Issue 10 | January 2015

Network Compliance Teacher

Compliance News and Tips from Credit Union Compliance Officers
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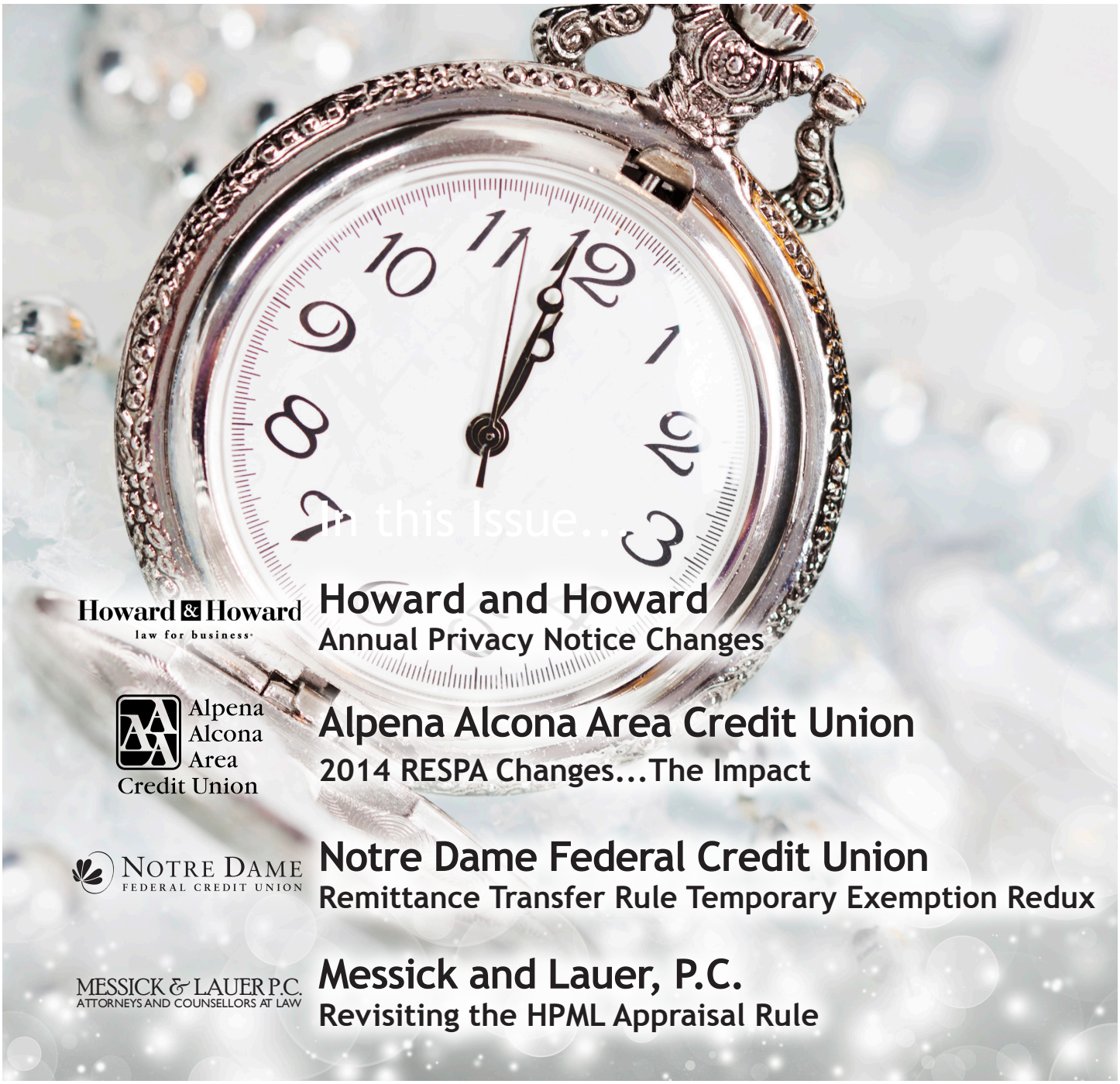

In this Issue...

