NAFCU Scope & Applicability – CFPB's New Mortgage Regulations

New Escrow Requirements for Higher-Priced Mortgage Loans
Effective Date: June 1, 2013

Escrow Requirement	Scope	Exemptions
Credit unions need to escrow for certain higher-priced mortgage loans (HPMLs). HPMLs are determined by comparing the APR to the APOR - [12 CFR 1026.35]().	The requirement applies to higher-priced mortgage loans that are <u>closed-end</u> consumer credit transactions secured by a <u>first lien</u> on a consumer's <u>principal dwelling</u>.	• Home equity lines of credit (HELOCs); • Loan secured by shares in a cooperative (co-op); • Loan to finance the initial construction of a dwelling; • Temporary or bridge loans with a term of 12 months or less; and • Reverse mortgages.

New Requirement: Cancellation of Escrows

The new requirements prevent a member from canceling their escrow account during the first five years (up from the current one year).

Additionally, credit unions cannot cancel a member's escrow account unless the "the unpaid principal balance is less than 80 percent of the original value of the property securing" the higher-priced mortgage loan; and the member is not delinquent or in default on the higher-priced mortgage loan.

Small Creditor Exemption – Four Part Test (Plus Wildcard) – Effective June 1, 2013

Overview – Credit unions can obtain an exemption *from the escrow requirement* for higher-priced mortgage loans if they meet a four-part test and do not have a forward commitment to sell their loans.

1) Operates Predominately in Rural <u>or</u> Underserved Areas – The first part of the test is whether a credit union – in the preceding year – originated more than 50% of its first lien mortgages in counties that are determined to be "rural" or "underserved" (the CFPB will post a listing on its website).

2) Total Annual Mortgage Originations – The second part of the test looks at the quantity of first lien mortgage loans the credit union originated in the preceding calendar year. Credit unions – combined with any CUSOs – that originated 500 or fewer first lien mortgage loans would meet this part of the test.

3) Asset Size Threshold – The third part of the test looks at the credit union's asset size at the end of the preceding calendar year. Only credit unions with less than $2 billion in assets would meet this part.

4) Do Not Currently Escrow for Mortgage Loans – The fourth part of the test is tricky. If a credit union (or its CUSO) regularly establishes escrow accounts for its mortgage loans, it would not qualify for this part of the test. However, there is an exception – for when a credit union (or its CUSO) only establishes escrow accounts for higher-priced mortgage loans due to the existing regulatory requirements (which became effective on April 1, 2010). Credit unions that only escrow for HPMLs as required under existing 12 CFR 1026.35 could meet this part of the test. Credit unions that escrow for all first lien mortgage loans (i.e., more than just HPMLs) would not meet this part of the test.

Wildcard – Forward Commitments – Even if a credit union meets all four parts of the small creditor exemption, it would still need to follow the escrow requirements for HPMLs *if* – at consummation – the credit union had an agreement in place to sell the mortgage to a non-exempt creditor (such as Fannie Mae or Freddie Mac). In other words, credit unions need to keep their HPMLs in their portfolio to qualify for the small creditor exemption. *Note*: The restriction is "at consummation." CUs could sell these HPMLs on the secondary market at a later date (i.e., in order to manage interest rate or concentration risks).