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Regulation Z New HPML Escrow Exemption

The Bureau of Consumer Financial Protection (Bureau) issued a final rule on January 19, 2021, to amend their Regulation Z rule impacting certain provisions for Higher Priced Mortgage Loans (HPMLs). The rule was issued to implement a provision contained in the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).

Updated Alert Date: February 18, 2021
Status: Effective February 17, 2021, with a 120 day transition period
Links: [Final Rule - Published 02/17/2021](#)

When the EGRRCPA was signed into law in 2018, it contained a title I, section 108 mandate to exempt from certain escrow requirements a residential mortgage loan held by a depository institution or credit union that did not exceed certain asset or mortgage thresholds and that met other specific requirements. On January 19th, the Bureau issued a final rule to amend Regulation Z to fulfill this mandate.

Regulation Z defines a HPML, which refers to a closed-end consumer credit transaction secured by a consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set, by certain limits, which is further impacted by whether a transaction is secured by a first-lien or subordinate-lien. The prior HPML escrow provisions already contained various exemptions, including one for small creditors operating in a rural or underserved area that meet certain requirements.

What is the New Exemption from the 2021 HPML Escrow Rule?

When effective, Regulation Z will be amended to reflect a new exemption from the HPML escrow rule. Under this new rule, the escrow requirement will not apply to any loan made by an insured depository institution or insured credit union that is secured by a first lien on the consumer's principal dwelling, provided certain criteria are met, which generally includes:

- the depository institution or credit union having assets of \$10 billion or less as of the preceding December 31st (adjusted annually for inflation);
- the creditor and its affiliates together extended no more than 1,000 covered transactions secured by a first lien on a principal dwelling during the preceding calendar year;
- the institution extended at least one covered transaction in the preceding year that was secured by a first lien on a property located in a rural or underserved area;
- 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
- the institution and its affiliates do not maintain an escrow for HPMLs, unless: a) the escrow was established after consummation as an accommodation to distressed consumers in avoiding default or foreclosure, or b) the escrow was established at a time when the institution may have been required by regulation to do so (**on or after April 1, 2010, and before June 17, 2021**).

What Should You Know About the Effective Date?

The Bureau issued this final rule on January 19, 2021, and it became effective when it was published in the Federal Register on February 17, 2021. 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 of the January 2021 final rule, to cease providing escrows for HPMLs in order to take advantage of the new exemption. The 120 transition period is reflected in the criteria reflected above, within the last bullet.

Recommendations for Next Steps

When Effective or by June 17, 2021:

1. Review final rule to determine impact on your institution.
2. As applicable, adjust policy and procedures to support the new exemption.
3. Train applicable staff on new policy and procedures.