Editor's Corner

What a great year it has been for AuditLink and CU*Answers. AuditLink's audit and consulting services were utilized by over 35 clients and our daily monitoring services grew 15% to 45 clients. We held multiple training events all over the country and the Network Compliance Teacher was a success with the help from our authors both in and out of network. CU*Answers' File Expansion Project (FEP) was completed after two years which now gives AuditLink an opportunity to get some of the projects we have had on Vilker's Dirty Dozen rolling.

So, it's time to say goodbye to another year and what better way to do that then with a recap of some of 2014's regulation changes? Once again, we were happy to receive articles that were written by your peers. Two of the articles include how these regulations impacted their credit union. Many thanks to you all.

Happy New Year!

Marsha Sapino, AAP
AuditLink Associate
CU*Answers

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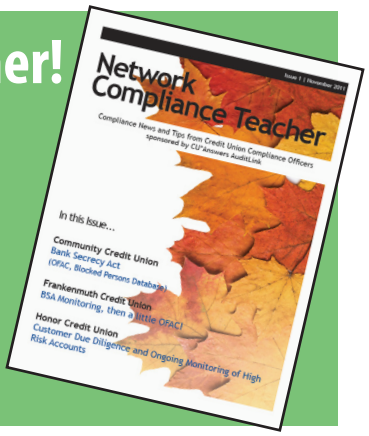
Have something to contribute?

Want to write an article for a future Network Compliance Teacher Issue?

Have a topic to suggest for a future issue?

We're looking for compliance officers like you to contribute!

Contact AuditLink at auditlink.cuanswers.com



The Network Compliance Teacher is a collaboration of compliance minded Credit Union Professionals like you from throughout the cuasterisk.com network.

The Network Compliance Teacher is published quarterly. Current and previous issues are available for download from the AuditLink website at http://auditlink.cuanswers.com.

AuditLink
CU*ANSWERS Management Services

6000 28th Street SE
Grand Rapids, MI 49525
(800) 327-3478
auditlink.cuanswers.com

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Annual Privacy Notice Changes

Steven Van Beek
Attorney and Counselor
Howard and Howard

General Information

Howard & Howard
law for business

Effective October 28, 2014, qualifying credit unions can reduce administrative, mailing and postage costs related to sending annual privacy notices to existing members. The key word in the preceding sentence is "qualifying." Not every credit union will qualify - but every credit union should analyze its information sharing practices in order to make an informed determination. After all, it is not every day that a regulatory change saves credit unions money.

Underlying Regulatory Requirement

Regulation P requires all federally-insured credit unions to provide members with an Initial Privacy Notice at account opening as well as an Annual Privacy Notice. The Consumer Financial Protection Bureau (CFPB) amended Regulation P to adopt an "alternative delivery method" for providing the Annual Privacy Notice. Prior to this change, all credit unions needed to use one of the standard delivery methods to provide members their Privacy Notices. The standard delivery methods are by mail or electronically (for members who have provided their E-SIGN Act consent).

As indicated above, only qualifying credit unions can use the alternative delivery method. And, importantly, the alternative delivery method is only an option for the Annual Privacy Notice (the delivery options for the Initial Privacy Notice and Revised Notices are not impacted).

Qualifying Criteria

The CFPB's changes include a five-part test to determine if a credit union qualifies for the alternative delivery method. Credit unions must meet all five parts to qualify.

1. The credit union does not share member information with nonaffiliated third parties other than through the existing exceptions in Regulation P (12 C.F.R § 1016.13, 1016.14 and 1016.15);

2. The credit union's annual privacy notice does not include an opt out under Section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (FCRA) (related to sharing credit information with affiliates);

3. The requirements of Section 624 of the FCRA (the Affiliate Marketing requirements), if applicable, have been satisfied previously or the annual privacy notice is not the only notice provided to satisfy that requirement;

4. The information required on the annual privacy notice has not changed since the credit union provided the prior privacy notice (whether initial, annual, or revised) to the member; and

5. The credit union uses the Model Privacy Form for its annual privacy notice.

Credit unions will need to review their qualification each year to ensure they continue to qualify for the alternative delivery method.

