

# DODD-FRANK

Residential Mortgage Industry

- These rules apply to dwellings (residential 1-4 unit properties)
- The intent of these rules is to protect consumers (household, family, personal loans)
- To save space, the citations are shortened to remove reference to the code of federal registrar (e.g. 12 CFR § 1026.42 is cited as 1026.42)

**Dodd-Frank Tips**

- Theme 1: removes incentives to loan originator compensation that promote risky loans
- Theme 2: qualification requirements for loan originators and requirement to disclose NMLS ID # (so it adopts the SAFE Act)

## **Loan Originator Rule**

- **Definition:** performs (or advertises that s/he performs) loan origination activities (taking, negotiating, offering, arranging, or assisting with a loan) for compensation (1026.36(a)(1))
- **Exception:** (a) HELOCs or timeshare plans (1026.36(b)); (b) administrative tasks; (c) seller financing; (d) real estate brokerage activities (1026.36(a)(1)(i))

## Loan Originator Rule

- Seller Financing Exception – 3 properties (1026.36(a)(4))
  - Seller is not a builder
  - Financing is fully amortizing
  - Buyer has ability to repay
  - Fixed rate or adjustable rate that is adjustable after 5 or more years

**Loan Originator Rule**

- Seller Financing Exception – 1 property (1026.36(a)(5))
  - Seller is a natural person, estate, or trust
  - Seller is not a builder
  - Finance payment – no negative amortization
  - Fixed rate or adjustable rate that is adjustable after 5 or more years

## Loan Originator Rule

## NO DUAL COMPENSATION

- **Rule:** if borrower pays loan originator, then no one else can pay loan originator (1026.36(d)(2)(i))

**Loan Originator Rule**

## NO YIELD SPREAD PREMIUMS

- **Rule:** No compensation based on terms (or proxy for terms) of the credit transaction(s) (1026.36(d)(1)(i))
- **Exception:** Amount of loan is not a term of the credit transaction (1026.36(d)(1)(ii))

**Loan Originator Rule**



## ANTI-STEERING PROVISIONS

- **Rule:** (non Dodd-Frank) prohibit loan originator from steering a consumer to a transaction based on fact that s/he will receive greater compensation (1026.36(e)(1))

**Loan Originator Rule**

## QUALIFICATION & ID

Qualification (SAFE Act): loan originator must be licensed and registered as according to the SAFE Act and all other applicable State or Federal law (1026.36(f))

**Loan Originator Rule**

## QUALIFICATION & ID

- **Qualification (non SAFE Act):** loan originator organization must ensure that each loan originator employee: (a) meets character, fitness, and criminal background standards (that are similar to the SAFE Act); and (b) receives appropriate training (1026.36(f)(3))

## Loan Originator Rule

## QUALIFICATION & ID

- **Disclosure:** unique identifier (NMLSR ID – see 1026.36(g)(1)) must be provided on: (1) credit application; (2) note or loan contract; and (3) security instrument (1026.36(g)(2))

**Loan Originator Rule**

## ARBITRATION / WAIVER OF CAUSES OF ACTION

- **Coverage:** applies to all consumer credit transaction secured by a dwelling (includes HELOC) (1026.36(h)(1)&(2))
- **Rule:** Transaction cannot include language that: (a) require arbitration; or (b) waive rights to federal statutory causes of action (1026.36(h)(1)&(2))

**Miscellaneous**

## CREDIT INSURANCE

- **Coverage:** applies to all consumer credit transaction secured by a dwelling (includes HELOC) (1026.36(i)(1))
- **Rule:** creditor may not finance any premiums or fees for credit insurance, except for credit insurance for which premiums/fees are calculated and paid in full on a monthly basis (1026.36(i)(1))

**Miscellaneous**

- Main theme: take actions that you would take if you are lending your own \$
- Theme 1: only lend \$ to those who can pay you back (common sense)
- Theme 2: evaluate applicants and verify information (again common sense)
- Theme 3: qualified mortgages (43% DTI)

