on the optimal scope of the exemption for these creditors that the Bureau should consider as new data becomes available, and in what timeframe the Bureau should consider undertaking additional rulemaking related to the exemption. The Bureau also requests comment, including relevant data, on whether the

[39] 12 CFR 1026.35(b)(2)(iii).

[40] January 2013 Escrows Final Rule, 78 FR 4726, 4736 (Jan. 22, 2013); January 2013 ATR Final Rule, 78 FR 6408, 6543 (Jan. 30, 2013).

[41] Allowing § 1026.35(b)(2)(iii)(A), as revised by this rule, to continue to apply for purposes of eligibility to originate balloon-payment high cost mortgages promotes consistency between the Bureau's ability-to-repay requirements and the high cost mortgage requirements and facilitates compliance for creditors who operate in these areas. *See* 2013 HOEPA Final Rule, 78 FR 6856, 6921–22 (Jan. 31, 2013). The special provisions and exemptions facilitate the ability of small creditors that operate in rural or underserved areas to provide access to mortgage credit for consumers they serve.

[42] January 2013 Escrows Final Rule, 78 FR 4726, 4736 (Jan. 22, 2013); January 2013 ATR Final Rule, 78 FR 6408, 6543 (Jan. 30, 2013).

[43] Application Process for Designation of Rural Area under Federal Consumer Financial Law, 81 FR 11099 (Mar. 3, 2016).

[44] 12 CFR 1026.43(e)(6); § 1026.32(d)(1)(ii)(C).

[45] *See http://www.fhfa.gov/Homeownersbuyer/Pages/National-Survey-of-Mortgage-Borrowers.aspx. See also http://www.consumerfinance.gov/reports/technical-reports-national-survey-of-mortgage-borrowers-and-national-mortgage-database/.* The NSMB is one component of the NMDB project, a multi-year project being jointly undertaken by the Federal Housing Finance Agency and the Bureau. For the Bureau, the NMDB project will support policymaking and research efforts and help identify and understand emerging mortgage and housing market trends. The Bureau expects to use the NMDB, among other purposes, in support of the market monitoring called for by the Dodd-Frank Act, including understanding how mortgage debt affects consumers and for retrospective rule review required by the statute. The Bureau can use the NSMB to gather additional information about balloon-payment loans, escrow accounts, and creditors operating rural or underserved areas and the NMDB to provide additional data relevant to a future rulemaking involving creditors that operate in rural areas. For example, the Bureau may be able to use NSMB data to monitor the self-reported number of consumers that have a mortgage with a balloon feature. The Bureau can monitor the self-reported number of consumers that had an escrow account at origination. The Bureau can track the areas where either mortgages with balloon features or loans without escrow accounts are prevalent. The Bureau may also be able to extrapolate the number of loans that the creditor providing the loan originated, allowing the Bureau to focus on creditors operating predominantly in rural or underserved areas if necessary.

revisions will result in expanded access to credit.

35(b)(2)(iii)(D)

35(b)(2)(iii)(D)(1)

Section 1026.35(b)(1) generally requires a creditor to establish an escrow account for a higher-priced mortgage loan secured by a first lien on a consumer's principal dwelling. Section 1026.35(b)(2)(iii) provides an exemption from that requirement for certain small creditors. Section 1026.35(b)(2)(iii)(D) makes creditors that maintain existing escrow accounts ineligible for that exemption, with certain exceptions. One such exception, § 1026.35(b)(2)(iii)(D)(*1*), currently excludes escrow accounts established on or after April 1, 2010, and before January 1, 2016, from counting for purposes of the limitation in § 1026.35(b)(2)(iii)(D). The Bureau is revising § 1026.35(b)(2)(iii)(D)(*1*) to extend the excluded period to May 1, 2016. The Bureau believes that the period should be extended to accommodate creditors who established escrow accounts after January 1, 2016, to comply with the previous requirement. Some of these creditors who did not previously satisfy the rural-or-underserved test under § 1026.35(b)(2)(iii)(A) may now qualify under the newly revised rural-or-underserved test. Creditors should not be precluded from qualifying under the newly revised test based solely on their having established escrow accounts to comply with requirements that the Bureau is now revising.

