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Certain Financial Institutions to be Exempt from the Higher-Priced Mortgage Loan Escrow Requirement

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Insured depository institutions and insured credit unions under $10 billion in assets that meet certain requirements no longer will be required to maintain property tax and insurance escrow accounts for certain higher-priced mortgage loans pursuant to a new exemption adopted by the Consumer Financial Protection Bureau ("CFPB"). The new exemption will be effective when the amendment is published in the Federal Register (expected to be in February 2021).

Background

The CFPB's 2013 higher-priced mortgage loan escrow rule ("HPML Escrow Rule") under Regulation Z, the regulation implementing the Truth-in-Lending Act ("TILA"), requires creditors to maintain escrow accounts to pay property taxes, homeowner's insurance premiums and other mortgage-related insurance charges required by creditors for certain higher-priced mortgage loans secured by a first lien on a principal dwelling[1], subject to certain exclusions[2].

The amendment to Regulation Z was adopted pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA"). Section 108 of the EGRRCPA amended TILA to require the CFPB to exempt certain loans made by certain insured institutions from the HPML Escrow Rule. The CFPB has now amended Regulation Z to add this new exemption.

New Exemption for Certain Insured Financial Institutions

The new exemption provides that insured depository institutions and insured credit unions do not need to establish a property tax and insurance escrow account for a transaction secured by a first lien on the principal dwelling of a consumer if, at the time of consummation, all of the following conditions are met:

1. The insured depository institution or insured credit union had assets of $10 billion or less as of the preceding December 31st (or, if the application for the transaction was received before April 1st of the current calendar year, the creditor's assets do not exceed $10 billion on December 31st of either of the two preceding calendar years);

2. The creditor and its affiliates together extended no more than 1,000 consumer loans secured by first liens on a principal dwelling during the preceding calendar year (or, if the application for the transaction was received before April 1st of the current calendar year, during either of the two preceding calendar years);
3. The creditor extended at least one consumer credit transaction secured by a first lien on a dwelling located in a rural or underserved area[3] during the preceding calendar year (or, if the application for the transaction was received before April 1st of the current calendar year, during either of the two preceding calendar years);
4. An escrow account is not required under the provision of Regulation Z which requires an escrow account to be established for a first-lien HPML that was originated under a forward commitment for sale[4]; and
5. The creditor and its affiliates do not maintain an escrow account for consumer loans secured by real property or a dwelling, except for:

- those established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure, or
- those established for HPMLs at a time when the institution may have been required to do so, which would have occurred for an HPML escrow account on or after April 1st, 2010, to 120 days from the effective date of this new amendment.

More Information

The CFPB's amendment to the HPML Escrow Rule is available here. If you have any questions regarding the amendment or mortgage loan requirements in general, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154, or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

Footnotes

[1] A higher-priced mortgage loan 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 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.

[2] The escrow requirement does not apply to 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); or insurance premiums the consumer purchases that the creditor does not require. Additionally, small creditors operating in a rural or underserved area that meet certain requirements are exempt from this rule.

[3] An area is "rural" during a calendar year if it is a county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area; or a census block that is not in an urban area.

An area is “underserved” during a calendar year if, it is a county in which no more than two creditors extended consumer transactions secured by first liens on properties in the county five or more times.

A property shall be deemed to be in an area that is rural or underserved in a particular calendar year if the property is: (1) located in a county that appears on the lists published by the CFPB of counties that are rural or underserved for that calendar year, (2) designated as rural or underserved for that calendar year by any automated tool that the CFPB provides on its public Web site, or (3) not designated as located in an urban area. 12 CFR § 1026.35(b)(2)(iv)(A).

[4] A first-lien higher-priced mortgage loan that will be acquired by a purchaser pursuant to a forward commitment is subject to the requirement to establish an escrow account under Regulation Z Section 1026.35(b)(1) unless the loan is otherwise exempt, or the purchaser is also eligible for either the small creditor or the insured institution exemption.

Practices

- Banking and Financial Services

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