## **Ability To Repay**

- **Coverage:** ATR requirements apply to all creditors who fall under the Truth-in-Lending-Act (TILA) and who are engaged in a covered transaction (1026.43(a))
- **Covered transaction** is a consumer credit transaction (credit offered for personal, family or household purpose) that is secured by a dwelling (1026.43(b)(1))
- **TILA coverage** – see 1026.1(c)

## Ability To Repay



## EXEMPTIONS (1026.43(a))

The ATR requirements does not apply to:

- Home Equity Line of Credit
- Timeshare plans
- Reverse mortgage
- Temporary / bridge loan (term of 12 months or less)
- Construction phase of 12 month or less of a construction-to-permanent loan
- Certain creditors – please see 1026.43(a)(3)(v)&(vi) for a complete list

# Ability To Repay

## REPAYMENT ABILITY

- **Rule:** creditor has to have a “reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan” (1026.43(c)(1)).

**Ability To Repay**

## 8 UNDERWRITING FACTORS

Creditors must consider : (1026.43(c)(2))

1. Consumer's income or assets
2. Consumer's employment status
3. Consumer's monthly payment on the covered transaction
4. Consumer's monthly payment on any simultaneous loan
5. Consumer's monthly payment for mortgage-related obligations
6. Consumer's debt obligations, alimony, and child support
7. Consumer's monthly debt-to-income ratio or residual income
8. Consumer's credit history

**Ability To Repay**

## EVALUATION

- **Rule:** creditors cannot base their evaluation of a consumer's ability to repay on teaser rates (1026.43(c)(5))
  - Base evaluation on substantially equal monthly payments that would fully amortize the loan
  - Use the introductory or fully-indexed rate (whichever is greater) to calculate monthly payments

**Ability To Repay**

## VERIFICATION

- **Rule:** creditors must verify the information that the creditor relies on (1026.43(c)(3))
  - Verify only info you relied on for ATR determination
  - Verify using reliable 3<sup>rd</sup> party records
  - Verify in writing (except for employment status)

**Ability To Repay**

## RECORD RETENTION

- **Rule:** creditors must retain evidence of compliance for three years (1026.25(c)(3))

**Ability To Repay**

## REFINANCING

- **Coverage:** ATR applies if refinancing is a covered transaction and creditor falls under TILA
- **Exemption:** In general, ATR doesn't apply to the refinancing of a non-standard (risky) mortgage into a standard (safer) mortgage (1026.43(d)(3))

**Ability To Repay**

## QUALIFIED MORTGAGE

- QMs are mortgages that do not contain risky features and creditors are presumed to have complied (or have a rebuttable presumption) with the ATR rule if they issue a QM.
- There are two requirements for QM: (1) no risky features; and (2) underwriting standards

**Ability To Repay**



## QUALIFIED MORTGAGES

- **Risky features** are: (i) no negative amortization or interest-only payments (substantially equal payments); (ii) no balloon payments; (iii) no excessive upfront points and fees (can't exceed 3% on loan of \$100,000 or more); and (iv) no loan terms in excess of 30 years
- **Underwriting** means evaluate and verify borrower's income and debt

**Ability To Repay**

## QM – PERMANENT

- **Requirement:** (1) no risky features; (2) creditor verifies, at consummation, that consumer DTI doesn't exceed 43% (1026.43(e)(2))

**Ability To Repay**

## QUALIFIED MORTGAGE

### Underwriting but no 43% DTI requirement:

- loan eligible to be purchased, guaranteed, or insured by GSEs & certain govt entities (1026.43(e)(4))
- Small creditors (1026.43(e)(5)(i))
- Rural (small) creditors (1026.43(f)(1))

**Ability To Repay**

## QUALIFIED MORTGAGE

Allowed to have balloon payments:

- Small creditors - okay up until January 10, 2016 (1026.43(e)(6))
- Rural (small) creditors (1026.43(f))

**Ability To Repay**

## QM – SMALL CREDITOR

- **Definition:** creditor that: (a) has assets below \$2 billion at the end of the last calendar year; and (b) has originated, together with its affiliates, 500 or fewer covered transactions (1026.43(e)(5)(i)(D)).