35(b)(2)(iv)(A)

35(b)(2)(iv)(A)(3)

Section 1026.35(b)(2)(iv)(A) currently considers an area as rural during a calendar year if it is: A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States. The Bureau is adding new § 1026.35(b)(2)(iv)(A)(*3*) to add to this definition an area that has been designated as rural pursuant to the application process established under section 89002 of the Act.[46]

As discussed above, on March 3, 2016, the Bureau published a procedural rule in the **Federal Register** establishing an application process through which a person may apply to have an area designated by the Bureau as a rural area for purposes of a Federal consumer financial law.[47] New § 1026.35(b)(2)(iv)(A)(*3*) defines rural area to include a county or a census block that has been designated as rural by the Bureau pursuant to the application process established under section 89002 of the Act. This amendment is necessary to incorporate areas designated as rural through that application process into the definition of rural area set forth in Regulation Z. Per the statute, designations through this process are time-limited and expire on December 4, 2017.

The Bureau interprets the term ''rural area,'' as that term is used in section 89002 of the Act, to be an area comprising counties or census blocks. For reasons set forth in the section-by-section analysis of the October 2015 amendments to § 1026.35(b)(2)(iv)(A), the Bureau adopted counties or census blocks as the appropriate units of analysis for its rural classification scheme and rejected alternative proposals.[48] Because the Act did not define the term ''rural area'' and did not revise this interpretation, the Bureau believes that Congress intended for the new designation process to be consistent with the current rural designation scheme and thus intended for the continued use of counties and census blocks as the units of analysis for defining rural areas for purposes of § 1026.35(b)(2)(iv)(A). Accordingly, only counties or census blocks are eligible for designation as rural under the application process, consistent with the interpretation of rural area already set forth in Regulation Z.

The Bureau is also making conforming changes to comments 35(b)(2)(iv)–1.i and –2.i.

Section 1026.43 Minimum Standards for Transactions Secured by a Dwelling

43(f) Balloon-Payment Qualified Mortgages Made by Certain Creditors

43(f)(1) Exemption

43(f)(1)(vi)

The Bureau is revising comment 43(f)(1)(vi)–1 to remove references to the ''more than 50 percent'' test and replace them with references to the test under revised § 1026.35(b)(2)(iii)(A) for the reasons discussed above in the section-by-section analysis of that section and to add references to new § 1026.35(b)(2)(iv)(A)(*3*) for the reasons discussed above in the section-by-section analysis of that section. The Bureau is revising the examples provided in the comment to reflect the revised test.

43(f)(2)(ii)

The Bureau is revising comment 43(f)(2)(ii)–1 to remove references to the ''more than 50 percent'' test and replace them with references to the revised test under § 1026.35(b)(2)(iii)(A) for the reasons discussed above in the section-by-section analysis of that section.

VI. Effective Date

This interim final rule is effective on March 31, 2016.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts.[49] The Bureau has consulted, or offered to consult with, the prudential regulators, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Agriculture, the U.S. Department of Housing and Urban Development, the U.S. Department of the Treasury, the U.S. Department of Veterans Affairs, and the U.S. Securities and Exchange Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The discussion below considers the benefits, costs, and impacts of expanding eligibility of certain small creditors that operate in rural or underserved areas for special provisions that permit originations of balloon-payment qualified mortgages and for the escrow exemption for higher-priced mortgage loans (HPMLs).[50] The Bureau

[46] Public Law 114–94, title LXXXIX (2015).

[47] Application Process for Designation of Rural Area under Federal Consumer Financial Law, 81 FR 11099 (Mar. 3, 2016).

[48] October 2015 Small Creditor Final Rule, 80 FR 59943, 59955 (Oct. 2, 2015).

