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# CFPB Mortgage Rules

In January 2014, credit unions will be required to comply with the numerous CFPB mortgage rules. These FAQs are common questions received on the Compliance Helpline and are meant to provide credit unions with additional information and resources to assist with compliance. Credit unions can also find further information and resources on the mortgage rules on the MCUL's website, located here.

***Please Note: Michigan Credit Union League & Affiliates services are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. For specific legal advice, please consult with your credit union's attorney.***

**Q.1. There are so many different effective dates and some have changed. What are the current effective dates for these mortgage rules?**

A. Yes, there have been changes to the effective dates originally published for some of the mortgage rules. The new loan originator compensation rules are effective on January 1, 2014, with the exception of the prohibition on financing credit insurance premiums, which is still effective on January 10, 2014. This was a change from the original proposed effective date. Additionally, the CFPB made revisions to the small creditor exemption for the escrow requirements for high priced mortgage loans (HPMLs). To qualify for the exemption, credit unions need to extend more than 50% of their total covered transactions in rural or underserved counties, now for any of the previous **three** calendar years (as opposed to the "previous" calendar year as originally proposed). Based on these amendments, the CFPB revised the effective date for credit unions that would meet this small creditor exemption to January 1, 2014. The ability-to-repay (ATR)/qualified mortgage (QM) rules, the Equal Credit Opportunity Act (ECOA) valuations rule, the Home Ownership Equity Protection Act (HOEPA) high cost mortgage rules and the mortgage servicing rules are all effective on January 10, 2014. The high priced mortgage loan (HPML) appraisal rules are effective on January 18, 2014.

**Q. 2. Many of the small creditor and small servicer exemptions reference a credit union "affiliate". If we use a CUSO for mortgage lending and/or servicing, are they considered our affiliate and do we have to consider their loans/servicing in our calculations?**

A. According to the Bank Holding Act of 1956, an affiliate means any company that controls, is controlled by, or is under common control with another company. The Bank Holding Act goes on to further to say that "any company has control over a bank or over any company if: (a) the company directly or indirectly or acting through one or more other persons owns, or controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company; (b) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or (c) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercise a controlling influence over the management or policies of the bank or company." Based on this definition, the credit union needs to analyze their CUSO relationship. Credit unions are also encouraged to have their CUSO provide them with a legal opinion letter to support their decision.

**Q. 3. Is it true that under the new CFPB Ability to Repay and Qualified Mortgage rule that our credit union is no longer permitted to do balloon mortgages?**

A. No, the ATR rule does not ban any type of loan features or transaction types. In fact the ATR requirements require credit unions to make a reasonable, good faith determination before or when a mortgage loan is consummated that the member has a reasonable ability to repay that loan, whatever type of covered transaction it is. The rule requires credit unions to evaluate and document the eight ATR underwriting factors outlined in the rule. Again, those requirements are required for all covered transactions, excluding HELOCs (and a few other transactions), but would include any potential balloon loans. The second part of the rule talks about the qualified mortgage. Credit unions underwriting qualified mortgages (that are not higher priced) have a safe harbor, meaning they are conclusively presumed to comply with the ATR requirements. There are four types of QMs that credit unions may qualify for. If you are a small creditor, you have the ability to underwrite a balloon-payment QM. If you are not a small creditor, there is nothing prohibiting you from underwriting a balloon mortgage (provided you are complying with the ATR requirements), it just may not be considered a QM under the rule.

**Q.4. The rule prohibiting the financing of credit insurance premiums has changed recently. If our credit union adds the member's monthly premium to their mortgage loan, are we violating the rule?**

A. The final rule prohibits the financing, directly or indirectly, of any premium, but excludes premiums that are calculated and paid in full on a monthly basis. Therefore, the credit union can continue to add the premium to a member's outstanding loan balance as long as the premium is paid off in the same monthly period. However, credit unions need to be sure that interest is not charged on those premiums added to the loan. For example if the premium is posted on the 15$^{th}$ and the consumer's payment is posted on the 22$^{nd}$, no interest should accrue on the premium. Although the CFPB has indicated that they do not believe this to be "financing" under the rule, they have indicated in their commentary that such a practice raises potential consumer protection concerns.

