**Mortgage Regulations - TO DO LIST**

**Ability to Repay / Qualified Mortgage Rule**

1. Update your procedures (and/or policies) to make sure the 8 underwriting factors (at a minimum) are included.
2. Reference the Readiness Questionnaire for guidance on what to include in policies/procedures.
3. Consider indicating what loans are considered QM in your system.

**Loan Originator Compensation**

1. Review your employees to determine which job functions would classify as a mortgage loan originator. Create a policy and procedure to ensure compliance with the Loan Originator Compensation Rules!

**Revised Commentary:**

4. *Managers and administrative staff.* For purposes of § 1026.36, managers, administrative and clerical staff, and similar individuals who are employed by (or contractor or agent of) a creditor or loan originator organization and take an application, offer, arrange, assist a consumer in obtaining or applying to obtain, negotiate, or otherwise obtain or make a particular extension of credit for another person are loan originators. The following examples describe activities that, in the absence of any other activities, do not render a manager, administrative or clerical staff member, or similar employee a loan originator:

i. *Application-related administrative and clerical tasks.* The definition of loan originator does not include a loan originator's or creditor's employee who provides a credit application form from the entity for which the person works to the consumer for the consumer to complete or, without assisting the consumer in completing the credit application, processing or analyzing the information, or discussing particular credit terms that are or may be available from a creditor or loan originator to that consumer selected based on the consumer's financial characteristics, delivers the credit application from a consumer to a loan originator or creditor. A person does not assist the consumer in completing the application if the person explains to the consumer filling out the application the contents of the application or where particular consumer information is to be provided, or generally describes the credit application process to a consumer without discussing particular credit terms that are or may be available from a creditor or loan originator to that consumer selected based on the consumer's financial characteristics. {Amended by 9/13/13 final rule]

ii. *Responding to consumer inquiries and providing general information.* The definition of loan originator does not include persons who:

A. Provide general explanations, information, or descriptions in response to consumer queries, such as explaining credit terminology or lending policies or who confirm written offer terms already transmitted to the consumer;

B. As employees of a creditor or loan originator, provide loan originator or creditor contact information of the loan originator or creditor entity for which he or she works, or of a person who works for that the same entity to a consumer, provided that the person does not discuss particular credit terms that are or may be available from a creditor or loan originator to that consumer selected based on the consumer's financial characteristics and does not direct the consumer, based on his or her assessment of the consumer's financial characteristics, to a particular loan originator or particular creditor seeking to originate credit transactions to consumers with those financial characteristics; [Amended by 9/13/13 final rule.]

C. Describe other product-related services (for example, persons who describe optional monthly payment methods via telephone or via automatic account withdrawals, the availability and features of online account access, the availability of 24-hour customer support, or free mobile applications to access account information); or [Amended by 9/13/13 final rule.]

D. Explain or describe the steps that a consumer would need to take to obtain an offer of credit, including providing general guidance on qualifications or criteria that would need to be met that is not specific to that consumer's circumstances.

iii. *Loan processing.* The definition of loan originator does not include persons who, acting on behalf of a loan originator or a creditor:

A. Compile and assemble credit application packages and supporting documentation;

B. Verify information provided by the consumer in a credit application such as by asking the consumer for supporting documentation or the consumer's authorization for the person to obtain supporting documentation from other persons;

C. Coordinate consummation of the credit transaction or other aspects of the credit transaction process, including by communicating with a consumer about process deadlines and documents needed at consummation, provided that any communication that includes a discussion about credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics only confirms credit terms already agreed to by the consumer; [Amended by 9/13/13 final rule.]