[49] Specifically, § 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[50] As explained in the section-by-section analysis above, the exception to the general prohibition on balloon-payment features for high cost mortgages in the 2013 HOEPA Final Rule is also affected by the final provisions. The Bureau estimates that there were about 1,000 high cost mortgage loans across all creditors in the U.S. in 2014. The Bureau believes that the number of high cost loans that also had a balloon feature and were originated by a small creditor that was not already qualified for this provision is negligible. The Bureau does not expect this to change in the future. Therefore, the Bureau believes that the effect of the final rule on the rural balloon-payment provision in the 2013 HOEPA Final Rule is relatively small, in terms of both the

does not possess the data to evaluate the number of creditors that would benefit from the amendment to the extension of the ''no harm provision'' [51] for the escrow exemption. This rule also applies the current definition of eligible ''areas'' (*i.e.,* counties or census blocks) used for existing rural designations to the new application process to have an area designated as rural by the Bureau. The impacts of that definition were previously considered and discussed in the October 2015 Small Creditor Final Rule. This 1022(b) analysis assumes this existing definition of area for purposes of analyzing the costs, benefits, and impacts of this rule.

The Bureau has chosen to evaluate the benefits, costs, and impacts of this rule relative to the current regulatory structure, including the October 2015 Small Creditor Final Rule.[52] The baseline considers economic attributes of the relevant market.

The Bureau has relied on a variety of data sources to consider the potential benefits, costs and impacts of this rule.[53] However, in some instances, the requisite data are not available or are quite limited. Data with which to quantify the benefits of this rule are particularly limited. As a result, portions of this analysis rely in part on general economic principles to provide a qualitative discussion of the benefits, costs, and impacts of the final rule.

The primary source of data used in this analysis is 2013 data collected under the Home Mortgage Disclosure Act (HMDA). The empirical analysis also uses data from the 4th quarter 2013 bank and thrift Call Reports [54] and the 4th quarter 2013 credit union Call Reports from the National Credit Union Administration (NCUA) to identify financial institutions and their characteristics. Appropriate projections have been made to account for gaps in the data, including, for example, institutions that do not report under HMDA. The Bureau also used data from the National Survey of Mortgage Borrowers.[55]

This rule expands the number of institutions that, under special provisions, are eligible to originate certain types of qualified mortgages and to take advantage of an exemption from the requirement to establish an escrow account for HPMLs under the January 2013 ATR Final Rule, the May 2013 ATR Final Rule, the January 2013 Escrows Final Rule, and the 2015 October Small Creditor Final Rule.[56]

These special provisions and exemption are only available to small creditors that operate in rural or underserved areas (rural small creditors). Rural small creditors can originate qualified mortgages with balloon-payment features, as long as these loans are kept in portfolio and other requirements are met. These qualified mortgages with balloon-payment features are deemed to comply with the ability-to-repay requirement as long as these loans have an APR of less than 3.5 percentage points over APOR for a comparable transaction.[57] Also, rural small creditors are generally allowed to originate higher-priced mortgage loans without setting up an escrow account for property taxes and insurance.

The Bureau discussed the benefits and costs of expanding the number of creditors eligible for the special provisions and exemption in detail in its 2015 October Small Creditor Final Rule Section 1022(b)(2) discussion.[58] Thus, the Bureau refers to that discussion for detailed explanations of effects and only provides here the numerical estimates of creditors and consumers affected.

B. Potential Benefits and Costs to Consumers and Covered Persons

Covered Persons Benefits and Costs

Based on the 2013 data, the Bureau estimated in its 2015 October Small Creditor Final Rule that about 4,100 out of the 10,400 small creditors would qualify as rural based on the revised definitions and ''predominantly'' test as it had been defined by the Bureau. Based on the same data, roughly an additional 6,000 small creditors will qualify as rural under the new provisions. Approximately 300 small creditors did not make any loans in rural or underserved areas in 2013, but may do so going forward.

