



SINCE 1902

CONFERENCE OF STATE BANK SUPERVISORS

April 25, 2016

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Re: Operations in Rural Areas Under the Truth in Lending Act (Regulation Z), Interim Final Rule; CFPB 2016-0013, RIN 3170-AA59.

Dear Director Cordray,

The Conference of State Bank Supervisors (CSBS) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's Interim Final Rule, entitled *Operations in Rural Areas under the Truth in Lending Act (Regulation Z)*, which 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. CSBS strongly supports expanding the class of creditors that may be eligible under the Truth in Lending Act (TILA) for special provisions and exemptions that relieve burden for small, rural mortgage creditors. Additionally, CSBS is supportive of the establishment of a process under which a person may apply to have an area designated as rural for purposes of a Federal consumer financial law.

State regulators have long standing policy that regulations should not discourage an insured depository institution's willingness to engage in portfolio lending. State regulators have long supported a flexible approach to underwriting for institutions that retain mortgages in portfolio because interests are inherently aligned between consumers and lenders that retain 100% of the risk of default. Our comments on the particular revisions to Regulation Z made in the Interim Final Rule are organized in the sections that follow.

AMENDMENTS TO THE SPECIAL PROVISIONS FOR BALLOON-PAYMENT QUALIFIED MORTGAGES AND EXEMPTION FROM THE ESCROW REQUIREMENT FOR HIGHER-PRICED MORTGAGE LOANS.

Pursuant to the Dodd-Frank Act, TILA sections 129C(b)(2)(E)(iv)(I) and 129D(c)(1) provide the Bureau with the discretion to create a special provision allowing origination of balloon-payment qualified mortgages (BPQMs) as well as an exemption from the requirement to establish an escrow account for higher-priced mortgage loans (HPMLs). Under TILA, the special BPQM provisions and escrow exemption may be made available only to small creditors that *operate predominantly* in rural or underserved area. In implementing this rural or underserved limitation, the Bureau adopted a single test to determine whether a small creditor operated predominantly in rural or underserved areas for purposes of eligibility for the special provisions and exemptions. The Bureau interpreted the use of "predominantly" in TILA 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 located in areas designated as either rural or underserved ('the 50-percent test').

The Helping Expand Lending Practices in Rural Communities Act of 2015 (HELP Rural Communities Act or the Act) struck the word "predominantly" from the relevant TILA sections and thereby gave the Bureau authority to extend the special provisions and exemption to certain small creditors who operate in rural or underserved areas, even if they do not operate predominantly in such areas. In light of this legislative revision, the Bureau is revising Regulation Z to replace the 50-percent test with a requirement that the creditor extend at least one first-lien covered transaction on a property that is located in a rural or underserved area ('the one-loan test'). Thus, effective March 31, 2016, a small creditor may be eligible to rely on the special balloon-payment provisions or the exemption from the escrow requirement if, in the preceding calendar year, it originated at least one covered transaction secured by a first lien on a property located in a rural or underserved area.

CSBS supports expanding the class of creditors that may be eligible under TILA for the special provisions allowing origination of BPQMs as well as for the escrow exemption since it will support and promote the portfolio lending activities of community banks. State regulators believe that Congress allowed for small creditors to originate BPQMs to ensure access to credit in rural and underserved areas where consumers may be able to obtain credit only from such community banks offering these balloon-payment loans. Additionally, as the CFPB stated in previous rulemakings, the portfolio lending model aligns the interests of community banks with consumer protection priorities.¹ The interests of borrowers and lenders has been further aligned and strengthened in recent years by the structural improvements to underwriting practices employed by all mortgage lenders. Since preserving the portfolio balloon lending model ensures access to credit in local communities across the country while reinforcing the fair treatment of customers, CSBS supports the expansion of the class of small creditors eligible to originate BPQMs.

State supervisors of depository and non-depository institutions believe the one-loan test to be a reasonable interpretation of the legislative amendments made in the HELP Rural Communities Act. This interpretation aligns with statements the Bureau has made in previous rulemakings regarding requested revisions to the "operate predominantly" requirement.² CSBS appreciates the Bureau's consistency in this respect and encourages the Bureau to maintain this consistency as it considers the optimal scope of the exemption going forward.

Notwithstanding our general support for this rulemaking, CSBS requests that the Bureau provide further guidance on specific issues where uncertainty may persist. In particular, additional guidance or clarification regarding a small creditor's ability to originate BPQMs in non-rural and non-underserved

¹ See Ability to Repay Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6624 (Jan. 30, 2013) ("Small creditors also have strong incentives to carefully consider whether a consumer will be able to repay a portfolio loan at least in part because the small creditor retains the risk of default.")

² See Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6453 (Jan. 30, 2013).

areas assuming they have already complied with the eligibility criteria for originating BPQMs. Further guidance would also be appropriate on the application of the timing criteria under the rural or underserved test to covered transactions extended in 2016. Specifically, the Bureau should clarify whether the temporary balloon payment provisions, the one-loan test, or the 50-percent test will be the applicable rural or underserved test governing the determination of a small creditor's eligibility in 2017 and 2018 based on origination activity in 2016. Additional clarity could be provided in the form of a comprehensive list of timing scenarios and the baseline rural or underserved test applicable in each scenario.

Going forward, as the Bureau reviews the optimal scope of the exemption for small rural mortgage creditors, the Bureau should consider, generally, whether making the rural or underserved exemption available based upon the previous year's origination activity provides sufficient compliance opportunities to new entrants to the loan origination market, in particular, de novo banks which, by definition, will not have the operational history required to demonstrate sufficient origination activity in a rural or underserved area.

APPLICATION PROCESS FOR THE DESIGNATION OF RURAL AREAS.

In addition to the revisions to the special provisions and exemption in TILA, the HELP Rural Communities Act also required 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 Federal consumer financial law. For many years, CSBS has actively encouraged the Bureau to establish a petition process whereby interested parties can petition the CFPB to make a determination that a specified and bounded area be considered rural for purposes of the special provisions and exemption available under TILA.³ For this reason, State regulators were very pleased that the HELP Rural Communities Act directed the CFPB to establish such a process and that the CFPB issued a procedural rule to establish the process quickly.

Additionally, CSBS supports the Bureau's interpretation of the term "rural area" to require the continued use of counties and census blocks as the units of analysis for defining rural areas in the designation process. Moreover, the procedural rule's consideration of the opinion of an applicant's state supervisory authority was a welcome sign of the Bureau's willingness to collaborate with State regulators in the designation of rural areas.

While the time-limited nature of the designations made through the rural petition process is less than ideal, CSBS understands that the Bureau is working within the confines of the sunset provision in the HELP Rural Communities Act. Nevertheless, CSBS wishes to offer our support to help alleviate application processing times and encourages the Bureau to exercise its discretion to accept applications after April 8, 2017 if processing times prove longer than estimated in the procedural rule.

CONCLUSION

³ See <https://www.csbs.org/regulatory/policy/Documents/2013/CSBSRuralPetitionRecommendation.pdf>.

CSBS supports the expansion of the class of small creditors eligible to originate BPQMs and qualify for the exemption from the escrow requirements for HPMLs. CSBS believes that the Bureau has interpreted the legislative amendments in the HELP Rural Communities Act in a reasonable manner which will promote the community banking portfolio lending model. As the CFPB continues to implement its mortgage rules, CSBS stands ready to help in the process as it relates to state supervised institutions, local economies, and the mortgage market.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Ryan". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

John W. Ryan
President & CEO