Alternative Delivery Method

Credit unions qualifying for the alternative delivery method still have an obligation to notify members of their privacy policy. There are three main parts of the alternative delivery method.

First, credit unions must provide members with a notice - at least annually - stating that its privacy policy has not changed, its privacy policy is available on its website and, if requested, a hard copy of the notice will be mailed to the member.

Second, credit unions must post their privacy policy continuously and in a clear and conspicuous manner on a page of the credit union's website where the privacy policy is the only content (navigational materials, such as links to other privacy information, are allowed).

Third, credit unions must have procedures in place to ensure that privacy policies are mailed within ten days to members who request a copy by telephone.

Notice of Availability

The notice to members discussed above is referred to as the Notice of Availability. The Notice of Availability must include a specific Web address that takes members directly to the page where the notice is posted and a telephone number for the member to request a mailed copy.

The CFPB included a model form of the Notice of Availability (two areas must be customized for each credit union):

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2014 RESPA Changes…The Impact

Angela Szatkowski CCUE, BSACS, CUCE
Chief Operating Officer
Alpena Alcona Area Credit Union

General Information

The Real Estate Settlement Procedures Act or RESPA has undergone numerous changes over this past year with more still to come. Credit unions will continue to feel the impact throughout 2015 as we work through the disclosure integration rules and continue to streamline our processes after the whirlwind of RESPA changes that came to life in January 2014.

We've seen rules regarding servicing requirements, mandatory homeowner counseling and so much more. We've torn apart our policies and procedures, evaluated our service standards and rebuilt our mortgage strategies from application to homeownership and payment processing to loss mitigation; the impact – unprecedented.

The rules in and of themselves sound reassuring. They sound as if they were written by a credit union – focused on consumer protection. But sounding and doing are two very different things and these rules are proof of that, especially for an industry whose main purpose has always been "people helping people." From statements and notices to an overwhelming number of new disclosure requirements, we have been forced to focus more on paperwork and less on our member-owner.

Now, to be clear, the member is still the number one priority. That has not, nor will it ever change. The service, however, has been impacted – how could it not be? We have to make certain we meet the timeline, the content and the staffing requirements established by the new rules, and we have to account for the additional cost of compliance.

Take, for example, one of the most impactful issues my credit union faced – the last four sections of RESPA's mortgage servicing rules. Those four sections required us to establish certain policies, procedures and requirements including the designation of personnel to assist those who fall behind on their mortgage payments and to contact consumers soon after delinquency and advise them ofany available loss mitigation programs. All of which were standard practice far before being mandated by regulation; however, now it has become a little less personal and a lot more formalized.

Early intervention with delinquent borrowers, for instance, has always been a best practice. History has proven, time and time again, the earlier we intervene the more successful the outcome, but now there are mandated timelines and content for both live contact and written notice.

The biggest obstacle – notices, initially our system only allowed for one configuration of collection notices. We could not change the content or the time periods on mortgages without impacting our consumer and credit card loans so notices needed to be developed and processed manually. Fortunately, in September 2014 CU*Base collection notices were expanded and can now be generated at different times for different loans – a process that will most certainly streamline the new notice requirements.

Next, continuity of contact, which is generally not an issue. The credit union makes every effort to keep in contact with delinquent borrowers and also works closely with such members to avoid foreclosure. The CU*Base tracker feature makes it easy to maintain a record of all contacts with the delinquent borrower, enabling our team to continue dialog with the borrower even if it started with a different staff member.

Our processes, however, posed a greater problem. They did not consistently meet the timetables recorded within the regulation and were not documented nor as streamlined as the regulation now required. Why? Because they were based on the member's needs, on the member's story, not a time schedule.

