CFPB Updates Regulation C and Regulation Z Asset-Size Exemption Thresholds for 2019

January 22, 2019

The Consumer Financial Protection Bureau ("CFPB") has updated two important inflation-adjusted asset thresholds: one is for determining whether the data collection and reporting obligations under the Home Mortgage Disclosure Act ("HMDA") and Regulation C apply, and the other is for determining whether a lender is exempt from the escrow requirements and prohibition on balloon payments for high-cost mortgages under the Truth in Lending Act ("TILA") and Regulation Z. These updated amounts are generally effective January 1, 2019.

I. Asset-Size Exemption Threshold Adjustment under HMDA and Regulation C

HMDA and Regulation C require covered financial institutions to collect, report and disclose data on mortgage loans. In order to be subject to these requirements, a financial institution must have a certain level of assets and meet certain other requirements. A financial institution with assets below the asset-size threshold is exempt from the requirements of HMDA and Regulation C.

As part of the asset-size test, the definition of "financial institution" pursuant to Regulation C provides that the CFPB will adjust the asset threshold based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W") for each 12-month period ending in November, rounded to the nearest $1 million. For 2018, the threshold was $45 million. Based on an increase in the CPI-W, the exemption asset-size threshold for HMDA and Regulation C has increased to $46 million for 2019.

As result of this increase, banks, savings associations and credit unions with assets of $46 million or less as of December 31, 2018, are exempt from collecting data under HMDA in 2019.

II. Escrow and Qualified Mortgage Asset-Size Exemption Change under TILA and Regulation Z

In January 2013, the CFPB issued a final rule requiring covered mortgage lenders to consider a consumer's ability to repay a home mortgage loan before making the loan and to establish and maintain escrow accounts for higher-priced mortgage loans[1] secured by a first lien on a principal dwelling.

A financial institution with assets below the asset-size threshold is not subject to the escrow requirements. The asset-size threshold is adjusted annually based on the average of each year's CPI-W.

Based on an increase in the CPI-W, the asset-size exemption threshold for the escrow requirement has increased from $2.112 billion to $2.167 billion for 2019. Accordingly, creditors with assets of less than $2.167 billion (including assets of certain affiliates) as of December 31, 2018, are exempt, if other requirements[2] of Regulation Z also are met, from having to establish escrow accounts for higher-priced mortgage loans in 2019 and any loans consummated in 2020 with applications received before April 1, 2020.

The adjustment to the escrow account asset-size exemption threshold will also increase a similar threshold for small-creditor portfolio and balloon-payment qualified mortgages. Balloon-payment qualified mortgages that satisfy all applicable criteria, including being made by creditors that have (together with certain affiliates) total assets below the threshold, are also exempt from the prohibition on balloon payments for high-cost mortgages.[3]

III. Further Information

For detailed information about the final rule amending Regulation C issued by the CFPB, please see here. The final rule amending Regulation Z issued by the CFPB can be found here.

If you have any questions regarding the updated thresholds for 2019 or Regulation C or Regulation Z in general, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenanddykman.com, Elizabeth A. Murphy at (516) 296-9154 or via email at emurphy@cullenanddykman.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenanddykman.com.

[1] "Higher-priced mortgage loan" means a closed-end consumer credit transaction secured by the 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 1.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;
- By 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or
- By 3.5 or more percentage points for loans secured by a subordinate lien. Please see Section 1026.35(a)(1) of Regulation Z.

[2] Other requirements include: 1) secured by a property located in an area that is either “rural” or “underserved” area; and 2) extended no more than 2000 covered transactions secured by first liens that were sold, assigned or transferred to another person during applicable period. For detailed requirements, please see Regulation Z section 1026.36(b)(2)(iii).

[3] A high-cost mortgage is any consumer credit transaction that is secured by the consumer's principal dwelling unless otherwise exempted and in which:

- The annual percentage rate applicable to the transaction will exceed the average prime offer rate for a comparable transaction by more than:
  - 5 percentage points for a first-lien transaction, other than as transaction listed below as item 2);
  - 5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than $50,000; or
  - 5 percentage points for a subordinate-lien transaction; or

- The transaction's total points and fees will exceed (effective January 1, 2019):
  - 5 percent of the total loan amount for a transaction with a loan amount of $21,549 or more; or
  - The lesser of 8 percent of the total loan amount or $1,077 for a transaction with a loan amount of less than $21,549; or

- Under the terms of the loan contract or open-end credit agreement, the creditor can charge a prepayment penalty, more than 36 months after consummation or account opening, or prepayment penalties that can exceed, in total, more than 2 percent of the amount prepaid.

Please see Section 1026.32(a)(1) of Regulation Z.

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