D. Provide a consumer with information unrelated to credit terms, such as the best days of the month for scheduling consummation; or

E. Communicate on behalf of a loan originator that a written credit offer has been sent to a consumer without providing any details of that offer.

iv. *Underwriting, credit approval, and credit pricing.* The definition of loan originator does not include persons who:

A. Receive and evaluate a consumer's information to make underwriting decisions on whether a consumer qualifies for an extension of credit and communicate decisions to a loan originator or creditor, provided that only a loan originator communicates such underwriting decisions to the consumer;

B. Approve particular credit terms or set particular credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics in offer or counteroffer situations, provided that only a loan originator communicates to or with the consumer regarding these credit terms, an offer, or provides or engages in negotiation, a counter-offer, or approval conditions; or [Amended by 9/13/13 final rule.]

C. Establish credit pricing that the creditor offers generally to the public, via advertisements or other marketing or via other persons that are loan originators.

v. *Producing managers.* Managers that work for creditors or loan originator organizations sometimes engage themselves in loan origination activities, as set forth in the definition of loan originator in § 1026.36(a)(1)(i) (such managers are sometimes referred to as "producing managers"). The definition of loan originator includes persons, including managers, who are employed by a creditor or loan originator organization and take an application, offer, arrange, assist a consumer with obtaining or applying to obtain, negotiate, or otherwise obtain or make a particular extension of credit for another person, even if such persons are also employed by the creditor or loan originator organization to perform duties that are not loan origination activities. Thus, such producing managers are loan originators.

1. Are systems set up to print the NMLS number of the mortgage loan originator and the Credit Union on the credit application, note or loan contract and security instrument?
2. Do your policies or procedures address how you will determine who has primary responsibility over the transaction for purposes of including their NMLS ID on the documents?
3. Review your credit unions credit life and disability products to make sure they will not be prohibited by the rules as of January 10, 2014.

**HPML Appraisal Rules / ECOA Valuations**

1. There is a safe harbor in Regulation Z, appendix N that provides steps to take in your appraisal review. If you take all the steps, you will have the safe harbor protection. You should build those in to your procedures!
2. Create a disclosure document or have this disclosure put on your loan application! This disclosure satisfies the requirement in the TILA and ECOA rule.

*“We may order an appraisal to determine the property’s value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.”*

1. Build in to your policies and/or procedures to deliver copies of appraisals no later than 3 business days before consummation for HPMLs and/or **“promptly”** for loans covered under the ECOA.

Difference between TILA/ECOA rules:

1. ECOA does not cover subordinate liens, HPML appraisal rules do!
2. ECOA covers any transactions secured by a dwelling for any purpose – TILA only when it is a consumer purpose and secured by principal dwelling.
3. For HPMLs, you are going to have to obtain a certified appraisal.
4. Both have disclosure requirements, the ECOA disclosure satisfies the requirements of both rules (use that one).
5. ECOA requires copies of appraisals to be provided “promptly upon completion” or 3 business days before closing, whichever is earlier.
6. ECOA allows the deadline to be waived and can obtain copies at closing, this cannot be done under the HPML appraisal rule.
7. If both rules apply, comply with the earlier deadline.
8. Review the Commentary of the ECOA revised in October to determine what cannot be considered a valuation. Ensure your credit union’s program complies. Or use a certified appraiser!

**HOEPA Rules**

1. Build in to your procedures/process to test for HOEPA coverage (which was expanded). Make sure you are not including any restricted features (balloon payment, prepayment penalty, etc.).
2. Is the system set up to charge different late fees for High-Cost Mortgages (if needed)?
3. Create a disclosure to provide 3 days prior to consummation or account opening – use the model forms provided in the regulation!

Regulation Z, Appendix H (H-16)



1. After three business days of receiving the application, the credit union must provide the member with a list of homeownership counseling organizations. Locate the list here:

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>

As of 11/8/13, the CFPB just published a tool as well. You can find that here:

<http://www.consumerfinance.gov/find-a-housing-counselor/>

The list must be current as of 30 days!

1. Create policy and/or procedure to ensure the homeownership counseling criteria for high-cost mortgages is satisfied prior to consummation.