For instance, our board appointed a special workout committee in the wake of the 2010 mortgage crisis to work hands on with our delinquent borrowers. That committee had to be re-assigned under the new rules due to "assigned personnel" and increased borrower communication requirements which placed even more responsibility on our collection department.

And, finally, the purpose of all of it – loss mitigation, advising the borrower of any available loss mitigation programs to avoid foreclosure. A common credit union practice, but now there are lengthy requirements and very specific timetables to follow when protecting our borrower.

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Remittance Transfer Rule Temporary Exemption Redux

Brian W. Vitale, CAMS-Audit, NCCO
Chief Risk and Compliance Officer
Notre Dame Federal Credit Union

General Information

On October 28, 2013 the Remittance Transfer Rule went into effect. The rule amended subpart B of Regulation E (Electronic Fund Transfer Act). The rule requires covered entities provide consumers sending funds abroad new disclosures, as well as cancellation and error resolution rights.

Additionally, on October 28, 2013 the Consumer Financial Protection Bureau launched their education campaign on the new international money transfer consumer protections: http://open.cuanswers.com/consumerfinance

"Consumers who make transfers covered by the new remittance rule will receive a number of new protections, including:

- Free, upfront information about the exchange rate, fees, and taxes they will pay
- Information on the amount to be received
- The right to cancel most transfers within thirty minutes at no cost
- 180 days to report errors to the company, the right to an investigation, and a remedy for certain types of errors

In January 2014 I was interviewed by the Consumer Financial Protection Bureau's Division of Research, Markets and Regulations. The purpose of the discussion was to discuss the October 28, 2013 Remittance Transfer Rule in general and the temporary exemption in specific, and how it impacts Notre Dame Federal Credit Union.

Overview of the Temporary Exemption

"The Remittance Transfer Rule requires regulated institutions to provide disclosures to remittance senders containing information about the price of the transfer, including fees and exchange rates. Generally, all disclosed amounts must be exact. However, the rule contains several exceptions that allow providers to estimate the applicable exchange rate, back-end fees and taxes, and total funds to be received. Some of these exceptions are permanent. The focus of the interview was the temporary exemption for insured depository institutions and credit unions. The exception is described in section 1005.32(a) of Regulation E. It is currently set to expire on July 21, 2015."

12 CFR Part 1005.32(a):
http://open.cuanswers.com/eregulations

For the temporary exemption to apply, the provider must meet the following criteria:

- ***Insured Institution***. The provider must be an insured depository institution or credit union, or an uninsured U.S. branch or agency of a foreign depository institution.
- ***Account-based transfers***. The remittance transfer must be sent from the sender's account with the provider.
- ***Unable to determine exact amounts***. The provider must be unable to determine exact amounts for reasons outside of its control. For example, the provider may not be able to determine the exchange rate if it is set By the designated recipient's institution and the provider has no correspondent relationship with that institution.

As a university credit union, it was strategically important Notre Dame Federal Credit Union committed to meeting our member's international wire transfer needs post October 28, 2013. As such, we reevaluated and amended our outbound international wire transfer function to incorporate the "new normal". New procedures were written and implemented based on the requirements of our corporate credit union. However, the CFPB had no solution to the currency risk borne by all insured institutions when executing international remittance transfers when the exchange of currency occurred. Fortunately, per agreement, our corporate credit union absorbs all currency risk, so the rate we quote at time of disclosure and wire execution is honored. Any movement in currency spread is absorbed by the corporate.

In addition to the mitigation of currency risk, we opted to filter all outbound international remittance transfers through our corporate credit union as the Fed was unable to commit to the error resolution requirements of the new rule. In the event the wire was not received in the recipient country, or the wire amount was incorrect,

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Remittance Transfer Rule Temporary Exemption Redux

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the Fed shifted this investigative responsibility to the credit union. Our corporate credit union handles all error resolutions within the required ninety (90) day window. Given current resources, the decision to utilize our corporate credit union for all outbound international remittance transfers was an easy strategic decision to make.

