

January 2021

# TILA Higher-Priced Mortgage Loans (HPML) Escrow Rule

Small entity compliance guide



# Version Log

The Bureau updates this guide on a periodic basis to reflect finalized amendments and clarifications to the rule which impact guide content. Below is a version log noting the history of this document and notable rule changes:

Date	Version	Rule Changes
January 29, 2021	1.3	<i>Exemption for certain insured institutions.</i> The January 2021 Final Rule adds a new exemption from the requirement to establish escrow accounts for certain higher-priced mortgage loans. The final rule also removes obsolete text from the Official Interpretations to Regulation Z (commentary). (See “Are there exemptions for creditors under this rule?” on page 13, “What are the requirements for the small creditors exemption?” on page 13, “What are the requirements for the insured institution exemption?” on page 15, “What are the loan volume and asset size requirements to qualify for the exemption for small creditors?” on page 16, “What are the loan volume and asset size requirements to qualify for the insured institution exemption?” on page 17, “How do I determine if my institution operates in a rural or underserved area?” on page 18, “What are the other requirements and conditions to qualify for either the exemption for small creditors exemption or the insured institution exemption?” on page 19, “What is an insured credit union?” on page 23, and “What is an insured depository institution?” on page 23.

		Miscellaneous administrative changes in various sections.
March 28, 2016	1.2	<p><i>Exemption for Small Creditors that Operate in a Rural or Underserved Area.</i> The September 2015 Final Rule amends the eligibility criteria for small creditors operating in rural or underserved areas for exemption from the requirement to establish an escrow account for higher-priced mortgage loans (HPMLs). The March 2016 Interim Final Rule further amends the definition of rural areas and replaces the requirement that a small creditor operate predominantly in rural and underserved areas to be eligible for the escrow exemption with a requirement that a small creditor operate in a rural or underserved area. The revised rural-or-underserved test extends eligibility to small creditors that originated at least one covered loan secured by a first lien on a property located in a rural or underserved area in the preceding calendar year. It also amends the conditions for exempting small creditors from the requirement to maintain escrows so that an otherwise eligible small creditor will be able to rely on the exemption if it and its affiliates continue to maintain escrows established for first-lien HPMLs if the application for the HPML was received between April 1, 2010 and May 1, 2016. (See “What are the exemptions to the TILA HPML Escrow Rule?” on page 13 and “What are the loan volume and size requirements to qualify for the exemption for creditors operating in a rural or underserved area?” on page 14. See also “How do I determine if my</p>

		<i>institution operates in a rural or underserved area?” on page 18 and “What are the other requirements and conditions to qualify for the exemption for small creditors operating in a rural or underserved area?” on page 16.)</i>
January 6, 2014	1.1	<i>Exemption for Small Creditors that Operate Predominantly in Rural or Underserved Areas.</i> The October 2013 Final Rule amends the exemption from the requirement to maintain escrows on certain higher-priced mortgage loans for certain small creditors that operate predominantly in rural or underserved areas. To prevent small creditors from losing eligibility for the exemption in 2014 due to changes in which counties are defined as rural, the revisions extend availability to small creditors that operated predominantly in rural or underserved areas in any of the previous three calendar years and also meet the other exemption criteria. (See “What are the exemptions to the TILA HPML Escrow Rule?” on page 13)
April 18, 2013	1.0	Original Document

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# 1. Introduction

In response to the mortgage crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) that, among other things, expanded protections for consumers receiving higher-priced mortgage loans.

Before passage of the Dodd-Frank Act, creditors were required under rules issued by the Federal Reserve Board to set up and administer escrow accounts for a minimum of one year for property taxes and required mortgage-related insurance premiums for higher-priced mortgage loans secured by a first lien on a principal dwelling.

This one-year escrow requirement became effective on April 1, 2010, for transactions secured by site-built homes, and on October 1, 2010, for transactions secured by manufactured housing.

This small entity compliance guide discusses the Escrow Requirements under the Truth in Lending Act (Regulation Z) Rule (January 2013 Final Rule) and subsequent amendments to the rule, including the September 2015 Final Rule and January 2021 Final Rule. This rule implements statutory changes made by the Dodd-Frank Act that lengthen the time creditors must collect and manage escrows for higher-priced mortgage loans, and additional statutory changes including the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) that exempt certain insured depository institutions and insured credit unions from the requirement to establish escrow accounts for certain higher-priced mortgage loans. The rule is generally referred to in this guide as the TILA Higher-Priced Mortgage Loans (HPML) Escrow Rule.