**Mortgage Servicing Rules**

1. Is your credit union a small servicer? Determine exemption.
2. Determine if your credit union will provide periodic statements or coupon books for covered loans.

Statements have specific format, covered in Regulation Z, Appendix H, H-30.

Also, consider providing the members with a coupon book! Requirements are 1026.41(e)(3), may be easier to comply with than the periodic statement requirement.

1. Create policies and/or procedures for ARM notices. Use the model forms located in Truth in Lending, Appendix H (H-4(D)(1), (2), (3) and (4)).
2. Establish or update policy and/or procedures to reflect the prompt payment crediting and payoff statement requirements.
3. Created force-placed insurance notices to have ready. Content requirements are outlined in 1024.3(c)(2), (d)(2), and (e)(2). The small entity guide has a table on page 45, which is helpful.

TABLE 6: CONTENT OF THE FORCE-PLACED INSURANCE DISCLOSURES

|  |  |  |  |
| --- | --- | --- | --- |
|  | FIRST NOTICE(§ 1024.37(c)(2)) | REMINDER NOTICE(§ 1024.37(d)(2)) | RENEWAL NOTICE(§ 1024.37(e)(2)) |
| The date of the notice | § 1024.37(c)(2)(i) | § 1024.37(d)(2)(i)(A) | § 1024.37(e)(2)(i) |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | § 1024.37(d)(2)(ii)(A) |  |
| A statement that this isthe second and final notice |  | § 1024.37(d)(2)(i)(B)§ 1024.37(d)(2)(ii)(B) |  |
| The servicer’s name and mailing address | § 1024.37(c)(2)(ii) | § 1024.37(d)(2)(i)(C)§ 1024.37(d)(2)(ii)(B) | § 1024.37(e)(2)(ii) |
| The consumer’s name and mailing address | § 1024.37(c)(2)(iii) | § 1024.37(d)(2)(i)(C)§ 1024.37(d)(2)(ii)(B) | § 1024.37(e)(2)(iii) |
| A request for the consumer to provide hazard insurance information for the property (and states the property’s address) | § 1024.37(c)(2)(iv) | § 1024.37(d)(2)(i)(C)§ 1024.37(d)(2)(ii)(B) | § 1024.37(e)(2)(iv) |
| A statement that the servicer previously purchased insurance, charged to theconsumer, because the servicer did not have evidence that the consumer had required hazard insurance on the property |  |  | § 1024.37(e)(2)(v) |
| A statement that, the insurance the servicer purchased previously has expired or is expiring, and because hazard insurance is required the servicer intends to maintain insurance by renewing or replacing the insurance it previously purchased. |  |  | § 1024.37(e)(2)(vi) |
| A statement that the hazard insurance has expired (is expiring) and the servicer does not have evidence of further insurance | § 1024.37(c)(2)(v) | § 1024.37(d)(2)(i)(C) |  |
| A statement that hazard insurance is required and the | § 1024.37(c)(2)(vi) | § 1024.37(d)(2)(i)(C) |  |

|  |  |  |  |
| --- | --- | --- | --- |
| servicer has purchased (will purchase) such insurance at the consumer’s expense |  |  |  |
| A statement requesting the consumerto promptly provide the servicerwith insurance information | § 1024.37(c)(2)(vii) | § 1024.37(d)(2)(i)(C) | § 1024.37(e)(2)(viii) |
| A description of the requested insurance information, and how the consumer may provide such information | § 1024.37(c)(2)(viii) | § 1024.37(d)(2)(i)(C) | § 1024.37(e)(2)(ix) |
| A statement that the insurance the servicer will (has) purchase(d):(i) may cost significantly more and(ii) may not provide as much coverage as hazard insurance purchased by the consumer | § 1024.37(c)(2)(ix) | § 1024.37(d)(2)(i)(C) | § 1024.37(e)(2)(vii)(A)to (B) |
| The servicer’s telephone number for consumer inquiries | § 1024.37(c)(2)(x) | § 1024.37(d)(2)(i)(C)§ 1024.37(d)(2)(ii)(B) | § 1024.37(e)(2)(ii)(x) |
| If applicable, a statement advising the consumer to review additional information provided in the same transmittal | § 1024.37(c)(2)(xi) | § 1024.37(d)(2)(i)(C)§ 1024.37(d)(2)(ii)(B) | § 1024.37(e)(2)(xi) |
| The cost of the force-placed insurance, stated as an annual premium (or if the servicer does not know the cost, a reasonable estimate) |  | § 1024.37(d)(2)(i)(D)§ 1024.37(d)(2)(ii)(B) | § 1024.37(e)(2)(vii)(C) |

