



WASHINGTON, D.C.

99 M Street SE  
Suite 300  
Washington, D.C. 20003-3799

Phone: 202-638-5777

Fax: 202-638-7734

September 21, 2020

Office of Regulations  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Re: Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z); Docket No. CFPB-2020-0023/RIN 3170-AA83

Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members. On behalf of our members, we write to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposed rule amending Regulation Z (the Rule) to, among other things, exempt certain insured depository institutions and insured credit unions from the requirement to establish escrow accounts for higher-priced mortgage loans (HPMLs).<sup>1</sup>

## Background

The Truth in Lending Act (TILA) is designed "to assure a meaningful disclosure of credit terms" to allow consumers to "compare more readily the various credit terms available . . . and avoid the uninformed use of credit."<sup>2</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") amended TILA and required the establishment of escrow accounts to assure payment of property taxes and insurance for certain higher-priced loans deemed at the time to be "sub-prime."<sup>3</sup> The definition of an HPML has been codified, in relevant part, by Regulation Z as 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 an amount equal to 1.5% or more for conforming, non-jumbo loans (<\$510,400 in 2020 for most of the U.S.), 2.5% or more for jumbo loans (>\$510,400 in 2020 for most of the U.S.) or 3.5% or more for subordinate lien loans.<sup>4</sup>

Beginning in 2013, pursuant to authority provided under Dodd-Frank, the Bureau established certain exemptions to these escrow requirements for creditors operating in rural or underserved areas, provided that they (a) originated a limited number of otherwise covered first-lien transactions in the prior calendar year, (b) have under \$2 billion assets, and (c) do not require and maintain escrow accounts for other serviced mortgage obligations (with some exclusions, including escrows for most HPMLs originated prior to May

<sup>1</sup> Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z), 85 Fed. Reg. 44228 (July 22, 2020).

<sup>2</sup> 12 U.S.C. 1601(a).

<sup>3</sup> Public Law 11-203, 124 Stat. 1376 (2010); Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z), 85 Fed. Reg. 44228 at 44229.

<sup>4</sup> 12 CFR § 1026.35(a)(1).

2016).<sup>5</sup> The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA) further amended TILA by requiring the Bureau to create a new rule exempting certain smaller insured depository institutions and insured credit unions from the HPML escrow requirement.<sup>6</sup> This proposed rule is designed to implement those changes required by the EGRRCPA.<sup>7</sup>

The proposed new regulatory exemption applies to any HPML made by an insured depository institution or insured credit union when the loan is secured by a first lien on a borrower's principal dwelling and the covered entity: (a) has assets of \$10 billion or less; (b) originated, together with its affiliates, 1,000 or fewer first lien mortgage loans for principal dwellings during the preceding calendar year; and (c) meets certain other escrow exemption criteria including requirements to: (i) extend credit in a rural or underserved area, (ii) exclude any loans from the exemption that have forward commitments to transfer or sell the loan to a purchaser that is ineligible for the exemption, and (iii) not require or maintain escrow accounts for other mortgage products.<sup>8</sup>

In sum, the Bureau has proposed amendments for the HPML escrow requirement to implement a statutorily required exemption and make concomitant changes to ancillary provisions, including definitions and explanatory comments.

## General Comments

Credit unions have historically not engaged in the high-priced or sub-prime lending that led to the TILA amendments requiring escrows for HPMLs. As not-for-profit financial cooperatives, credit unions have a specified mission “to meet the credit and savings needs of consumers, especially persons of modest means,”<sup>9</sup> and pursuant to that mission they proudly provide members with affordable, safe and sustainable mortgages. In 2019, credit unions originated almost \$180 billion in first-lien mortgages, and have been active participants in refinancing member mortgages in 2020.<sup>10</sup> Despite the fact that most credit union mortgage lending is priced well below the Bureau's proposed thresholds for obtaining General Qualified Mortgage (QM) status and protections, we welcome the codification of escrow exemptions for smaller credit unions that will gain the ability to originate a few HPMLs that meet particular member needs.<sup>11</sup>

We believe that this exemption represents a positive step forward to ensure that small, leanly staffed credit unions are not burdened with costly regulatory obligations that could prevent them from offering mortgage products that are right for a members' financial situation. We note that in 2019, 956 of the 1,620 HMDA reporting credit unions (~59%) had \$10 billion or less in assets, originated 1,000 or fewer first lien mortgage loans and provided credit in Bureau-defined rural and/or underserved areas.<sup>12</sup> As a result, there are a number of credit unions could potentially benefit from these amendments, even if only a few decide to pursue HPML lending.

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<sup>5</sup> Id. at 1026.35(b)(2)(iii). The Rule also exempts other loans, including transactions secured by shares in a cooperative, construction finance loans, temporary or bridge loans, reverse mortgages and open-ended credit loans such as home equity lines of credit (HELOC).

<sup>6</sup> See Public Law 115-174, 132 Stat. 1304-05 (2018), codified at 15 U.S.C. 1639d(c)(2).

<sup>7</sup> Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z), 85 Fed. Reg. 44228 at 44230.