The TILA HPML Escrow Rule helps ensure consumers set aside funds to pay property taxes, homeowner's insurance premiums, and other mortgage-related insurance required by the creditor.

The TILA HPML Escrow Rule has three main elements:

1. After you originate a higher-priced mortgage loan secured by a first lien on a principal dwelling, you must establish and maintain an escrow account for at least five years regardless of loan-to-value ratio. You must maintain the escrow account until one of the following occurs: 1) the underlying debt obligation is terminated or 2) after the five-year period, the consumer requests that the escrow account be canceled. However, if you are

canceling the escrow account at the consumer’s request, the loan’s unpaid principal balance must be less than 80 percent of the original value of the property securing the underlying debt obligation, and the consumer must not be currently delinquent or in default on the underlying obligation.

2. You do not have to escrow for insurance premiums for homeowners whose properties are located in condominiums, planned unit developments, and other common interest communities where the homeowners must participate in governing associations that are required to purchase master insurance policies.
3. If you operate in a rural or underserved area and meet certain asset size and other requirements, you may be eligible for an exemption from this rule for certain loans you hold in portfolio.

## 1.1 What is the purpose of this guide?

The purpose of this guide is to provide an easy-to-use summary of the TILA HPML Escrow Rule. This guide also highlights issues that small creditors and their business partners might find helpful to consider when implementing the rule.

This guide also meets the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, which requires the Bureau to issue a small entity compliance guide to help small businesses comply with a new regulation.

This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policystatement-compliance-aids/>, that explains the Bureau’s approach to Compliance Aids. The TILA HPML Escrow Rule and its Official Interpretations (also known as Commentary) are the definitive sources of information regarding the rule’s requirements. The complete rule, including the Official Interpretations, is available at <http://www.consumerfinance.gov/regulations/escrow-requirements-under-the-truth-in-lending-act-regulation-z/>.

Additionally, the Bureau has issued rules to amend and clarify provisions in the January 2013 Final Rule: the [May 2013 Final Rule](#), the [October 2013 Final Rule](#), the [September 2015 Final Rule](#), the [March 2016 Interim Final Rule](#), and the [January 2021 Final Rule](#).

The focus of this guide is the TILA HPML Escrow Rule. This guide does not discuss other federal or state laws that may apply to the maintenance and administration of escrow accounts or other rules to implement other requirements of the Dodd-Frank Act.

At the end of this guide, there is more information about how to read the rule and a list of additional resources.

## 1.2 Who should read this guide?

If your organization originates higher-priced mortgage loans secured by principal dwellings, you may find this guide helpful. This guide will help you determine whether the mortgage loans you originate are regulated by this rule, and if so, what your compliance obligations are.

It discusses exceptions that might apply to you, including special rules for loans made by certain small creditors and insured institutions operating in a rural or underserved area, as well as special rules for loans secured by properties in common interest communities such as condominiums and planned unit developments.

This guide may also be helpful to servicing market participants, software providers, and other companies that serve as business partners to creditors.

## 1.3 Who can I contact about this guide or the TILA HPML Escrow Rule?

If, after reviewing this guide and the regulation(s) and commentary it addresses, you have a question regarding regulatory interpretation, please submit the question on the Bureau’s website at <https://reginquiries.consumerfinance.gov/>. Bureau staff provide only informal responses to regulatory inquiries, and the responses do not constitute official interpretations or legal advice.

Generally, Bureau staff are not able to respond to specific inquiries the same business day or within a particular requested time frame. Actual response times will vary based on the number of questions Bureau staff are handling and the amount of research needed to respond to a specific question.

## 2. What is the TILA HPML Escrow Rule?

### 2.1 What is the purpose of the TILA HPML Escrow Rule?

As directed by Congress, the TILA HPML Escrow Rule **lengthens to a minimum of five years** the required period most creditors must maintain an escrow account for higher-priced mortgage loans.

