



1700 G Street NW, Washington, DC 20552

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Executive Summary of the January 2021 Amendments to the TILA HPML Escrow Rule¹

On January 19, 2021, the Consumer Financial Protection Bureau (Bureau) issued a final rule (January 2021 Final Rule) amending the Bureau’s 2013 higher-priced mortgage loan escrow rule (HPML Escrow Rule) to exempt certain insured depository institutions and insured credit unions from the requirement to establish escrow accounts for certain higher-priced mortgage loans, as required by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).² The January 2021 Final Rule is available on the Bureau’s website at <https://www.consumerfinance.gov/rules-policy/final-rules/tila-higher-priced-mortgage-loan-escrow-rule/>

Background

The HPML Escrow Rule requires that creditors establish an escrow account for certain first-lien higher-priced mortgage loans (HPMLs). HPML is defined in Regulation Z, 12 CFR 1026.35(a)(1), and generally means a closed-end consumer credit transaction secured by the consumer’s principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by (1) 1.5 percentage points or more for a first-lien transaction at or below the Freddie Mac

¹ This document is a Compliance Aid issued by the Consumer Financial Protection Bureau (Bureau). The Bureau published a Policy Statement on Compliance Aids [available at: <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statementcompliance-aids/>], that explains the Bureau’s approach to Compliance Aids.

² Pub. L. 115–174, 132 Stat. 1296 (2018).

conforming loan limit; (2) 2.5 percentage points or more for a first-lien transaction above the Freddie Mac conforming loan limit; or (3) 3.5 percentage points or more for a subordinate-lien transaction.

Under the 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.

The HPML Escrow Rule contains an exemption for small creditors operating in a rural or underserved area that meet certain requirements. 12 CFR 1026.35(b)(2)(iii). For more information on these requirements, see HPML Small Entity Compliance Guide at <https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/higher-priced-mortgage-loan-escrow-rule/>.

New Final Rule Exemption for Certain Insured Institutions

The January 2021 Final Rule adds 12 CFR § 1026.35(b)(2)(vi) to implements EGRRCPA’s statutory directive, which required the Bureau to issue regulations to add a new exemption from the HPML Escrow Rule that exempts transactions by certain insured depository institutions and insured credit unions. Under the final rule, 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:

- (1) 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, the insured depository institution or insured credit union had assets of \$10,000,000,000 or less, adjusted annually for inflation;
- (2) 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, the creditor and its affiliates together extended no more than 1,000 covered transactions secured by a first lien on a principal dwelling;
- (3) the 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;³

(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 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 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 (the date of publication of the final rule in the *Federal Register*, expected in February 2021).

The January 2021 Final Rule 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).

Other Amendments

The January 2021 Final Rule also makes technical corrections and removes obsolete text from the Official Interpretations to Regulation Z (commentary). This obsolete text includes language related to an interpretive rule issued on June 23, 2020,⁴ which explained that certain parts of Regulation Z became obsolete because they referred to HMDA data points replaced or otherwise modified by the 2015 HMDA Final Rule.⁵ The June 23, 2020, interpretive rule can be accessed

³ For a list of rural or underserved areas, see <https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/rural-and-underserved-counties-list/>.

⁴ 85 FR 38299 (June 26, 2020).

⁵ 80 FR 66127 (Oct. 28, 2015).

at <https://www.consumerfinance.gov/rules-policy/final-rules/truth-lending-regulation-z-underserved-areas-home-mortgage-disclosure-act-data/>.

Effective date

The January 2021 Final Rule is effective on the date of its publication in the *Federal Register*. As noted above, the Bureau is giving institutions affected by the rule that have established HPML escrow accounts on or after April 1, 2010, 120 days after the effective date (*i.e.*, publication in the *Federal Register*) of the January 2021 Final Rule to cease providing escrows for HPMLs in order to take advantage of the new exemption.