CFPB Expands the Eligibility Requirements for Small Creditors in Rural or Underserved Areas

March 31, 2016

The Consumer Financial Protection Bureau ("CFPB") has issued an interim final rule ("Interim Rule") to expand the eligibility of creditors to issue balloon-payment Qualified Mortgages ("QMs") and high-cost mortgages with a balloon-payment feature, and to be exempt from the escrow requirement for certain Higher-Priced Mortgage Loans ("HPMLs").

The Interim Rule implements certain provisions of the recently-enacted Helping Expand Lending Practices in Rural Communities Act. In this regard, the Interim Rule lowers the requirement for small creditors to meet the "rural or underserved" criteria for certain special provisions under the Truth in Lending Act ("TILA"). This change will allow more financial institutions to be eligible to issue a balloon-payment QM and a high-cost mortgage with a balloon-payment feature and to be exempt from the escrow requirement for certain HPMLs. The Interim Rule also redefines "rural" to include a county or census block that has been designated by the CFPB to be rural. This "rural" designation may be obtained through application to the CFPB (as further explained below).

The effective date of the Interim Rule is March 31, 2016, and comments about its provisions will be accepted by the CFPB for 30 days after the Interim Rule's publication in the Federal Register.

The Interim Rule does not change the definition of a small creditor. A small creditor is a creditor which: (1) had total assets of less than $2 billion at the end of the last calendar year; and (2) originated no more than 2,000 first-lien, closed-end residential mortgages in the preceding calendar year together with its affiliates. There are special provisions under TILA for small creditors operating in rural or underserved areas, which enable such creditors to issue balloon-payment QMs that the CFPB's Qualified Mortgage Rule would otherwise prohibit and balloon-payment high-cost mortgages that the Home Ownership Equity Protection Act would otherwise prohibit. Additionally, such creditors are also exempted from the escrow requirement for first-lien HPMLs for at least five years that would otherwise be required under the CFPB's HPML Escrow Rule.

Previously, small creditors were only eligible for these special provisions if they operated predominantly in rural or underserved areas. More than half of a small creditor's first-lien covered transactions during any of the three preceding calendar years must have been secured by properties in rural areas or underserved areas. This Interim Rule significantly broadens the scope of financial institutions that are eligible to take advantage of these special provisions by amending the "rural or underserved areas" requirement. Under the Interim Rule, small creditors will be eligible for these special provisions and may offer balloon-payment QMs and high-cost mortgages with a balloon-payment feature, and be exempt from the escrow requirement for HPMLs, if they originate at least one covered mortgage loan secured by a first lien on a property located in a rural or underserved area in the preceding calendar year. According to the Independent Community Bankers of America, this Interim Rule will allow many more community banks that are defined as small creditors in rural or underserved areas to offer certain products that meet their communities' needs.

The Interim Rule also amends the definition of "rural" to include a county or census block that the CFPB has designated as rural pursuant to an application process. Please note that the CFPB's designation is only effective before December 4, 2017. Pursuant to the application process, a person (including an individual or an entity) may petition the CFPB to designate a census block or county as "rural" for purposes of Federal consumer financial laws by submitting an application that: (1) identifies the census block or county to be designated and the name of the state in which the census block or county is located; (2) provides supporting information; and (3) includes applicant information. There are certain circumstances where the CFPB will not consider the application: (a) the area identified in the application is already designated as rural; (b) the area for which an application is already pending; (c) the area for which an application has been denied less than 90 days prior to the new application; or (d) the applicant does not live or do business in the state in which the area is located. If none of the above-stated circumstances occurs within 60 days of receiving a complete application, the CFPB will publish the application in the Federal Register and accept public comment for at least 90 days. The CFPB will either grant or deny the application, and publish its decision in the Federal Register within 90 days following the end of the public comment period.

An executive summary of CFPB's Interim Rule may be found at http://files.consumerfinance.gov/f/201603_cfpb_executive-summary-of-the-rules-implementing-the-helping-expand-lending-practices-in-rural-communities-act.pdf. Please note that this advisory is a general overview of the Interim Rule and is not intended as a comprehensive explanation of all aspects of the Interim Rule or as formal legal advice. If you have any questions regarding the Interim Rule, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Mandy Xu at 516-357-3850 or via email at mxu@cullenanddykman.com.

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