The Rub: Insured institutions with voluminous outbound international wire transfer traffic are in essence forced to assume all currency risk in the interim between exchange rate disclosure and wire execution. For a financial institution with very little outbound international wire transfer traffic, the currency risk is low to non-existent. However, at a Bank of America or Wells Fargo Bank, the currency risk borne by these large international banks is enormous given the volatility in the currency exchange markets. The CFPB does not know how to solve this problem.

From January 1, 2010 through October 27, 2013, a sum total of 1,679 outbound international wire transfers were executed here at the credit union. October 28, 2013 through November 30, 2014, a sum total of 397 outbound international wire transfers were executed. With no U.S. Dollar Correspondent account in the name of Notre Dame Federal Credit Union, we rely on our corporate credit union to provide required exchange rates, fees, and taxes from wire execution to recipient country / foreign institution settlement. Although implementation of new procedures was relatively painless, the new process has added twenty (20) minutes to each and every outbound international wire transfer we execute. The additional time commitment is directly attributable to disclosure preparation, exchange rate inquiries and receipt of member review and signature. In other words, of the 397 outbound international wire transfers we executed beginning on October 28, 2013, a sum total of 132 hours of additional time (3.30 weeks based on a 40 hour work week) was dedicated to the new Remittance Transfer Rule process.

On August 22, 2014, the Consumer Financial Protection Bureau extended the temporary exception for an additional five years through July 21, 2020. "If the temporary exemption expired in July 2015, current market conditions would make it impossible for insured institutions to know the exact fees and exchange rates associated with a minority of their remittance transfers. Without the exemption, these insured institutions reported that they would have been unable to send some transfers to certain parts of the world that they currently serve." If your credit union executes wire transfers to only those countries currently listed on the Safe Harbor List (Aruba, Brazil, China, Ethiopia and Libya), the temporary exemption is of no material concern to your credit union. However, as a credit union with a membership base from every corner of the world, the temporary exemption is welcome news.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 delivered to each of us the Consumer Financial Protection Bureau. Although the CFPB directly regulates financial institutions with assets greater than $10 billion, make no mistake their indirect reach impacts all financial institutions. If your institution has consumers, the CFPB affects you. Cost of Compliance: HIGH.

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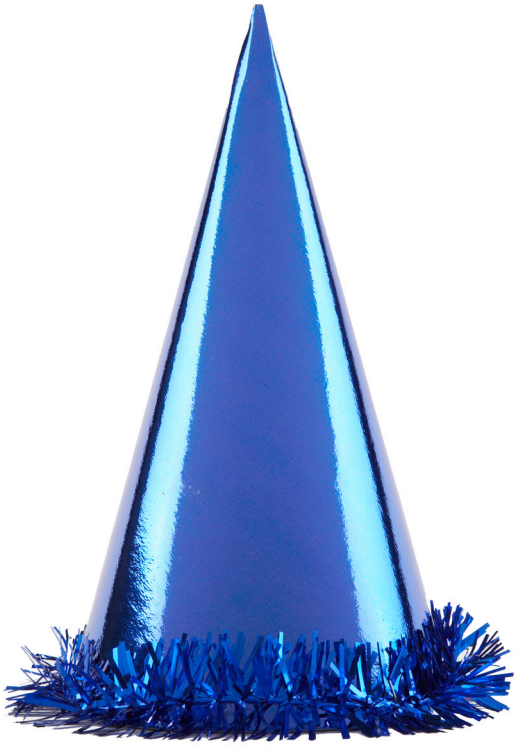

Revisiting the HPML Appraisal Rule

Amanda J. Smith
Messick & Lauer, P.C.