Before passage of the Dodd-Frank Act, creditors were required under rules issued by the Federal Reserve Board to set up and administer escrow accounts for property taxes and required mortgage-related insurance premiums for higher-priced mortgage loans secured by a first lien on a principal dwelling for a minimum of one year.

This one-year escrow requirement became effective on April 1, 2010, for transactions secured by site-built homes, and on October 1, 2010, for transactions secured by manufactured housing.

Title XIV of the Dodd-Frank Act amended the Truth in Lending Act (TILA) to expand this minimum escrow requirement from one year to five years. (*See “What do I have to do to comply with this rule?” on page 10 for additional requirements.*)

The TILA HPML Escrow Rule also **clarifies that you do not need to escrow** for property insurance premiums for mortgages on properties in planned unit developments and other common interest communities where homeowners must participate in a governing association that is required to purchase a master policy insuring all dwellings.

Finally, the rule **offers regulatory relief** for certain small creditors and insured institutions operating in a rural or underserved area.

## 2.2 When do I have to start following this rule?

You must follow the TILA HPML Escrow Rule's provisions for applications received on or after June 1, 2013. This is a delay from January 21, 2013, when the new escrow requirements and other new mortgage requirements under Title XIV of the Dodd-Frank Act would have been effective in the absence of regulations.

The amendments to the TILA HPML Escrows Rule adopted in the October 1, 2013 Final Rule apply to applications received on or after January 1, 2014.

The amendments to the TILA HPML Escrow Rule adopted in the September 2015 Final Rule are effective January 1, 2016.

The amendments to the TILA HPML Escrow Rule adopted in the March 2016 Interim Final Rule are effective March 31, 2016.

Finally, the amendments to the TILA HPML Escrow Rule adopted in the January 2021 Final Rule are effective upon publication in the *Federal Register* (expected in February 2021). The non-escrowing requirement in the January 2021 Final Rule becomes applicable 120 days after that date. See "*What are the other requirements and conditions to qualify for either the small creditors exemption or the insured institution exemption?*" on page 19.

## 2.3 What do I have to do to comply with this rule?

You must establish and maintain escrow accounts for first-lien higher-priced mortgage loans for at least five years, subject to the requirements of the rule and any applicable exceptions. (*See "What are the exemptions to the TILA HPML Escrow Rule?" on page 13.*)

This means that instead of being required to maintain mandatory escrow accounts for those loans until at least the one-year anniversary of origination (for instance, on September 1, 2014, for a loan originated on September 1, 2013), you are required by this regulation to maintain the accounts until at least the five-year anniversary date (for instance, until at least September 1, 2018, for a loan originated on September 1, 2013).

You must maintain the escrow account until one of the following occurs: 1) the underlying debt obligation is terminated or 2) after the five-year period, the consumer requests that the escrow account be canceled. However, if you are canceling the escrow account at the consumer's request, the loan's unpaid principal balance must be less than 80 percent of the original value of the property securing the underlying debt obligation, and the consumer must not be currently delinquent or in default on the underlying obligation – so if these conditions are not met, you will need to maintain the escrow account beyond five years.

See Regulation X (12 CFR 1024.17(b)) for the definition of “escrow account.”

What loans does the TILA HPML Escrow Rule cover? (§ 1026.35(b)(1))

The TILA HPML Escrow Rule applies generally to first-lien, higher-priced mortgage loans (*see “What is a higher-priced mortgage loan (HPML)?” on page 22*) secured by a consumer’s principal dwelling, subject to certain exceptions described below.

## 2.4 What loans are not covered by the TILA HPML Escrow Rule? (§ 1026.35(b)(2))

Under the TILA HPML Escrow Rule, escrow accounts do not need to be established for:

- Transactions secured by shares in a cooperative
- Transactions to finance the initial construction of a dwelling
- Temporary or “bridge” transactions with terms of 12 months or less
- Reverse mortgages
- Transactions secured by subordinate liens
- Open-end credit (such as a home equity line of credit)
- Insurance premiums the consumer purchases that you do not require

Loans held in portfolio by an organization that operates in a rural or underserved area and meets certain size and operational criteria may be exempt from the TILA HPML Escrow Rule. (*See “What are the exemptions to the TILA HPML Escrow Rule?” on page 13.*)

# 3. What important changes did the TILA HPML Escrow Rule make?

The rule made three primary changes:

1. It lengthened to at least five years the required minimum period most creditors must maintain an escrow account for first-lien higher-priced mortgage loans secured by a consumer's principal dwelling. You must maintain the escrow account until one of the following occurs: 1) the underlying debt obligation is terminated or 2) after the five-year period, the consumer requests that the escrow account be canceled. However, if you are canceling the escrow account at the consumer's request, the loan's unpaid principal balance must be less than 80 percent of the original value of the property securing the underlying debt obligation, and the consumer must not be currently delinquent or in default on the underlying obligation.
2. It clarified that you do not have to escrow insurance payments for homeowners in common interest communities where the governing body is required to purchase master insurance policies.
3. It exempted from the escrow requirement loans made by certain small creditors and insured institutions that operate in a rural or underserved area, as long as they are not subject to forward commitments for sale to nonexempt institutions.

# 4. What are the exemptions to the TILA HPML Escrow Rule?

## 4.1 Are there exemptions for creditors under this rule?

The TILA HPML Escrow Rule contains two exemptions for creditors that operate in a rural or underserved area: (1) the small creditors exemption, and (2) the insured institution exemption.

You may qualify for these exemptions based on your lending activity in a rural area or underserved area. To qualify for either of these exemptions you must also meet other requirements, such as loan volume and asset size. *See “What are the requirements for the small creditors exemption?” on page 13 and “What are the requirements for the insured institution exemption?” on page 15.*

## 4.2 What are the requirements for the small creditors exemption?

Under the TILA HPML Escrow Rule, as amended, the HPML escrow requirement does not apply to any loan made by a small creditor for a loan secured by a first lien on a property if:

1. At least one covered transaction that the institution extended in the preceding calendar year (or in the year preceding that calendar year for applications received prior to April 1 of the current calendar year) was secured by a first lien on a property located in a rural or underserved area;
2. The small creditor and its affiliates together extend no more than 2,000 covered transactions secured by first liens 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, 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;

3. The small creditor has assets of \$2.23 billion or less (adjusted annually for inflation);
4. An escrow account is not required under § 1026.35(b)(2)(v), which requires that an escrow account be established for an HPML that was originated under a forward commitment for sale (i.e., your organization will not hold the loan in portfolio) unless the loan is otherwise exempt (for example, it is a reverse mortgage) or the acquirer is also eligible for either the small creditor or the insured institution exemption; and
5. The small creditor and its affiliates do not maintain an escrow for HPMLs, pursuant to § 1026.35(b)(2)(iii)(D)(1), unless:
  - a. The escrow was established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure, or
  - b. The escrow was established at a time when the creditor may have been required by the regulation to do so, which would have occurred for an HPML escrow account on or after April 1, 2010, to 120 days from the effective date of the January 2021 Final Rule (expected in February 2021).

“Affiliate” is defined in § 1026.32(b)(5) as “any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).”

For more information on these requirements see “*What are the loan volume and asset size requirements to qualify for the small creditor exemption?*” on page 16, “*How do I determine if my institution operates in a rural or underserved area?*” on page 18, and “*What are the other requirements and conditions to qualify for either the exemption for small creditors exemption or the insured institution exemption?*” on page 19.

## 4.3 What are the requirements for the insured institution exemption?

Under the TILA HPML Escrow Rule, as amended, the HPML escrow requirement does not apply to any loan made by an insured depository institution or insured credit union and secured by a first lien on the principal dwelling of a consumer if, at the time of consummation:

1. The insured institution has assets of \$10 billion or less (adjusted annually for inflation) as of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts);
2. The insured institution and its affiliates originated 1,000 or fewer loans secured by a first lien on a principal dwelling 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;
3. The insured institution meets the requirement in § 1026.35(b)(2)(iii)(A), which requires that at least one covered transaction that the institution extended in the preceding calendar year (or in the year preceding that calendar year for applications received prior to April 1 of the current calendar year) was secured by a first lien on a property located in a rural or underserved area;
4. An escrow account is not required under § 1026.35(b)(2)(v), which requires that an escrow account be established for an HPML that was originated under a forward commitment for sale (i.e., your organization will not hold the loan in portfolio) unless the loan is otherwise exempt (for example, it is a reverse mortgage) or the acquirer is also eligible for either the small creditor or the insured institution exemption; and
5. The insured institution and its affiliates do not maintain an escrow for HPMLs, pursuant to § 1026.35(b)(2)(iii)(D)(1), unless:
  - a. The escrow was established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure, or
  - b. The escrow was established at a time when the insured institution may have been required by the regulation to do so, which would have occurred for an HPML escrow account on or after April 1, 2010, to 120 days from the effective date of the January 2021 Final Rule (expected in February 2021).

