THE MORTGAGE COMPLIANCE MONITOR™
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Truth-in-Lending Change Applies to Jumbo Mortgages

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The Federal Reserve Board recently amended TILA to provide a separate, higher rate threshold for determining whether a "jumbo" loan is subject to the same escrow requirements as non-jumbo Higher Priced Mortgage Loans (HPMLs). Effective April 1, 2011, if a jumbo loan's APR exceeds the average prime offer rate (APOR) by 2.5 or more percentage points on the date the interest rate is set, then TILA requires the establishment of an escrow account for the payment of property taxes and any creditor-required premium for mortgage-related insurance, prior to consummation. For jumbo loans with an APR which does not exceed the APOR by 2.5 percentage points or more, this escrow requirement will no longer apply. This new rule implements a TILA amendment contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The current TILA rules governing HPMLs do not contain any special provisions for jumbo loans. Until this new provision takes effect, any loan secured by a consumer's principal dwelling is considered an HPML if the APR exceeds the average prime offer rate (APOR) for a comparable transaction on the date the interest rate is set by 1.5 or more percentage points for first-lien secured loans (3.5 or more percentage points for a subordinate lien).

For the purposes of implementing this special threshold, the new rule defines "jumbo loan" as a loan with an original principal balance exceeding the applicable Freddie Mac maximum principal obligation. In addition, the Board notes that any future FHFA adjustments to the general maximum principal obligation stated will be considered in determining whether a loan is a jumbo loan.

The Board also clarified that use of this higher threshold of 2.5 or more percentage points is limited to determining only whether the HPML escrow requirements apply to a jumbo loan transaction. The TILA section governing HPMLs also prohibits creditors from making a HPML based on the value of the consumer's collateral without regard to the consumer repayment ability as of consummation, and restricts creditor's ability to charge prepayment penalties. The special threshold for jumbo loans does not apply when determining whether either the repayment ability or prepayment penalty protections apply. For those considerations, the

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APR threshold remains 1.5 or more percentage points higher than the APOR on the date the rate is set.

In this new rule, the Board also states that Creditors are permitted to elect to continue to use the 1.5 percentage point threshold for whether "jumbo" loans will be subject to the escrow requirement subject to applicable state or local laws.

Mortgage lenders may obtain the index from the Federal Institutions Examination Council (FFIEC) which publishes the Average Prime Offer Rate (APOR) on behalf of the Federal Reserve Board. To determine whether or not the loan is considered a Higher-Priced Mortgage Loan, employees may go to the FFIEC website at http://www.ffiec.gov and select Rate Spread Calculator from the Consumer Compliance menu on the homepage. This link can be directly accessed as follows: http://www.ffiec.gov/ratespread/newcalc.aspx

The APOR tables may be accessed on the following links:

FIXED RATE:
http://www.ffiec.gov/ratespread/YieldTableFixed.CSV

ADJUSTABLE RATE:
http://www.ffiec.gov/ratespread/YieldTableAdjustable.CSV

Loan Officer Compensation Policy Guide

Dear Reader,

This month, every mortgage lender is under pressure to establish their new Loan Officer Compensation plans to comply with the Truth in Lending amendment effective April 1, 2011. Many secondary market investors are asking lenders to submit a written policy guide to ensure the lender has processes in place. The scope of the regulation covers both compensation and anti-steering provisions.

Bankers Advisory has written a comprehensive policy that explains the general principles for compliance, acceptable forms of compensation, pricing and third party charges. The policy also outlines the prohibition on steering, exceptions to the rule, and safe harbor applicability. We've also included supplementary material that may be incorporated into your Loan Officer Compensation Agreements. Please contact me directly to discuss policy manuals that meet your organization's specific needs.

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