## QM BENEFIT

- **Safe harbor:** non higher-priced mortgage loans (HPML) QMs enjoy a safe harbor (1026.43(e)(1)(i))
- **Rebuttable presumption:** HPML QMs enjoy a rebuttable presumption (1026.43(e)(1)(ii))
- **Prepayment penalty:** prohibited except for non HPML fixed term QM (and is otherwise permitted by law) (1026.43(g)(1))

**Ability To Repay**

## QM BENEFITS – HPML

- **HPML** = APR is [(a) 1<sup>st</sup> lien = 1.5%; (b) Jr lien = 3.5%; or (c) small creditor = 3.5%] point or more over APOR (1026.43(b)(4))
- **APOR** = Average Prime Offer Rate; which is rates offered to highly qualified borrowers (published on [www.ffiec.gov/ratespread](http://www.ffiec.gov/ratespread))

**Ability To Repay**

- Theme 1: appraisal/valuation independence (lender pay market rate)
- Theme 2: appraisals required for expensive loans (HPML) & 2<sup>nd</sup> appraisal required for flipped HPML
- Theme 3: disclosures / copies of appraisal

## Appraisals



## TILA – VALUATION INDEPENDENCE

- **Coverage:** applies to consumer credit transaction secured by principal dwelling (1026.42(a))
- **Covered person** is either a creditor or a settlement service provider (1026.42(b)(1))
- **Covered transaction** is extension of consumer credit that is secured by principal dwelling (1026.42(b)(2))

**Appraisal**

## TILA – VALUATION INDEPENDENCE

- **Coercion:** covered person can't influence valuation coercion (1026.42(c)(1))
- **Mischaracterization of value:** preparer / covered person can't misrepresent / falsify or alter value (1026.42(c)(2))
- **Conflicts of interest:** appraiser can't have interest in the property/transaction (1026.42(d))

**Appraisals**

## TILA – VALUATION INDEPENDENCE

- **Prohibition on extension of credit:** creditor that knows of coercion, conflicts, or mischaracterization shouldn't extend unless if valuation doesn't materially misstate or misrepresent the value (1026.42(e))

**Appraisal**

## TILA – VALUATION INDEPENDENCE

- **Appraiser compensation:** creditor shall pay customary/reasonable compensation (1026.42(f)(1)) & can't engage in anticompetitive acts (1026.42(f)(2)(ii))
- **Mandatory reporting:** covered person must report any appraiser that fails to comply w/ ethical/professional requirements if failure is material (1026.42(g))

**Appraisal**

## TILA – HPML

- **Definition:** As used in this section - HPML means a closed-end consumer credit transaction secured by principal dwelling w/ APR that is [(a) 1<sup>st</sup> lien = 1.5% (for Freddie Mac eligible loan); (b) 1<sup>st</sup> lien = 2.5% (for loans not eligible for Freddie Mac); or (c) jr lien = 3.5%] point or more over APOR (1026.35(a)(1))

**Appraisal**

## TILA – HPML (GENERAL APPRAISAL)

- **Disclosure:** statement “creditor may order and charge borrower for appraisal and give copy” to be disclosed w/in 3 business days of receipt of HPML application (1026.35(c)(5)(i)&(ii))
  - Compliance w/ ECOA disclosure satisfies compliance w/ this disclosure
- **Mandatory inspection:** can’t extend w/o written appraisal by certified/licensed appraiser who inspects interior of property (1026.35(c)(3)(i))

# Appraisal

## TILA – HPML (GENERAL APPRAISAL)

- **Copy of appraisal:** provide free copy of appraisal no later than 3 business days prior to consummation of loan  
(1026.35(c)(6))
- **Exemptions:** HPML rules mentioned above don't apply to: (1) QM; (2) mobile homes / boat; (3) initial construction / bridge loans; (4) reverse mortgage etc.  
(1026.35(c)(2))

**Appraisal**

## TILA – HPML (ADDITIONAL APPRAISAL)

- **Additional appraisal:** credit can't extend w/o obtaining 2 appraisals for flipped property (1026.35(c)(4)(i))
- **Flipped properties:** (a) acquired property 90 or fewer days prior to purchase k and price exceeds seller's acquisition price by more than 10%; or (b) acquired property 91-180 days prior to purchase k and price exceeds purchase price by more than 20% (1026.35(c)(4)(i)(A)&(B))