The TILA HPML Escrow Rule, as amended, defines “insured depository institution” to have the same meaning given to the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and “insured credit union” to have the same meaning given to the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752). “Affiliate” is defined in § 1026.32(b)(5) as “any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.).”

For more information on some of these requirements, see “*What are the loan volume and asset size requirements to qualify for the insured institution exemption?*” on page 17, “*How do I determine if my institution operates in a rural or underserved area?*” on page 18, “*What are the other requirements and conditions to qualify for either the small creditors exemption or the insured institution exemption?*” on page 19.

## 4.4 What are the loan volume and asset size requirements to qualify for the small creditors exemption?

To qualify, you must meet a two-part test under the TILA HPML Escrow Rule:

1. Your organization, together with its affiliates, extended no more than 2,000 first-lien covered transactions during the preceding calendar year. Your organization is not required to count loans that it extended and kept in portfolio or loans that an affiliate extended and kept in its portfolio. Additionally, there is a grace period. If your organization, together with its affiliates, exceeded the loan-volume limit in the immediately preceding calendar year, it can still qualify as a small creditor for applications received before April 1 of the current year, if your organization and its affiliates did not exceed the limit in the calendar year before the immediately preceding calendar year. *See comment 35(b)(2)(iii)-1.ii* for additional guidance on this part of the test.
2. As of December 31 of the preceding calendar year, your organization and its affiliates that regularly extended first lien covered transactions in the preceding calendar year together had total assets of less than \$2.23 billion. The asset requirement adjusts automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November. Additionally, there is a grace period. If your organization, together

with its affiliates that regularly extended covered transactions in the preceding calendar year, exceeded the asset-size limit in the preceding calendar year, your organization can still qualify as a small creditor for applications received before April 1 of the current year, if your organization and its affiliates that regularly extended covered transactions together did not exceed the asset-size limit in the calendar year before the immediately preceding calendar year. *See comment 35(b)(2)(iii)-1.iii for additional guidance on this part of the test.*

You must still meet other requirements in addition to asset size and loan volume to be exempt from the TILA HPML Escrow Rule. (*See “How do I determine if my institution operates in a rural or underserved area?” below and “What are the other requirements and conditions to qualify for either the small creditors exemption or insured institution?” on page 18*).

## **4.5 What are the loan volume and asset size requirements to qualify for the insured institution exemption?**

To qualify, you must meet a two-part test under the TILA HPML Escrow Rule:

1. Your insured institution, together with its affiliates, extended no more than 1,000 first-lien covered transactions during the preceding calendar year. All loans made by the insured institution and its affiliates secured by a first lien on a principal dwelling count toward the 1,000 loan threshold, whether or not such loans are held in portfolio. Note that the loan volume requirement for the insured institution exemption includes loans not counted under the small creditor exemption. *See Comment 35(b)(2)(vi)(B)-1. Additionally, there is a grace period. If your insured institution, together with its affiliates, exceeded the loan-volume limit in the immediately preceding calendar year, it can still qualify for the exemption for applications received before April 1 of the current year, if your organization and its affiliates did not exceed the limit in the calendar year before the immediately preceding calendar year. See comment 35(b)(2)(iii)-1.ii and 35(b)(2)(vi)-1 for additional guidance on this part of the test.*
2. As of December 31 of the preceding calendar year, your insured institutions had total assets of less than \$10 billion. The asset requirement adjusts automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November. Note that the asset size requirement for the insured institution exemption does

not include the asset size of affiliates. *See* Comment 35(b)(2)(vi)(A)-1. Additionally, there is a grace period. If your insured institution exceeded the asset-size limit in the preceding calendar year, your insured institution can still qualify for the exemption for applications received before April 1 of the current year, if your insured institution did not exceed the asset-size limit in the calendar year before the immediately preceding calendar year. *See* comment 35(b)(2)(iii)-1.iii and 35(b)(2)(vi)-1 for additional guidance on this part of the test.

