ABA Staff Analysis: Rules for Higher-Price Mortgage Loans—
Mandatory Escrow for Jumbo Loans
76 Federal Register 11319
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Final Rule Issued February 23, 2011

On March 2, 2011, the Federal Reserve published in the Federal Register, the final rule and staff commentary to amend Regulation Z, which implements the Truth in Lending Act (TILA), in compliance with Section 1461 of the Dodd-Frank Act. The final rule amends section 226.35(b)(3) of TILA by providing a higher threshold for jumbo loans, for application of mandatory escrow accounts. The final rule makes a conforming amendment to 226.35(a)(1) and provides a new section 226.35(b)(3)(v).

Compliance

The final rule is effective on April 1, 2011 and is applicable only to those loans originated on or after that date.

Overview

The final rule revises section 226.35(b)(3), requiring a higher APR threshold for determining if jumbo loans secured by a first-lien mortgage are higher-priced mortgages for purposes of establishing a mandatory escrow account. The final rule does not apply to open-ended credit plans subject to section 226.5b or to financing for initial construction, temporary or bridge loans with a 12-month term or less, or reverse mortgages.

The Final Rule

Threshold Coverage for Jumbo Loans—Section 226.35(b)(3): The final rule requires mandatory escrow coverage when a jumbo loan is 2.5 percentage points in excess of the average prime offer rate, as of the date the transaction's rate is set, on loans secured by a first lien on a consumer’s principal dwelling. Jumbo loans are defined as loans exceeding the maximum allowable purchase amount by Freddie Mac and Fannie Mae. The higher threshold is applicable only as to the application of mandatory escrow. Other provisions of section 236.35, such as restrictions on pre-payment penalties and ability repay continue to be governed by the 1.5 percentage point threshold. If a jumbo loan is under the new 2.5 percent threshold, creditors may, at their option, elect to continue to use the existing 1.5 percentage point threshold for the imposition of escrow requirements.

Adjustments Pursuant to The Federal Home Loan Mortgage Act (FHLMCA) and other Federal Law:
The Board resolved the question of whether threshold amounts for purchase by Freddie Mac or Fannie Mae, would be limited to the sixth sentence of Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (FHLMCA), as provided in section 1461 of the Dodd-Frank Act, 129D (b)(3). The sixth sentence refers specifically to the base conforming limits (BCL). Subsequent sentences in paragraph 2 refer to methods used when making adjustments to the BCL and further define super conforming limits (SCL) when applicable. According to the Board, Section 305(a)(2) incorporates by reference other provisions of the section, and as such these provisions would be applied for purposes of mandatory escrow. The Board further determined that adjustments made to allowable purchase amounts by other federal law, would also apply, such as adjustments made to the maximum principal obligation under the Economic Stimulus Act.

ABA staff analysis does not provide, nor is it intended to substitute for, professional legal advice.
**Board Action on Other Dodd-Frank Escrow Provisions:**  The Board declined to address possible exemptions and other escrow requirements of Dodd-Frank, and deferred action beyond the jumbo threshold provisions to future rulemaking. In a proposed rule issued by the Board, also on March 2, 2011, the Board proposed limited escrow exemptions, new escrow disclosures, and the utilization of transaction coverage rate instead of the annual percentage rate as the metric for determining whether a transaction is a higher-priced mortgage. The ABA will provide a summary of the Board’s proposals in a separate communication.

Questions? Contact Rod Alba or Vincent Barnes for more information.