**Appraisal**



## TILA – HPML (ADDITIONAL APPRAISAL)

- **Additional appraisal:** (i) can't be performed by same appraiser as general appraisal; (ii) one of appraisals must have analysis about price differential; (iii) creditor can only charge for one of the appraisals (1026.35(c)(4)(ii)-(v))

**Appraisal**

## TILA – HPML (ADDITIONAL APPRAISAL)

- **Exemptions:** if seller is: (a) government agency; (b) foreclosure or deed-in-lieu; (c) inheritance; (d) employer/relocation agency; (e) servicemember etc. (1026.35(c)(4)(vii)).

**Appraisal**

## ECOA

- **Copy of appraisal:** creditor provide applicant a copy of all appraisals/valuation connected to application for credit that will be secured by 1<sup>st</sup> lien on a dwelling (1002.14(a)(1))
  - Copy should be provided promptly upon completion or 3 business days prior to consummation or account opening

**Appraisal**

## ECOA

- **Disclosure:** statement “borrower right to receive a copy of appraisal” to be delivered not later than 3 business days after receipt of application for credit that is secured by 1<sup>st</sup> lien on dwelling (1002.14(a)(2))
- **Free copy of appraisals:** however, creditor may charge reasonable fee for appraisal unless prohibited by law (1002.14(a)(3))

**Appraisal**

## TILA

- Theme 1: provide notice/disclosures
  - (a) each billing cycle; (b) ARMS
- Theme 2: credit payments promptly
- Theme 3: provide payoff statement

**Servicing**

## TILA – PERIODIC BILLING

- **Coverage:** closed-end consumer credit transaction secured by dwelling (1026.41(a)(1))
- **Rule:** provide periodic statement that satisfies 1026.41(d) for each billing cycle (1026.41(a)(2))
- **Exemption:** reverse mortgages; small servicers (5,000 or fewer mortgages, or is a Housing Finance Agency); bankrupt consumer; timeshare plans; coupon books (for fixed-rate) (1026.41(e))

**Servicing**

## TILA – ARMS (INITIAL)

- **Coverage:** closed-end consumer credit transaction secured by principal dwelling in which APR may increase after consummation (ARMS w/ terms of one year or less are exempt) (1026.20(d)(1))
- **Disclosure:** notice that satisfies 1026.20(d)(2)&(3)
- **Timing:** provided at least 210, but no more than 240, days before 1<sup>st</sup> payment at adjusted level or at consummation if 1<sup>st</sup> payment is due w/in 210 days after consummation (1026.20(d))

**Servicing**

## TILA – ARMS (ALL OTHER ADJUSTMENTS)

- **Coverage:** closed-end consumer credit transaction secured by principal dwelling in which APR may increase after consummation (1026.20(c)(1)(i))
- **Exemption:** (a) ARMS of one year or less; (b) initial rate adjustment (if initial disclosure is given; or (c) if servicer is subject to FDCPA (1026.20(c)(1)(ii))

**Servicing**



## TILA – ARMS (ALL OTHER ADJUSTMENTS)

- **Disclosure:** notice must satisfy 1026.20(c)(2)(i)-(c)(3)
- **Timing:** (in general) provided to consumer at least 60, but no more than 120, days after the first payment at the adjusted level is due (1026.20(c)(2))

**Servicing**

## TILA – PROMPT PAYMENT CREDITING

- **Coverage:** consumer credit transaction secured by a principal dwelling (1026.36(c)(1))
- **Rule:** no servicer shall fail to credit periodic payment as of the date of receipt, except when a delay doesn't result in any charge to consumer or reporting of negative info to a consumer reporting agency, or is caused by receipt of non-conforming payments (1026.36(c)(1)(i))

**Servicing**

## TILA – PAYOFF STATEMENT

- **Coverage:** consumer credit transaction secured by a consumer's dwelling (1026.36(c)(3))
- **Rule:** provide an accurate payoff statement w/in a reasonable time but in no case more than 7 business days after receipt of written request from consumer (consumer's behalf) (1026.36(c)(3))