General Information

MESSICK & LAUER P.C.
ATTORNEYS AND COUNSELLORS AT LAW

A year ago, the mortgage industry was preparing for one of the most voluminous regulatory changes experienced in recent years. Now that the new rules have been implemented and the industry has been given time to adjust, it is worth revisiting the less publicized rules to be certain compliance with them did not get overlooked. One of these rules is the Truth in Lending Act (TILA) Higher-Priced Mortgage Loans (HPML) Appraisal Rule (HPML Appraisal Rule). While the rule does not require a massive operational overhaul to comply, lenders must be familiar with its nuances or run the risk of violations.

The HPML Appraisal Rule applies to higher-priced, closed-end loans secured by a principal dwelling, regardless of lien priority. To determine whether or not a loan is higher-priced, the APR is compared to the APOR (a published rate). If the APR exceeds APOR by more than 1.5 percentage points for first lien, 2.5 percentage points for first lien jumbo loans, and 3.5 percentage points for subordinate lien loans, it is an HPML and subject to the HPML Appraisal Rule. Certain loans, even if they otherwise meet this criteria, are specifically exempted from the rule. These loans include, qualified mortgages, reverse mortgages, bridge loans, loans for the initial construction of a dwelling, loans for $25,000 or less, certain streamlined refinance loans, certain loans secured by manufactured homes, and loans secured by boats, trailers, and mobile homes. To ensure ongoing compliance, lenders should have a process to recognize HPMLs. Market movements during the application and underwriting process could turn a loan into an HPML long after the application is taken, so it is important that this status be monitored throughout the lending process.

When originating a loan subject to this rule, a lender must make certain disclosures within three business days of receiving an application; obtain an appraisal from a certified or licensed appraiser that conforms with USPAP and FIRREA; ensure the appraiser evaluates the interior of the property and reflects that in the report; and, provide copies of the report to the borrower no later than three days before closing. The takeaways here are to make sure all appraisers are properly certified, do not use EVMs or "drive-by" appraisals for these loans, and ensure the report is given to the applicant; do not simply inform the applicant that it is available upon request.

Additional requirements apply to loans subject to the rule which are being used to purchase a home that has been "flipped" (resold within 90-180 days of acquisition by the seller). Subject to limited exception, an additional appraisal from a different appraiser is required for an HPML intended to purchase a flipped property if the purchase price is more than a ten percent increase over what the seller paid for the property if the seller acquired the property in the past 90 days, or more than a twenty percent increase over what the seller paid for the property if the seller acquired the property in the past 91 to 180 days. In addition to meeting the same requirements the first appraisal had to meet, the second appraisal must also analyze the difference in the original sales price and the subsequent sales price, changes in market conditions, and property improvements. The challenge is to identify "flipped" properties early on in the process in order to avoid any unnecessary delays.

Like most regulations, the HPML Appraisal Rule cannot be looked at in a vacuum; it is intricately intertwined with the Equal Credit Opportunity Act Valuations Rule (ECOA Valuations Rule). First-lien mortgages that are subject to the HPML Appraisal Rule are also subject to the ECOA Valuations Rule. Under the ECOA Valuations Rule, a lender must supply a copy of the appraisal promptly upon completion or three business days before closing, whichever is earlier. In most transactions, the appraisal is performed early on in the process; therefore, the "promptly upon completion" rule would most often comply. So long as this date is also no later than three business days before closing, the timing requirements of the HPML Appraisal Rule would also be met. Although an applicant can waive the right to receive a copy of an appraisal in advance under the ECOA Valuations Rule, it is important to note it cannot be waived under the HPML Appraisal Rule.

While the HPML Appraisal Rule may not have made headlines, it still requires lenders to have a working knowledge of the rule and to examine the internal policies and procedures that guide compliance.

NCT

Howard and Howard

continued from page 1

"PRIVACY NOTICE

Federal law requires us to tell you how we collect, share, and protect your personal information. Our privacy policy has not changed and you may review our policy and practices with respect to your personal information at [insert direct Web address link] or we will mail you a free copy upon request if you call us at [insert telephone number]."