**Q.5. Can a closed end home equity loan be considered a high priced mortgage loan?**

A. Yes, it can. However, it is important to consider the coverage for each rule before making that determination since lien placement is also a consideration. For example, under the **HPML Escrow Rule** a HPML is defined below:

- First lien mortgage with APR 1.5% or more over the APOR.
- First lien mortgage with an APR 2.5% or more over the APOR if the principal amount exceeds Freddie Mac's limit for mortgages it will purchase in effect as of the date the interest rate is set for the transaction ("jumbo loan").

This rule is applicable to **first lien closed end** loans secured by a member's **principal dwelling**.

Under the **HPML Appraisal Rule** a HPML is defined as:

- First lien with an APR that exceeds the APOR by 1.5% or more
- First lien jumbo loan with an APR that exceeds the APOR by 2.5% or more.
- Subordinate lien with an APR that exceeds the APOR by 3.5% or more

This rule applies to **first lien or subordinate lien closed end** loans secured by a member's **principal dwelling.**

In the **Ability to Repay / Qualified Mortgage** rule a HPML is defined as:

- A first lien mortgage with APR 1.5% or more over the APOR.
- Subordinate-lien mortgage with an APR 3.5% or more over the APOR.

This rule applies to almost all **closed end** loans secured by a **dwelling** (including any real property attached to the dwelling). This rule is not limited to loans on a primary residence.

**Q.6. How is a high priced mortgage loan different from a high cost mortgage?**

A. A high cost mortgage is used in the Home Ownership Equity Protection Act (HOEPA) Rule and requires credit unions to provide members specific disclosures, restricts certain loan features such as balloon payments and prepayment penalties and requires the member to receive written certification of homeownership counseling. So in addition to being located in separate rules from a HPML, the HOEPA rule applies to **purchase money mortgages, refinances, closed end and open end home equity loans** secured by a member's **principal dwelling**. Lastly, whereas the HPML coverage test applies to the transactions APR, the high cost mortgage loan coverage test is determined by the transaction's APR, the amount of points and fees paid in connection with the transaction or the prepayment penalties charged. A high cost mortgage loan has the following APR coverage test:

If the APR (as of the date the interest rate for the transaction is set or locked) exceeds the APOR for a comparable transaction on that date by more than:

- 6.5% for first lien generally
- 8.5% for first lien less than $50K and secured by personal property (RV, houseboats, etc.)
- 8.5% for junior lien

**Q.7. Under the new Mortgage Servicing rules, is it true that the credit union cannot force-place hazard insurance on a member's loan without waiting for the notice requirements?**

A. Nothing in this rule indicates that you cannot force place insurance to protect your collateral, at a cost to the credit union. It does say that **before charging a member for force placed** insurance, the credit union must have a reasonable belief that the member failed to maintain required hazard insurance and comply with the required notice requirements (first notice at least 45 days before charging and a second notice at least 30 days after the first notice). Credit unions will be permitted to charge a member for insurance coverage that was put in place before the notices were sent if they do not receive any contrary evidence, but they may not impose that charge until after the notices have been sent and the notice periods have lapsed.

**Q.8. Our Member Service Representatives (MSRs) provide members with mortgage loan applications upon request, are they considered a mortgage loan originator and required to obtain an NMLS number?**

A. There seems to be a lot of confusion related to loan originators since they are defined both under the SAFE Act and Truth in Lending Act (TILA). For purposes of **TILA**, the CFPB made revisions in September to exclude a credit union employee who provides a credit application form from the credit union to the member for completion, without assisting in completing the application, processing or analyzing the information or discussing particular credit terms that are or may be available from the credit union based on the member's financial characteristics. The **SAFE Act** defines a mortgage loan originator as an individual who takes a residential mortgage loan application; and offers or negotiates terms of a residential mortgage loan for compensation or gain. Therefore in the example above, if the MSR only provides the member with the application and does not assist in the completion, analyzing or negotiation of terms and conditions they would not be considered a mortgage loan originator under either the SAFE Act or TILA.