The roughly 6,000 small creditors that will qualify as rural under this rule originated approximately 1.1 million loans, including 360,000 portfolio loans and 70,000 HPMLs in 2013. The Bureau is unaware of how many of these loans were balloon loans. However, estimates from the National Survey of Mortgage Borrowers indicate that about 4 percent of the loans in rural areas had a balloon feature and about 2 percent of the loans in non-rural areas had a balloon feature. The Bureau does not know and lacks a method for estimating how many creditors who are newly eligible for the escrow exemption will choose to stop providing escrow accounts when originating HPMLs.

All methods of compliance under current law remain available to covered persons when this rule becomes effective.[59] Thus, a covered person that is in compliance with current law will not need to take any additional action under the final rule; however, it might choose to do so to benefit from the special provisions and exemption.

Consumer Benefits and Costs

As the Bureau noted in its 2015 October Small Creditor Final Rule that similarly expanded the set of creditors eligible for the special provisions, consumer benefit from the final provisions of this rule is a potential expansion or avoidance of contraction in access to credit. The Bureau outlined its analysis of the available data on access to credit in its 2015 October Small Creditor Final Rule, and that analysis still applies. Prior to its 2015 October Small Creditor Final Rule, the

consumers and covered persons affected, and thus does not merit further discussion in this 1022(b) analysis.

[51] 12 CFR 1026.35(b)(2)(iii)(D)(*1*).

[52] The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking.

[53] The quantitative estimates in this analysis are based upon data and statistical analyses performed by the Bureau. To estimate counts and properties of mortgages for entities that do not report under HMDA, the Bureau has matched HMDA data to Call Report data and National Mortgage Licensing System data and has statistically projected estimated loan counts for those depository institutions that do not report these data either under HMDA or on the NCUA Call Report. The Bureau has projected originations of higher-priced mortgage loans in a similar fashion for depositories that do not report under HMDA. These projections use Poisson regressions that estimate loan volumes as a function of an institution's total assets, employment, mortgage holdings, and geographic presence.

[54] Every national bank, State member bank, and insured nonmember bank is required by its primary Federal regulator to file consolidated Reports of Condition and Income, also known as Call Reports, for each quarter as of the close of business on the last day of each calendar quarter (the report date). The specific reporting requirements depend upon the size of the bank and whether it has any foreign offices. For more information, see *http://www2.fdic.gov/call_tfr_rpts/.*

[55] *See http://files.consumerfinance.gov/f/201508_cfpb_national-survey-of-mortgage-borrowers-technical-report-15-02.pdf.*

[56] *See,* January 2013 ATR Final Rule, 78 FR 6408 (Jan. 30, 2013); May 2013 ATR Final Rule, 78 FR 35430 (June 12, 2013); January 2013 Escrows Final Rule, 78 FR 4726 (Jan. 22, 2013); October 2015 Small Creditor Final Rule, 80 FR 59944 (Oct. 2, 2015).

[57] Note that currently, due to a temporary exemption in the May 2013 Qualified Mortgage Final Rule, all small creditors are allowed to originate qualified mortgages with balloon-payment features.

[58] October 2015 Small Creditor Final Rule, 80 FR 59944, 59961–67 (Oct. 2, 2015).

[59] This discussion takes into account the temporary provisions that expire on April 1, 2016, that allow small creditors to originate balloon-payment qualified mortgages and balloon-payment high cost mortgages regardless of their operations in rural or underserved areas.

Bureau received numerous comments suggesting that more creditors should be eligible for the special provisions and exemption above in order to expand access to credit.

As noted in the 2015 October Small Creditor Final Rule, the potential cost to consumers is the reduction of certain consumer protections as compared to the baseline established by the January 2013 ATR Final Rule, the May 2013 ATR Final Rule, and the January 2013 Escrows Final Rule. This rule would further reduce consumer protections from the 2015 October Small Creditor Final Rule. These consumer protections include a consumer's private cause of action against a creditor for violating the general ability-to-repay requirements for balloon loans and the requirement that every higher-priced mortgage loan have an associated escrow account for the payment of property taxes and insurance for five years.

The number of consumers affected is the same as the number of loans discussed above.

C. Impact on Covered Persons With No More Than $10 Billion in Assets

The only covered persons affected by this rule are those with no more than $10 billion in assets. The effect on these covered persons is described above.