Credit unions can provide the Notice of Availability on an existing notice sent to members - such as a periodic statement, coupon book, or other notice or disclosure.

Conclusion

Credit unions should review the Regulation P changes to determine if they qualify for the alternative delivery method based on their current information sharing practices and Privacy Notice. Qualifying credit unions can begin providing their Annual Privacy Notices via the alternative delivery method immediately.

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Alpena Alcona Area Credit Union

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The loss mitigation rules assign standards for completing and evaluating a loss mitigation application, assign response standards for loss mitigation offers and denials and even provide borrowers with an opportunity to appeal a denial decision. They make it clear that foreclosure is a remedy of last resort, and prohibit us from initiating foreclosure proceedings during the first 120 days of delinquency but also require us to stop such proceedings if the borrower submits a complete loss mitigation application.

We are now assigned the very daunting tasks of devising specific loss mitigation documentation and monitoring stringent deadlines. The CU*Base system can certainly help us meet our deadlines with the tracker system's member follow up feature, but the applications, notices and responses are on us - developed internally and are processed manually. Why? Because the documentation now requires so much detail it would be nearly impossible for any system to program the required data.

More detailed information on the 2014 RESPA amendments has been posted to CU*Answers Policy Swap, refer to the document labeled Mortgage Compliance-Reg X-Mortgage Servicing Rules.

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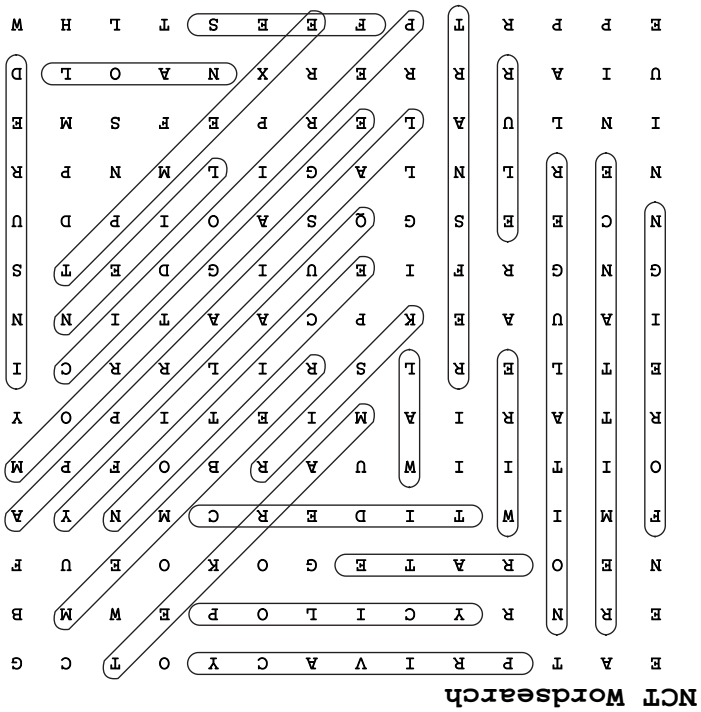

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Word List:

MORTGAGE	RULE	LOAN	PRIVACY
MEMBER	LAW	POLICY	TRANSFER
RISK	RATE	FOREIGN	REMITTANCE
CREDIT	INSURED	WIRE	LIEN
APPRAISAL	FEES	EXEMPT	QUALIFY
REGULATION	NOTICE	MARKET	PERIODIC

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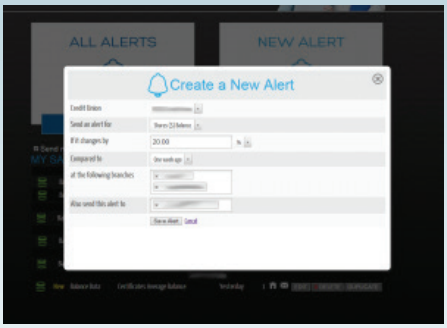

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