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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

RIN 3170-AA58

Application Process for Designation of Rural Area under Federal Consumer Financial Law; Procedural Rule

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is adopting a procedural rule establishing an application process under which a person may identify an area that has not been designated by the Bureau as a rural area for purposes of a Federal consumer financial law and apply for such area to be so designated. Currently the Bureau designates rural areas for purposes of certain Federal consumer financial laws relating to mortgage lending.

DATES: This final rule is effective March 3, 2016. The Bureau will begin accepting applications submitted according to the procedure established herein on March 31, 2016.

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

SUPPLEMENTARY INFORMATION:

I. Background

A. Rural Area Designations in Federal Consumer Financial Law

Federal consumer financial law provides special provisions and exemptions for certain creditors doing business in rural areas. For example, an exemption from the requirement to

establish an escrow account for a higher-priced mortgage loan (escrow exception) partially depends on whether the creditor has extended credit secured by properties in rural areas¹ and a special provision permits certain small creditors to originate balloon-payment qualified mortgages if the creditor has extended a sufficient amount of credit secured by properties in rural areas.²

The exemption and special provision listed above were adopted as part of the Bureau's mortgage rules implementing title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),³ pursuant to its authority under the Truth in Lending Act (TILA), as amended by the Dodd-Frank Act. The Bureau adopted revisions to these provisions that were published in the *Federal Register* on October 2, 2015.⁴ These revisions included raising the loan origination limit for determining eligibility for small creditor status, including the assets of a creditor's affiliates that regularly extended covered transactions in the calculation of the asset limit for small-creditor status, expanding the definition of rural and underserved areas by adding census blocks that are not in urban areas as defined by the U.S. Census Bureau to the existing county-based definition, and extending the transition period that allowed certain small creditors to make balloon-payment qualified mortgages regardless of whether they operated predominantly in rural or underserved areas to April 1, 2016. Title LXXXIX of the Fixing America's Surface Transportation Act, entitled the HELP Rural Communities Act,⁵ contained amendments to TILA and new provisions relating to the designation by the Bureau of

¹ 12 CFR 1026.35(b), 1026.35(b)(2)(iii)(A), and 1026.35(b)(2)(iv)(A).

² 12 CFR 1026.43(f)(1).

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

⁴ Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z), 80 FR 59943, 59944 (Oct. 2, 2015).

⁵ HELP Rural Communities Act, Public Law 114-94 (2015).

rural areas under “a Federal consumer financial law (as defined under section 1002 of the [Dodd-Frank Act]).”

B. HELP Rural Communities Act Application Process

Section 89002 of the HELP Rural Communities Act requires the Bureau to establish an application 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. Section 89002 of the HELP Rural Communities Act also provides details on many of the features of the process, including evaluation criteria for the Bureau’s determinations on these applications, a period for public comment on the applications, and a sunset date for the application process of two years after the date of enactment of the HELP Rural Communities Act. The Bureau is issuing this procedural rule to establish the process required by section 89002 of the HELP Rural Communities Act.

Section 89003 of the HELP Rural Communities Act separately made amendments to TILA’s test with respect to the Bureau’s discretionary authority to establish the escrow exemption and a special provision that permits certain small creditors to originate balloon-payment qualified mortgages. This procedural rule relates solely to the application process under section 89002 and not to those amendments. The Bureau understands that the HELP Rural Communities Act amendments to TILA may create some uncertainty for creditors regarding how the Bureau will exercise its newly expanded discretionary authority with respect to the exemption and special provision in question, particularly in light of the April 1, 2016, expiration of the temporary period that allows certain small creditors to originate balloon-payment qualified mortgages and balloon-payment high cost mortgages, regardless of their operations in rural or

underserved areas.⁶ The Bureau expects to issue another notice in the *Federal Register* shortly concerning the amendments under section 89003. The Bureau also anticipates providing an interpretation of the term “rural area” in section 89002(a) of the HELP Rural Communities Act in that notice that would define the type of area for which applicants may submit applications pursuant to this rule. The Bureau plans to issue that notice before it begins accepting applications pursuant to this rule on March 31, 2016.

II. Procedural Requirements

A. Administrative Procedure Act

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because this rule relates solely to agency procedure and practice.⁷ Because the rule relates solely to agency procedure and practice, it is not substantive, and therefore is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the APA.⁸ The Bureau also believes that this final rule meets the requirements for the section 553(d)(3) exception for good cause. Congress, in section 89002(a) of the HELP Rural Communities Act, required the Bureau to establish an application process not later than 90 days after the enactment of the HELP Rural Communities Act. Because the application process has a required sunset period of two years from the enactment of the HELP Rural Communities Act under section 89002(g), there is good cause to establish the procedure immediately to provide the most time possible for applicants to use the application process. Therefore, the Bureau finds that there is good cause to make the final rule effective on March 3, 2016. Though this final rule establishes

⁶ Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z), 80 FR 59943, 59968 (amending 12 CFR 1026.43(e)(i)(B)(ii)) (Oct. 2, 2015).