## 4.6 How do I determine if my institution operates in a rural or underserved area? (§§ 1026.35(b)(2)(iii)(A), 35(b)(2)(iv)(A), 35(b)(2)(iv)(B), and 35(b)(2)(iv)(C)?

To qualify for either the small creditors exemption or insured institution exemption, your organization must have operated in a rural or underserved area in the preceding calendar year, meaning that at least one covered transaction that your organization extended in the preceding calendar year was secured by a first lien on a property located in a rural or underserved area. In addition, the TILA HPML Escrow Rule includes a grace period, which allows a creditor that did not operate in a rural or underserved area in the preceding calendar year to continue to qualify for the exemption for applications received before April 1 of the current year if the creditor operated in a rural or underserved area in the calendar year prior to the immediately preceding calendar year.

A “rural” area is : (1) a county that is not in a metropolitan statistical area nor in a micropolitan statistical area adjacent to a metropolitan statistical area as those terms are defined by the U.S. Office of Management and Budget and applied under currently applicable U.S. Department of Agriculture’s Economic Research Service (USDA–ERS) Urban Influence Codes (UICs); or (2) a census block that is not in an urban area as defined by the U.S. Census Bureau in the latest decennial U.S. census.

An “underserved” area is a county where no more than two creditors extend five or more first-lien covered transactions on properties in the county based on Home Mortgage Disclosure Act data from the preceding calendar year. In June 2020, the Bureau issued an interpretive rule to provide guidance to creditors and other persons involved in the mortgage origination process about the way in which the Bureau determines which counties qualify as “underserved” for a

given calendar year. You can access that interpretive rule at

[https://files.consumerfinance.gov/f/documents/cfpb\\_interpretive-rule\\_determining\\_underserved-areas-using-hmda-data.pdf](https://files.consumerfinance.gov/f/documents/cfpb_interpretive-rule_determining_underserved-areas-using-hmda-data.pdf)

Since 2013, the Bureau has posted on its website lists of counties classified as rural or underserved for a particular year. Creditors may rely on these lists to determine whether a property is located in a “rural” or “underserved” area for the applicable year.

Creditors may also use the Rural or Underserved Areas Tool that the Bureau provides on its public website that designates whether a property is rural or underserved, or any automated address search tool provided on the Census Bureau’s website that specifically indicates the urban or rural designations of properties. Creditors may rely on these tools to determine whether a property is located in a “rural” or “underserved” area for the applicable year. See § 1026.35(b)(2)(iv)(C) and comments 35(b)(2)(iv)-1 and 35(b)(2)(iv)-2 for additional guidance on the tools and the use of other means to determine whether a property is located in a rural or underserved area.

You must still meet other asset size, loan volume and operational requirements to be exempt from the TILA HPML Escrow Rule. (See “*What are the loan volume and asset size requirements to qualify for the small creditors exemption?*” on page 16 and “*What are the other requirements and conditions to qualify for either the small creditors exemption or the insured institution exemption?*” below.)

## 4.7 What are the other requirements and conditions to qualify for either the small creditors exemption or the insured institution exemption?

For creditors that meet the loan volume and size and the rural or underserved requirements to qualify for either the small creditors exemption or the insured institution exemption, there is one additional requirement. You and your affiliates cannot maintain escrows on or beyond the second installment due date for any loans you service, with two exceptions (Comments 35(b)(2)(iii)-1.iv, 35(b)(2)(iii)(D)(1) and 35(b)(2)(iii)(D)(2)):

1. Existing escrow accounts for: (a) transactions covered by the TILA HPML Escrow Rule (b) that you or your affiliates established for applications received on or after April 1, 2010, to 120 days from the effective date of the January 2021 Final Rule (expected in February 2021). In order to qualify for this exception, **you and your affiliates must not escrow for such transactions** for which you receive an application on or after 120 days from the effective date of the January 2021 Final Rule, other than for distressed consumers as noted below; or
2. Escrow accounts you or your affiliates establish after consummation for distressed consumers.