<sup>8</sup> Id. at 44229.

<sup>9</sup> Credit Union Membership Access Act, Pub. L. No. 105-219, § 2(4), 112 Stat. 913, 914 (1998).

<sup>10</sup> Sources: National Credit Union Administration (NCUA) credit union call report data; CUNA analysis.

<sup>11</sup> See CUNA September 8, 2020 Comment Letter on Qualified Mortgage (QM) Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition, available at [https://www.cuna.org/uploadedFiles/Advocacy/Actions/Comment\\_Calls\\_Letters\\_and\\_Testimonies/2020/Comment\\_Letters/FINAL%20-%20CUNA%20Comments%20on%20General%20QM%20Definition.pdf](https://www.cuna.org/uploadedFiles/Advocacy/Actions/Comment_Calls_Letters_and_Testimonies/2020/Comment_Letters/FINAL%20-%20CUNA%20Comments%20on%20General%20QM%20Definition.pdf).

<sup>12</sup> Sources: National Credit Union Administration (NCUA) credit union call report data; CUNA analysis.

While CUNA generally supports the proposed amendments, we believe the Bureau should consider the following specific changes:

### **Explore Administrative Flexibilities to Update Spreads for First Lien and Subordinate Lien HPMLs**

Given the strong track record of insured credit unions, and consistent with our comments on the Bureau's proposed definition of a General QM, we encourage the CFPB to consider what flexibilities it has to define conforming, non-jumbo first lien HPMLs as loans with spreads that are two percent (2%) over the relevant APOR or higher for certain lenders.<sup>13</sup> A 2% threshold would bring welcome consistency between HPMLs and the CUNA-recommended QM safe harbor threshold. Use of the same price-based distinctions across Regulation Z simplifies and lowers the regulatory burden on credit unions by eliminating the cost of tracking disparate thresholds for the same mortgage products. In addition, in the current environment of historically low-interest rates, first-lien mortgage loans with APRs that are 150 basis points over APOR are still relatively low-interest mortgages and should not be equated with the sub-prime products that led to the initial adoption of this regulatory provision. Given that the average spread for HMDA-reporting credit unions is currently only 0.299%,<sup>14</sup> any HPML requirements would only apply to particular instances where a mortgage product with a higher APR is required to meet a member's needs while still being affordable.

Similarly, a slightly higher spread for credit union-originated subordinate lien loans is warranted as well. When the HPML rule went into effect, rather than face the new regulatory requirements, some credit unions stopped offering closed-end equity loans to members with lower credit scores because they are priced based on risk and may be considered HPMLs. Accordingly, a fully amortizing, closed-end subordinate lien product may not be available to members with credit scores below 650, even if it is a less risky product for them compared to a HELOC. Although the proposed exemption eliminates the escrow requirements for some eligible insured credit unions, a higher spread for subordinate lien HPMLs would help make appropriate closed-end mortgage products more available for borrowers with lower credit scores.

### **Extend the "Established HPML Escrow" Exclusion to 120 Days After Publication of the Final Rule**

Finally, we note that the Bureau wisely recognized that insured credit unions and other lenders covered by this rule should not be penalized for having "established escrows for HPMLs after May 1, 2016, in compliance with the existing escrow rule's requirements."<sup>15</sup> With these amendments, the Bureau would replace May 1, 2016 with a new end date that is 90 days after the publication of this new rule. We welcome the foresight behind this change and request consideration of an end date 120 days after publication of this new rule, in order to provide additional time for smaller credit unions to study the impact of these changes and adapt their systems and processes if they decide to lend in accordance with the exemption.

### **Conclusion**

We commend the Bureau for this codification of the statutory exemption, and we look forward to working with you to ensure that credit union members continue to have access to a range of sustainable and affordable mortgage products. On behalf of America's credit unions and their more than 120 million members, thank you for your consideration.

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<sup>13</sup> See CUNA September 8, 2020 Comment Letter on Qualified Mortgage (QM) Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition, at 4-5, available at [https://www.cuna.org/uploadedFiles/Advocacy/Actions/Comment\\_Calls\\_Letters\\_and\\_Testimonies/2020/Comment\\_Letters/FINAL%20-%20CUNA%20Comments%20on%20General%20QM%20Definition.pdf](https://www.cuna.org/uploadedFiles/Advocacy/Actions/Comment_Calls_Letters_and_Testimonies/2020/Comment_Letters/FINAL%20-%20CUNA%20Comments%20on%20General%20QM%20Definition.pdf). See also,

<sup>14</sup> Source: CUNA Analysis of 2Q 2020 HMDA Data.

<sup>15</sup> Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z), 85 Fed. Reg. 44228 at 44231.

If you have questions or require additional information related to our feedback, please do not hesitate to contact me at (202) 235-3390 or [dsmith@cuna.coop](mailto:dsmith@cuna.coop).

Sincerely,

A handwritten signature in cursive script that reads "Damon Y. Smith".

Damon Y. Smith  
Senior Director of Advocacy & Counsel