D. Impact on Access to Credit

The Bureau does not believe that there will be an adverse impact on access to credit resulting from the final provisions. Moreover, it is possible that there will be an expansion of access to credit.

E. Impact on Rural Areas

Despite the Bureau's estimate that balloon loans are about twice as frequent in rural areas, this rule is not likely to disproportionately impact non-rural areas. The approximately 4,100 small creditors that operate predominantly in rural areas are already eligible for the special provisions and for the exemption due to the 2015 October Small Creditor Final Rule, and are thus unaffected by this rule.

VIII. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[60]

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to obtain Office of Management and Budget (OMB) approval for information collection requirements before implementation. The collections of information related to Regulation Z have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170–0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

Consistent with the discussion in Section 1022(b)(2), the Bureau has determined that this rule does not impose any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA.

[60] 5 U.S.C. 603(a), 604(a).

List of Subjects in 12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Section 1026.35 is amended by revising paragraphs (b)(2)(iii)(A), (b)(2)(iii)(D)(*1*), and (b)(2)(iv)(A) to read as follows:

§ 1026.35 Requirements for higher-priced mortgage loans.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor extended a covered transaction, as defined by § 1026.43(b)(1), secured by a first lien on a property that is located in an area that is either ''rural'' or ''underserved,'' as set forth in paragraph (b)(2)(iv) of this section;

* * * * *

(D) * * *

(*1*) Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before May 1, 2016; or

* * * * *

(iv) * * *

(A) An area is ''rural'' during a calendar year if it is:

(*1*) A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget and as they are applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS);

(*2*) A census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States; or

(*3*) A county or a census block that has been designated as rural by the Bureau pursuant to the application process established under section 89002 of the Helping Expand Lending Practices in Rural Communities Act, Public Law 114–94, title LXXXIX (2015). The provisions of this paragraph (b)(2)(iv)(A)(*3*) shall cease to have any force or effect on December 4, 2017.

* * * * *

■ 3. In Supplement I to Part 1026—Official Interpretations:

■ A. Under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans:*

■ i. Under *Paragraph 35(b)(2)(iii),* paragraph 1.i is revised.

■ ii. Under *Paragraph 35(b)(2)(iii)(D)*(1)*,* paragraph 1 is revised.

■ iii. Under *Paragraph 35(b)(2)(iv),* paragraphs 1.i and 2.i are revised.

■ B. Under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling:*

■ i. Under *Paragraph 43(f)(1)(vi),* paragraph 1.i is revised.

■ ii. Under *Paragraph 43(f)(2)(ii),* paragraph 1 is revised.

The revisions read as follows:

Supplement I to Part 1026—Official Interpretations

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b) Escrow Accounts

* * * * *

35(b)(2) Exemptions

* * * * *

Paragraph 35(b)(2)(iii)

1. * * *

i. During the preceding calendar year, or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, a creditor extended a first-lien covered transaction, as defined in § 1026.43(b)(1), secured by a property located in an area that is either ''rural'' or ''underserved,'' as set forth in § 1026.35(b)(2)(iv).

A. In general, whether the rural-or-underserved test is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question was received before April 1 of the current calendar year, the creditor may instead meet the rural-or-underserved test based on its activity during the next-to-last calendar year. This provides creditors with a grace period if their activity meets the rural-or-underserved test (in § 1026.35(b)(2)(iii)(A)) in one calendar year but fails to meet it in the next calendar year.

B. A creditor meets the rural-or-underserved test for any higher-priced mortgage loan consummated during a calendar year if it extended a first-lien covered transaction in the preceding calendar year secured by a property located in a rural-or-underserved area. If the creditor does not meet the rural-or-underserved test in the preceding calendar year, the creditor meets this condition for a higher-priced mortgage loan consummated during the current calendar year only if the application for the loan was received before April 1 of the current calendar year and the creditor extended a first-lien covered transaction during the next-to-last calendar year that is secured by a property located in a rural or underserved area. The following examples are illustrative:

1. Assume that a creditor extended during 2016 a first-lien covered transaction that is secured by a property located in a rural or underserved area. Because the creditor extended a first-lien covered transaction during 2016 that is secured by a property located in a rural or underserved area, the creditor can meet this condition for exemption for any higher-priced mortgage loan consummated during 2017.