⁷ 5 U.S.C. 553(b).

⁸ 5 U.S.C. 553(d).

the application process immediately, the Bureau will not begin accepting applications until March 31, 2016. In addition the Bureau currently expects to issue a notice concerning the amendments under section 89003 of the HELP Rural Communities Act before March 31, 2016, in light of the April 1, 2016, expiration of the temporary provisions referenced in part I above, and the Bureau expects that some potential applicants may wish to consider the content of that notice in determining whether to apply. The delay also will afford some time for the Bureau to prepare internal procedures to receive applications.

B. 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.⁹

III. Legal Authority

The Bureau is issuing this rule pursuant to its authority under section 1022(b)(1) of the Dodd-Frank Act, which 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 Federal consumer financial law.¹⁰ The Bureau is also issuing this rule pursuant to the requirements of section 89002(a) of the HELP Rural Communities Act.¹¹

IV. Effective Date

The final rule is effective March 3, 2016. The Bureau will begin accepting applications submitted according to the procedure established herein on March 31, 2016. The HELP Rural

⁹ 5 U.S.C. 603-604.

¹⁰ 12 U.S.C. 5512(b)(1).

¹¹ Public Law 114-94, Title LXXXIX (2015).

Communities Act provides that section 89002, which requires the Bureau to establish this process, shall cease to have any force or effect on December 4, 2017.

V. Paperwork Reduction Act

According to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) the Bureau may not conduct or sponsor a collection of information as defined by the PRA and, notwithstanding any other provisions of law, persons are not required to respond to a collection of information unless it displays a current valid Office of Management and Budget (OMB) control number. The collections of information contained in this procedural rule, and identified as such, have been approved by OMB and assigned the control number 3170-0061. The information collection contained in this procedural rule is required to obtain a benefit. The information collection under this procedural rule is an application to request that the Bureau apply a rural designation to a specific geographic area.

VI. Application Process and Instructions

A. Submission

The application shall be addressed to the CFPB Rural Application Coordinator, Bureau of Consumer Financial Protection.

It may be submitted using one of the following methods:

- *Email:* CFPB_Rural_Application@cfpb.gov.
- *Mail:* ATTN: CFPB Rural Application Coordinator, Research, Markets, and Regulations Division, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

- *Hand Delivery/Courier:* ATTN: CFPB Rural Application Coordinator, Research, Markets, and Regulations Division, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

If the application is submitted by email, it and all attachments described below in part VI.C shall be compiled into a single portable document format (PDF) file. If the application is submitted by mail, hand delivery, or courier, the applicant shall provide three copies of the complete application. The application shall not exceed 10 pages.

B. Content

The application shall contain the following sections:

1. Area Identified

The application shall specifically identify the area requested to be designated as a rural area and the State in which the area is located. An application may identify more than one area if the areas are contiguous (*e.g.*, counties that share a border). Additional areas that are not contiguous (*e.g.*, counties that do not share a border) must be identified in separate applications.

The application shall provide information describing the area identified, for example:

- a. The county that comprises the area or in which the area is located; or
- b. The Census block that comprises the area, unless the area is comprised entirely of whole counties.

2. Justification for Designation as Rural Area

The applicant shall provide the following information about the evaluation criteria in section 89002(b) of the HELP Rural Communities Act:

a. Census Bureau

The application shall state whether the area identified is classified as rural or urban by the Director of the Bureau of the Census and, if rural, explain the basis for concluding that the area identified was so classified, including by attaching any supporting documentation as described below in part VI.C.

b. Office of Management and Budget

The application shall state whether the area identified is classified as either a metropolitan area, a micropolitan area, or neither by the Director of the Office of Management and Budget and, if neither, explain the basis for concluding that the area identified was so classified, including by attaching any supporting documentation as described below in part VI.C.

c. Department of Agriculture – Rural Development

The application shall state whether the Secretary of Agriculture has determined that properties in the area identified are eligible for programs of the United States Department of Agriculture Office of Rural Development and, if so, explain the basis for concluding that the Secretary has determined as such, including by attaching any supporting documentation as described below in part VI.C.

d. Department of Agriculture – Rural-Urban Commuting Codes

The application shall state the most recent primary and secondary rural-urban commuting codes from the Department of Agriculture for the area identified or of which the area identified is a part, including by attaching any supporting documentation as described below in part VI.C.

e. State Bank Supervisor

The application shall state whether the State bank supervisor, as defined by 12 U.S.C. 1813(r), of the State where the area identified is located has issued a written opinion concerning

whether the area identified should be designated as a rural area. Any such written opinion shall be attached as described below in part VI.C.

f. Population Density

The application shall provide the population density of the area identified expressed as the number of persons per square mile using data from the Bureau of the Census and explain the data relied on, including by attaching supporting documentation as described below in part VI.C. The application shall also provide the population density of any nearby area with a greater population density that has been designated by the Bureau as a rural area.

