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B-327967

April 14, 2016

The Honorable Richard Shelby
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Bureau of Consumer Financial Protection: Operations in Rural Areas Under the Truth in Lending Act (Regulation Z); Interim Final Rule*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Bureau of Consumer Financial Protection (Bureau) entitled "Operations in Rural Areas Under the Truth in Lending Act (Regulation Z); Interim Final Rule" (RIN: 3170-AA59). We received the rule on March 30, 2016. It was published in the *Federal Register* as an interim final rule with request for public comment on March 25, 2016. 81 Fed. Reg. 16,074.

The 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 (HELP 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.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). The interim final rule has an effective date of March 31, 2016, and comments may be submitted on or before April 25, 2016. We received the rule on March 30, 2016, and it was published in the *Federal Register* on March 25, 2016. Therefore, the interim final rule does not have the required 60-day delay in effective date. The 60-day delay in effective date can be waived, however, if the agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. The Bureau found good cause due to the exigencies created by the HELP Rural Communities Act to publish the

interim final rule without notice and comment and for the rule to be effective less than 30 days after publication, although it is accepting comments which may be submitted on or before April 25, 2016. According to the Bureau, it was necessary to finalize the interim final rule before April 1, 2016, due to the exigencies created by the HELP Rural Community Act. As a result, the Bureau found that it was 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 under the Administrative Procedure Act. The Bureau noted that this finding also satisfied the requirements of 5 U.S.C. 808(2) of the Congressional Review Act, allowing the interim final rule to become effective notwithstanding the requirements of 5 U.S.C. 801.

Enclosed is our assessment of the Bureau's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Bureau complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Lea Mosena
Senior Counsel, Legal Division
Bureau of Consumer Financial Protection

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
BUREAU OF CONSUMER FINANCIAL PROTECTION
ENTITLED
“OPERATIONS IN RURAL AREAS UNDER THE
TRUTH IN LENDING ACT (REGULATION Z);
INTERIM FINAL RULE”
(RIN: 3170-AA59)

(i) Cost-benefit analysis

The Bureau of Consumer Financial Protection (Bureau) discussed the potential costs and benefits of this interim final rule to consumers and covered persons, the impact on covered persons with no more than \$10 billion in assets, the impact on access to credit, and the impact on rural areas. 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 (October 2015 Small Creditor Final Rule, 80 Fed. Reg. 59,944, 59,961-67 (Oct. 2, 2015)). The baseline considers economic attributes of the relevant market. The Bureau states, however, that in some instances the requisite data are not available or are quite limited, and 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.

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, as stated in the rule. 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 higher-priced mortgage loans in 2013. The Bureau states that it 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 nonrural areas had a balloon feature. All methods of compliance under current law remain available to covered persons when this rule becomes effective. Thus, according to the Bureau, 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.

The Bureau noted in its 2015 October Small Creditor Final Rule that the consumer benefit from the final provisions of this rule is a potential expansion or avoidance of contraction in access to credit. The Bureau also outlined its analysis of the available data on access to credit in its 2015 October Small Creditor Final Rule, and that analysis still applies. As noted by the Bureau 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 ability-to-repay (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 5 years. The number of consumers affected is the same as the number of loans discussed above.

The Bureau states that the only covered persons affected by this rule are those with no more than \$10 billion in assets. The effect on these covered persons was described in the interim final rule. The Bureau states that it does not believe that there will be an adverse impact on access to credit resulting from the final provisions. Moreover, according to the Bureau, it is possible that there will be an expansion of access to credit. Finally, the Bureau states that despite its estimate that balloon loans are about twice as frequent in rural areas, the rule is not likely to disproportionately impact nonrural 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.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

The Bureau stated that because no notice of proposed rulemaking is required, the RFA does not require an initial or final regulatory flexibility analysis.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Act does not apply to independent regulatory agencies.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Bureau stated that to the extent that notice and comment would otherwise be required, the Bureau found 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 under the Administrative Procedure Act. As a result, the Bureau found 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.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

Under PRA, 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 PRA and assigned OMB Control Number 3170-0015 (Regulation Z). Consistent with the discussion in the Bureau's 2015 October Small Creditor Final Rule section 1022(b)(2) (October 2015 Small Creditor Final Rule, 80 Fed. Reg. 59,944, 59,961-67 (Oct. 2, 2015), the Bureau 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.

Statutory authorization for the rule

The Bureau promulgated this final rule under the authority of sections 105(a), 129(e), 129C(b)(2)(E) and 129D(c), 129(p), of the Truth in Lending Act (TILA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) (codified in scattered sections of titles 12, 15, and 42 of the United States Code), and the Helping Expand Lending Practices in Rural Communities Act (HELP Rural Communities Act), Pub. L. No. 114-94 (Dec. 4, 2015). In addition, the Bureau also promulgated this interim final rule under the authority of section 1061(a)(1)(A), 12 U.S.C. 5581(a)(1)(A) of the Dodd-Frank Act, and section 1022(b) and (b)(1) of the Dodd-Frank Act.

Executive Order No. 12,866 (Regulatory Planning and Review)

The Order does not apply to independent regulatory agencies.

Executive Order No. 13,132 (Federalism)

The Order does not apply to independent regulatory agencies.