2. Assume that a creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area. Assume further that the same creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area. Assume further that the creditor consummates a higher-priced mortgage loan in 2017 for which the application was received in November 2017. Because the creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area, and the application was received on or after April 1, 2017, the creditor does not meet this condition for exemption. However, assume instead that the creditor consummates a higher-priced mortgage loan in 2017 based on an application received in February 2017. The creditor meets this condition for exemption for this loan because the application was received before April 1, 2017, and the creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area.

* * * * *

Paragraph 35(b)(2)(iii)(D)(*1*)

1. *Exception for certain accounts.* Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before May 1, 2016, are not counted for purposes of § 1026.35(b)(2)(iii)(D). For applications received on and after May 1, 2016, creditors, together with their affiliates, that establish new escrow accounts, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), do not qualify for the exemption provided under § 1026.35(b)(2)(iii). Creditors, together with their affiliates, that continue to maintain escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before May 1, 2016, still qualify for the exemption provided under § 1026.35(b)(2)(iii) so long as they do not establish new escrow accounts for transactions for which they received applications on or after May 1, 2016, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), and they otherwise qualify under § 1026.35(b)(2)(iii).

* * * * *

Paragraph 35(b)(2)(iv)

1. * * *

i. Under § 1026.35(b)(2)(iv)(A), an area is rural during a calendar year if it is: A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area; a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States; or a county or a census block that has been designated as ''rural'' by the Bureau pursuant to the application process established in 2016. *See* Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (Mar. 3, 2016). Metropolitan statistical areas and micropolitan statistical areas are defined by the Office of Management and Budget and applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS). For purposes of § 1026.35(b)(2)(iv)(A)(*1*), ''adjacent'' has the meaning applied by the USDA–ERS in determining a county's UIC; as so applied, ''adjacent'' entails a county not only being physically contiguous with a metropolitan statistical area but also meeting certain minimum population commuting patterns. A county is a ''rural'' area under § 1026.35(b)(2)(iv)(A)(*1*) if the USDA–ERS categorizes the county under UIC 4, 6, 7, 8, 9, 10, 11, or 12. Descriptions of UICs are available on the USDA–ERS Web site at *http://www.ers.usda.gov/data-products/urban-influence-codes/documentation.aspx.* A county for which there is no currently applicable UIC (because the county has been created since the USDA–ERS last categorized counties) is a rural area only if all counties from which the new county's land was taken are themselves rural under currently applicable UICs.

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2. *Examples.* i. An area is considered ''rural'' for a given calendar year based on the most recent available UIC designations by the USDA–ERS and the most recent available delineations of urban areas by the U.S. Census Bureau that are available at the beginning of the calendar year. These designations and delineations are updated by the USDA–ERS and the U.S. Census Bureau respectively once every ten years. As an example, assume a creditor makes first-

lien covered transactions in Census Block X that is located in County Y during calendar year 2017. As of January 1, 2017, the most recent UIC designations were published in the second quarter of 2013, and the most recent delineation of urban areas was announced in the **Federal Register** in 2012, *see* U.S. Census Bureau, *Qualifying Urban Areas for the 2010 Census,* 77 FR 18652 (Mar. 27, 2012). To determine whether County Y is rural under the Bureau's definition during calendar year 2017, the creditor can use USDA–ERS's 2013 UIC designations. If County Y is not rural, the creditor can use the U.S. Census Bureau's 2012 delineation of urban areas to determine whether Census Block X is rural and is therefore a ''rural'' area for purposes of § 1026.35(b)(2)(iv)(A). In addition, an area is considered ''rural'' if it is a county or a census block that has been designated as rural by the Bureau using the application process established in 2016. *See* Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (Mar. 3, 2016). Designations under this process are time-limited and expire on December 4, 2017.

