



## Regulatory Update Bulletin

October 27, 2009

### Regulation Z (TILA) Section 35 – Higher-Priced Mortgage Loan

A **Higher-Priced Mortgage Loan (HPML)** is a consumer credit transaction secured by the consumer's dwelling with an APR 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 on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling.

"Average prime offer rate" means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. The Board of Governors of the Federal Reserve (Board) publishes average prime offer rates for a broad range of types of transactions, as well as the methodology used to derive these rates, in a table updated at least weekly.

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- Effective for Applications taken 10/1/2009 and after
  - Owner Occupied Primary Residence Only
  - Refinance and Assumptions that are new transactions
  - Excluded from the Regulation
    - Reverse Mortgages
    - HELOCs
    - Construction Loans (but not the end loan)
    - Bridge Loans
  - How is it determined?

Compare the Average Prime Offer Rate published in the Primary Mortgage Market Survey for the week of the date the loan was locked with the borrower:

    - 1<sup>st</sup> Liens – 1.5% allowable APR over the Fixed or Adjustable Yield Table
    - 2<sup>nd</sup> Liens – 3% allowable APR over the Fixed or Adjustable Yield Table
    - Term
      - Fixed Loan – term is not the amortization but the actual balloon term.
        - 30/30 – term would be a 30 year calculation.
        - 30/15 – term would be a 15 year calculation.
      - ARM Loan – term is not the amortization but the initial fixed rate (shown in years).
        - 3/1 ARM – term would be a 3 year calculation.
        - 5/1 ARM – Term would be a 5 year calculation.
  - If a loan is determined to be a **HPML**, the following restrictions apply:
    - 1) Escrows are required (Taxes, Hazard Insurance, Mortgage Insurance, Flood Insurance etc.)
    - 2) If a refinance of a loan that was opened within the past 12 months, it must meet the Net Tangible Benefit requirement.
    - 3) Repayment ability must be verified (effectively negates Streamline mortgages) which includes, but is not limited to:
      - Verifying income.
      - Verifying employment.
      - Verifying assets.
      - Current obligations.
      - Mortgage related obligations (Taxes, Homeowners Insurance, Condo Association Dues etc.)



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- 4) Borrowers repayment ability (Debt Ratio) must be calculated using:
  - The largest payment of principal and interest scheduled within 7 years subsequent to the disbursement date.
  - Plus all mortgage related obligations (Taxes, Hazard Insurance, Condo Association Dues etc.).
  - Plus all other monthly obligations (Revolving and Installment)
- Evasion of the HPML Regulation; Originators or Lenders may not elect to use a HELOC or other open-end credit transaction to elude the Section 35 regulation/restrictions.
- We must notify any investor that purchases a **HPML**:
  - “Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor.”

More details will follow. Please contact [correspondent@wintrustmortgage.com](mailto:correspondent@wintrustmortgage.com) for more information regarding this Regulatory Update.