|  |  |  |  |
| --- | --- | --- | --- |
| If applicable, a statement that the information the consumer sent to the servicer is incomplete and the consumer must send the missing information to avoid charge for any period for which the servicer is unable to verify hazard insurance coverage |  | § 1024.37(d)(2)(ii)(C)to (E) |  |

TABLE 7: AT A GLANCE: FORCE-PLACED INSURANCE DISCLOSURES PRESENTATION

|  |  |  |  |
| --- | --- | --- | --- |
|  | FIRST NOTICE(§ 1024.37(c)(1)) | REMINDER NOTICE(§ 1024.37(d)(1)) | RENEWAL NOTICE(§ 1024.37(e)(1)) |
| Timing | At least 45 days before you assess a force-placed insurance fee | At least 30 days after the first notice, at least 15 days before assessing a force- placed insurance fee | Before each anniversary of your purchase of force- placed insurance, and generally at least 45 days before assessing on a consumer fee related to the renewal, but not more than once annually |
| Content | § 1024.37(c)(2) | § 1024.37(d)(2) | § 1024.37(e)(2) |
| Format | § 1024.37(c)(3). | § 1024.37(d)(3) | § 1024.37(e)(3) |
| Forms | Appendix MS-3(A) | Appendix MS-3(B) to (C) | Appendix MS-3(D) |
| Additional information | You may not include any information other than the required information in the notice. If you want to include additional information, put it on a separate piece of paper in the same transmittal.(§ 1024.37(c)(4)) | You may not include any information other than the required information in the notice. If you want to include additional information, put it on a separate piece of paper in the same transmittal.(§ 1024.37(d)(4)) | You may not include any information other than the required information in the notice. If you want to include additional information, put it on a separate piece of paperin the same transmittal.(§ 1024.37(e)(4)) |

|  |  |  |  |
| --- | --- | --- | --- |
| Note |  | If you receive new information about the consumer’s hazard insurance after you put the reminder notice into production, you are not required to update the notice based on the new information provided the notice was put into production a reasonable time prior to mailing it to the consumer.(§ 1024.37(d)(5)) | You are not required to provide this notice more than once a year. |

1. Establish policies and procedures to achieve these requirements:
	* Accessing and providing timely and accurate information
	* Properly evaluating loss mitigation applications
	* Facilitating oversight of, and compliance by service providers
	* Facilitating transfer of information during servicing transfers
	* Informing consumers of written error resolution and information request procedures
	* Record Retention / Servicing File creation
2. Using the model form, create a loss mitigation notification to be sent out by the 45th day of delinquency. Examples are located in Regulation X (RESPA), Appendix MS-4.
3. Your policies and procedures also need to address the continuity of contact provisions within RESPA. Details are outlined in 1024.40(a)
* Employee is assigned to delinquent members by the time you send written notice.
* Members can reach the assigned employee by phone to assist with inquiries and pursing loss mitigation options or the current status of applications.
* Employee needs to be able to retrieve the member’s records in a timely manner.
* Employee must provide a timely live response to members who call.
1. Your policies and procedures also need to address loss mitigation options and the proper evaluation of members for those options, including the appeal process!
2. Update your procedures for foreclosure to incorporate new timing requirements in the RESPA rule.