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Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

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43(f) Balloon-Payment Qualified Mortgages Made By Certain Creditors

43(f)(1) Exemption.

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Paragraph 43(f)(1)(vi)

1. * * *

i. During the preceding calendar year or during either of the two preceding calendar years if the application for the transaction was received before April 1 of the current calendar year, the creditor extended a first-lien covered transaction, as defined in § 1026.43(b)(1), on a property that is located in an area that is designated either ''rural'' or ''underserved,'' as defined in § 1026.35(b)(2)(iv), to satisfy the requirement of § 1026.35(b)(2)(iii)(A) (the rural-or-underserved test). Pursuant to § 1026.35(b)(2)(iv), an area is considered to be rural if it is: A county that is neither in a metropolitan statistical area, nor a micropolitan statistical area adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget; a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States; or a county or a census block that has been designated as ''rural'' by the Bureau pursuant to the application process established in 2016. *See* Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (Mar. 3, 2016). An area is considered to be 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 secured by first liens on properties in the county five or more times.

A. The Bureau determines annually which counties in the United States are rural or underserved as defined by § 1026.35(b)(2)(iv)(A)(*1*) or § 1026.35(b)(2)(iv)(B) and publishes on its public Web site lists of those counties to assist creditors in determining whether they meet the criterion at § 1026.35(b)(2)(iii)(A). Creditors may also use an automated tool provided on the Bureau's public Web site to determine whether specific properties are located in areas that qualify as ''rural'' or ''underserved'' according to the definitions in § 1026.35(b)(2)(iv) for a particular calendar year. In addition, the U.S. Census Bureau may also provide on its public Web site an automated address search tool that specifically indicates if a property address is located in an urban area for purposes of the Census Bureau's most recent delineation of urban areas. For any calendar year that begins after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is located in an area that qualifies as ''rural'' according to the definitions in § 1026.35(b)(2)(iv) if the search results provided for the property by any such automated address search tool available on the Census Bureau's public Web site do not identify the property as being in an urban area. A property is also located in an area that qualifies as ''rural,'' if the Bureau has designated that area as rural under § 1026.35(b)(2)(iv)(A)(*3*) and published that determination in the **Federal Register**. *See* Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule, 81 FR 11099 (Mar. 3, 2016).

B. For example, if a creditor extended during 2017 a first-lien covered transaction that is secured by a property that is located in an area that meets the definition of rural or underserved under § 1026.35(b)(2)(iv), the creditor meets this element of the exception for any transaction consummated during 2018.

C. Alternatively, if the creditor did not extend in 2017 a transaction that meets the definition of rural or underserved test under § 1026.35(b)(2)(iv), the creditor satisfies this criterion for any transaction consummated during 2018 for which it received the application before April 1, 2018, if it extended during 2016 a first-lien covered transaction that is secured by a property that is located in an area that meets the definition of rural or underserved under § 1026.35(b)(2)(iv).

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Paragraph 43(f)(2)(ii)

1. *Transfer to another qualifying creditor.* Under § 1026.43(f)(2)(ii), a balloon-payment qualified mortgage under § 1026.43(f)(1) may be sold, assigned, or otherwise transferred at any time to another creditor that meets the requirements of § 1026.43(f)(1)(vi). That section requires that a creditor: (1) Extended a first-lien covered transaction, as defined in § 1026.43(b)(1), on a property located in a rural or underserved area; (2) together with all affiliates, extended no more than 2,000 first-lien covered transactions that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person; and (3) have, together with its affiliates that regularly extended covered transactions secured by first liens, total assets less than $2 billion (as adjusted for inflation). These tests are assessed based on transactions and assets from the calendar year preceding the current calendar year or from either of the two calendar years preceding the current calendar year if the application for the transaction was received before April 1 of the current calendar year. A balloon-payment qualified mortgage under § 1026.43(f)(1) transferred to a creditor that meets these criteria would retain its qualified mortgage status even if it is transferred less than three years after consummation.

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Richard Cordray,

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