ICBA Summary of the TILA Higher-Priced Mortgage Loan (HPML) Escrow Rule

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I. BACKGROUND

The Consumer Financial Protection Bureau (CFPB) issued a final rule implementing the Truth in Lending Act (TILA) Higher-Priced Mortgage Loan (HPML) Escrow requirements on January 10, 2013 with subsequent amendments to the rule issued May 16, 2013, July 10, 2013, September 13, 2013, September 21, 2015, and March 22, 2016. The HPML Escrow Rule became effective June 1, 2013. Generally, under the rule, when a creditor originates a HPML secured by a first lien on a principal dwelling, the creditor must establish and maintain a mandatory escrow account until one of the following occurs: 1) the underlying debt obligation is terminated or 2) after five years elapses from the date the loan was consumated, the consumer requests that the escrow account be canceled subject to certain conditions.

Applicability to Community Banks
The TILA Higher-Priced Mortgage Loan (HPML) Escrow Rule applies to community banks. However, community banks that are small creditors (less than $2 billion in assets as adjusted annually and originating fewer than 2,000 loans per year, excluding portfolio loans) that extended a covered transaction secured by a first-lien on a property located in a rural or underserved area in the previous calendar year can rely on the exemption to the escrow requirement for portfolio loans if the small creditor does not maintain an escrow account for real estate or dwelling-secured consumer credit that it or an affiliate services, unless the escrow was established as an accommodation to a distressed consumer or for a first-lien HPML between April 1, 2010 and May 1, 2016.

Link to the CFPB's HPML Escrow Rule Resource Page -
http://www.consumerfinance.gov/regulations/escrow-requirements-under-the-truth-in-lending-act-regulation-z/

II. SCOPE

The HPML Escrow Rule generally applies first-lien HPMLs secured by a consumer's principal dwelling. A mortgage loan is considered an HPML if the APR exceeds the average prime offer rate (APOR) by 1.5 percent or by more than 2.5 percent for jumbo loans.[1]

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

- Transactions secured by shares in a cooperative

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[1] A loan is a jumbo loan when the maximum balance exceeds the limit in effect as of the date the transaction's rate is set for the maximum principal obligation eligible for purchase by Freddie Mac.

- Transactions to finance the initial construction of a dwelling
- Temporary or "bridge" transactions with a term of 12 months or less
- Reverse mortgages
- Transactions secured by subordinate liens
- Open-end credit (HELOCs)
- Insurance premiums the consumer purchases that are not required by the creditor

Creditors also 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.

III. SPECIAL EXCEPTIONS FOR SMALL CREDITORS

The HPML Escrow Rule creates an exemption from the escrow requirements for small creditors that operate in rural or underserved areas. To be eligible for the exemption, a creditor must:

- Have made at least one covered mortgage loan[2] in areas that are considered rural[3] or underserved[4] in the previous calendar year or for applications received before April 1 of a calendar year, in either of the two prior calendar years.
- Have an asset size less than $2 billion (adjusted annually)[5];
- Together with its affiliates, have originated 2,000 or fewer first lien mortgage loans during the proceeding calendar year, not including any loans originated and held in portfolio; AND
- Together with its affiliates, not escrow for any mortgage it or its affiliates currently services other than:
  - Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010 and before May 1, 2016; or
  - Escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure. Distressed consumers are those working with the creditor to attempt to bring the loan into a current status through a modification, deferral, or other accommodation to the consumer.

A creditor that establishes escrow accounts after consummation as a regular business practice, regardless of whether consumers are in distress, does not qualify for the exemption.

***Note:* Creditors that satisfy the exemption requirements need not establish escrow accounts for mortgages intended at consummation to be held in portfolio, but must establish accounts at consummation for mortgages that are subject to a forward commitment to be purchased by an investor that does not itself qualify for the exemption.**

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[2] A "covered mortgage loan" is generally a consumer credit transaction that is secured by a first-lien on a dwelling, other than a transaction exempt from the Ability to Repay Rule under 12 CFR 1026.43(a).
[3] Rural is defined as any census block that is not in an urban area as defined by the U.S. Census Bureau.
[4] Underserved is defined as a county with no more than two creditors that extend covered mortgage transactions secured by a first lien five or more times in that county during a calendar year.
[5] For 2017, the small creditor asset threshold is $2.069 billion.

IV. The Escrow Period

A creditor must maintain an escrow account for first-lien mortgages covered by the HPML Escrow Rule until one of the following occurs:

1. The underlying mortgage obligation is terminated; or
2. Once the five-year mandatory period has elapsed, the consumer requests the escrow account be cancelled. However, if you are cancelling 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 original mortgage debt obligation, and the consumer must not be currently delinquent or in default on the underlying obligation.