3. Applicant Information

The application shall include the following information about the applicant:

a. Name

The application shall include the name of the applicant.

b. Contact Information

The application shall include information about how to contact the applicant if the Bureau needs additional information about the request.

c. Living or Doing Business in the State

If the applicant is a natural person, the application shall include only a statement affirming that the applicant lives or does business in the State in which the area identified is located. If the applicant is not a natural person, the application shall include a statement affirming that the applicant does business in the State in which the area identified is located and evidence supporting the statement as an attachment as described in part VI.C. Such evidence could include, for example, evidence of incorporation in the State, evidence of licensure to do business in the State, evidence of licensure to conduct a specific type of business in the State, or

evidence of an office in the State. The applicant may redact such evidence to withhold sensitive personal information that is not relevant to establishing that the applicant does business in the State where the area identified is located. The applicant may also state on a cover page to the attachment that it wishes the entire attachment to be withheld from the *Federal Register* publication of the attachment.

C. Attachments

The application shall include any other documents necessary to provide the required information above as attachments.

D. Further Instructions

Applicants should not include personal information other than information identified above in part VI.B.3. The Bureau is required by the HELP Rural Communities Act to publish the application in the *Federal Register*. The Bureau may redact the application prior to publication in the *Federal Register* to withhold any unnecessary personal information included in the application.

VII. Process for Considering Applications

A. Receipt of Application and Initial Review

Upon receipt of a request pursuant to this process, the Bureau shall review the request for preliminary matters, including:

1. Completeness of the information set forth above in part VI;
2. Ensuring that the area identified is not already designated as a rural area under the Federal consumer financial laws;
3. Determining if there is an application already pending for the same area identified as described in section 89002(d)(2) of the HELP Rural Communities Act; and

4. Determining if an application for the area identified has been denied less than 90 days before the receipt of the application as described in section 89002(f) of the HELP Rural Communities Act.

If the Bureau determines that the applicant has not submitted a complete application (*e.g.*, because the Bureau cannot ascertain the relevant area from the application), it shall contact the applicant and specify the additional information that is needed to complete an application.

If the Bureau determines that the applicant seeks the designation of a rural area for an area that is already designated as a rural area under the Federal consumer financial laws, for an area for which an application is already pending, for an area for which an application has been denied less than 90 days before the receipt of the application, or if the Bureau determines that the applicant neither lives nor does business in the State in which the area is located, the Bureau shall notify the applicant that the Bureau will not consider whether to designate the area as rural and the reason for not considering the application.

*B. Publication of Application in the **Federal Register***

Not later than 60 days after receipt of a complete application, the Bureau shall publish the application in the **Federal Register**. The Bureau may redact the application prior to publication in the **Federal Register** to withhold any unnecessary personal information included in the application, as discussed above in part VI.D.

C. Public Comment on Application

The Bureau shall accept public comments on the application for not fewer than 90 days after publication in the **Federal Register**.

D. Decision on Designation

The Bureau shall review the information contained in the application and the public comments and, not later than 90 days after the end of the public comment period described above in part VII.C, the Bureau shall grant or deny the application in whole or in part and shall publish such grant or denial in the *Federal Register* along with an explanation of what factors the Bureau relied on in making such determination. The Bureau shall base its decision on the criteria set forth in section 89002(b) of the HELP Rural Communities Act and the rule of construction in section 89002(c) of the HELP Rural Communities Act. A decision to grant an application in whole or in part shall specify the area designated as a rural area, and the time period during which the designation is effective by reference to the duration of the designations of rural areas under the Federal consumer financial laws.

E. Sunset Date

The HELP Rural Communities Act contemplates a process of up to 240 days for each application, including a minimum of 90 days for public comments. The Bureau will consider any application received before April 8, 2017. The Bureau may, in its discretion, consider an application received on or after April 8, 2017, if it determines that it is possible to complete the designation decision process for that application by the sunset date, based on the time remaining, the complexity of the application, and any other relevant factors. The Bureau will notify the applicant if it determines that it cannot complete the application process, in which case the Bureau shall not consider the application nor publish the application in the *Federal Register* as described above in part VII.B.

Dated: February 26, 2016. _____

Richard Cordray,

Director,

Bureau of Consumer Financial Protection.

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