If your organization is eligible for the small creditors exemption or the insured institution exemption, but you originate an HPML under a forward commitment for sale (*i.e.*, your organization will not hold the loan in portfolio), you must establish an escrow account unless the loan is otherwise exempt (for example, it is a reverse mortgage) or the acquirer is also eligible for either the small creditor or insured institution exemption. (§ 1026.35(b)(2)(v)).

## 4.8 Why did the Bureau exempt certain loans by certain creditors operating in a rural or underserved area from the TILA HPML Escrow Rule? (§ 1026.35(b)(2)(iv))

The Bureau believes the small creditors exemption mitigates risk to consumers while ensuring the flow of credit to areas served by creditors that may find it too difficult or expensive to maintain escrows. In 2018, Congress passed the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA), which instructed the Bureau to implement the insured institution exemption, which also requires that a creditor operate in a rural or underserved area.

## **4.9 What does the rule say about escrowing for property insurance in common interest communities? (§ 1026.33(b)(1))**

You do not need to escrow homeowner's insurance premiums for loans secured by properties in condominiums, planned unit developments, or other common interest communities where the consumer must participate in a governing association that is required to purchase a master policy insuring all dwellings.

# 5. What definitions do I need to know?

## 5.1 What is a dwelling? (§ 1026.2(a)(19))

A dwelling is a residential structure that contains one to four units, whether or not that structure is attached to real property. Individual condominium units, cooperative units, mobile homes, and trailers used as residences are also dwellings.

## 5.2 What is a higher-priced mortgage loan (HPML)? (§ 1026.35(a)(1))

A mortgage loan is “**higher-priced**” if:

- It is a first-lien mortgage with an annual percentage rate (APR) that exceeds the Average Prime Offer Rate (APOR) by 1.5 percentage points or more.
- It is a first-lien mortgage with an APR that exceeds the APOR by 2.5 percentage points or more, if the principal amount of the mortgage exceeds Freddie Mac’s limit for mortgages it will purchase (“jumbo loan”) in effect as of the date the interest rate for the transaction is set.

For example, if the APOR is 5 percent, a first-lien mortgage is higher-priced if it has an APR of 6.5 percent or more and is not a jumbo loan.

The APOR is published at <http://www.ffcic.gov/ratespread>.

When comparing the transaction’s APR to APOR, use the rate in effect on the last date you set (or lock) the interest rate before consummation.

## **5.3 What is an insured credit union? (§ 1026.35(a)(3))**

An insured credit union has the meaning given in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

## **5.4 What is an insured depository institution? (§ 1026.35(a)(4))**

An insured depository institution has the meaning given in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

# **6. What else do I need to know?**

## **6.1 Can I structure a closed-end loan as open-end credit to evade this rule? (§ 1026.35(d))**

No. You are prohibited from structuring a closed-end loan as open-end credit to evade this rule.

You may wish to consider the definition of open-end credit as you check compliance with this provision. It includes three characteristics:

1. You expect the consumer to take repeated draws.
2. You may charge the consumer a finance charge or charges on the unpaid principal balance.
3. The amount of credit available to the consumer (up to any limit you set) changes as the consumer takes and repays advances.

## **6.2 Can consumers cancel their escrow accounts before the deadlines set in the rule? (§ 1026.35(b)(3))**

If you are required to set up an escrow account by this rule, you cannot cancel the account prior to the fifth year after consummation unless the underlying mortgage has been terminated. A consumer may request cancellation five years after consummation. Under this circumstance, you may cancel the escrow account only if two conditions are met:

1. The unpaid principal balance is less than 80 percent of the original value of the property securing the underlying debt obligation.

2. The consumer currently is neither delinquent nor in default on the debt.

# **7. Practical implementation and compliance considerations**

You may want to consult with legal counsel or your compliance officer to understand your obligations under the rule and to plan for compliance with the rule's requirements. In general, since creditors were already complying with the rule for a larger set of transactions for a shorter period of time, the Bureau anticipates that to comply with this rule, most creditors will generally have to make only modest changes to their servicing systems and processes, internal controls, subservicer contracts, or other aspects of their business operations.

How you comply with the rule may depend upon your business model. When mapping out your compliance plan, you should consider practical implementation issues in addition to understanding your obligations under the rule. Your implementation and compliance plan may include:

## **7.1.1 Identifying affected products, departments, and staff**

Your organization may offer some, or all, of the loan products discussed in the TILA HPML Escrow Rule. You may find it useful to identify all affected products, departments, and staff.

## **7.1.2 Identifying the business-process, operational, and technology changes that will be necessary for compliance**

Fully understanding the changes required may involve a review of your existing business processes and recordkeeping regimes, as well as the hardware and software that you, your agents, or other business partners use.

The TILA HPML Escrow Rule's requirements may affect a number of parts of your business systems and processes. For example, the servicing department will need to calculate termination dates for escrow accounts for higher-priced mortgage loans covered by the rule. Your organization may also seek to evaluate ways to transition out of escrow for such loans for applications received on or after 120 days after the January 2021 Final Rule is published in

the *Federal Register* (expected in February 2021), so that your organization can meet that part of the test for the HPML exemptions (if you otherwise qualify for one of the exemptions).

The forms and processes you use to communicate internally and externally may be affected by the need to verify whether your applicants live in communities that purchase master insurance policies. You will also want to adjust your systems and processes so they no longer escrow for insurance premiums for loans secured by dwellings in common interest communities where dwellings owners must participate in a governing association that is required to maintain a master property insurance policy insuring all dwellings, to the extent that those premiums were being escrowed to comply with the Federal Reserve Board's 2008 Final Rule implementing changes to Regulation Z pursuant to authority granted under the Home Ownership and Equity Protection Act.

### **7.1.3 Identifying critical impacts on key service providers or business partners**

Software providers, or other vendors and business partners, may offer compliance solutions that can assist with making the changes. These key partners will depend on your business model. For example, banks and credit unions may find it helpful to talk to their correspondent banks, secondary market partners, and technology vendors. In some cases, you may find it useful to negotiate revised or new contracts with these parties, or seek a different set of services.

If you seek the assistance of vendors or business partners, make sure you understand the extent of the assistance they provide. For example, if you use subservicers, are they prepared to follow these escrow requirements, if applicable?

The CFPB expects supervised banks and nonbanks to have an effective process for managing the risks of service provider relationships. For more information on this, view [CFPB Bulletin 2012-03 Service Providers](#).

### **7.1.4 Identifying training needs**

Consider what training will be necessary for your loan administration, processing, compliance, and quality-control staff as well as anyone else involved in servicing. Training may also be required for other individuals you employ.

## 7.1.5 Considering other Title XIV rules

The TILA HPML Escrow Rule is just one component of the Bureau's Dodd-Frank Act Title XIV rulemakings.

Other Title XIV rules include:

- Ability-to-Repay and Qualified Mortgage Rule
- 2013 HOEPA Rule
- ECOA Valuations Rule
- TILA Higher-Priced Mortgage Loans Appraisal Rule
- Loan Originator Rule
- RESPA & TILA Mortgage Servicing Rules

Each of these rules affects aspects of the mortgage industry and its regulation. Many of these rules intersect with one or more of the others. Therefore, the compliance considerations for these rules may overlap in your organization. You will find copies of these rules online at <http://www.consumerfinance.gov/regulations>.

# 8. Other resources

## 8.1 Where can I find a copy of the TILA HPML Escrow Rule and get more information about it?

You will find the TILA HPML Escrow Rule and other resources that help you understand, implement, and comply with the rule on the Bureau's website at

<https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/higher-priced-mortgage-loan-escrow-rule/>.

In addition, that web page also contains:

- The preamble of the Bureau's January 2013 Final Rule, which explains why the Bureau issued the rule; the legal authority and reasoning behind the rule; responses to comments; and analysis of the benefits, costs, and impacts of the rule.
- Official Interpretations of the rule.
- Links to final rule amendments, including the [May 2013 Final Rule](#), [the October 2013 Final Rule](#), [the September 2015 Final Rule](#), [the March 2016 Interim Final Rule](#), and [the January 2021 Final Rule](#).
- Other implementation support materials including videos, reference charts, and proposed rule amendments.
- Useful resources related to regulatory implementation are also available at <http://www.consumerfinance.gov/regulatory-implementation/>.

For email updates about Bureau regulations and when additional implementation resources become available, please submit your email address within the "Email updates about mortgage rule implementation" box [here](#).