**Servicing**

# RESPA

- Theme 1: hazard insurance
  - inform (disclosure) before you charge for hazard insurance
- Theme 2: qualified written requests
  - respond to customer's request for error resolution or information
  - fix error or provide information or explain why there's no error or why information is not available

**Servicing**

## RESPA

- Theme 3: Catch-all
  - Reasonable policies in place to ensure that servicer can comply w/ rules
- Theme 4: Delinquent Borrowers
  - contact delinquent borrower (offer loss mitigation options) and provide point of contact
  - Evaluate loss mitigation application
  - Can't file 1<sup>st</sup> foreclosure notice unless 120 days delinquent & loss mitigation application has been reviewed

**Servicing**

## RESPA

- **Coverage:** any federally related mortgage loan, but doesn't include open-end lines of credit (1024.30(a))
  - RESPA servicing sections might limit coverage or have other exemptions

**Servicing**

## RESPA – FORCE PLACED INSURANCE

- **General tip:** inform before you charge
- **Definition:** hazard insurance obtained by servicer on behalf of loan owner that insures the property (1024.37(a)(1))
- **Fee:** charge only if (reasonable belief) borrower has failed to comply w/ loan's requirement to maintain hazard insurance (1024.37(b))
- **Fee:** bona fide & reasonable (1024.37(h))

**Servicing**

## RESPA – FORCE PLACED INSURANCE

- **Initial notice:** before (45 days) charging a fee, deliver notice that satisfies 1024.37(c)(2) (1024.37(c)(1)(i))
- **Reminder notice:** deliver notice that satisfies 1024.37(d)(2) 15 days before charging a fee and 30 days after sending initial notice (1024.37(d)(1))
- **Cancellation:** cancel & refund w/in 15 days of evidence that borrower has hazard insurance that complies w/ loan (1024.37(g))

**Servicing**



## RESPA – Qualified Written Requests - ERROR RESOLUTION

- **Notice of Error (NOE)**: written notice from borrower that asserts an error and includes info that enables servicer to identify borrower's loan account and the alleged error (1024.35(a))
- Note that notice of error, along w/ information requests, can be referred to as **qualified written request (QWR)** (1024.31)

**Servicing**

## RESPA – ERROR RESOLUTION

- **Contact info:** servicer can establish an address that borrower must use to submit QWR (1024.35(c))
- **Acknowledge receipt:** send a written response w/in 5 business days (1024.35(d))
- **Response to NOE:** (a) correct error and send notice of correction; or (b) conduct investigation & inform borrower that no error was found (1024.35(e)(1)(i))

**Servicing**

## RESPA – ERROR RESOLUTION

- **Response to NOE (timing):** in general, w/in 30 business days of receipt of NOE (1024.35(e)(3)(i))
- **Copies of documentation:** free copies of docs (excluding confidential...) relied upon in determination of no error w/in 15 business days of request (1024.35(e)(4))

**Servicing**

## RESPA – ERROR RESOLUTION

- **Early correction:** need not follow acknowledgment/response rules if: (1) servicer corrects and informs w/in 5 business days of receipt of NOE; or (2) foreclosure error and NOE received w/in 7 days of foreclosure (1024.35(f))
- **Adverse info:** servicer can't furnish adverse info to consumer reporting agency re: payment subject to NOE for 60 days after receipt (1024.35(i))

**Servicing**

## RESPA – ERROR RESOLUTION

- **Requirements not applicable:** duplicative, overbroad, or untimely NOE (1024.35(g)(1))
  - Servicer will have to send notice w/in 5 business days of arriving at determination
- **Payment prohibition:** can't charge fee or require payment on \$ owed as a condition of responding to NOE (1024.35(h))

**Servicing**

## RESPA – Qualified Written Request - INFORMATION REQUEST

- **Information Request (IR)**: written request that includes info that allows servicer to identify borrower's loan account and states the requested info (1024.36(a))
  - Payoff demand need not be treated as IR
- Note that NOE, along w/ IR, can be referred to as **qualified written request (QWR)** (1024.31)

**Servicing**

## RESPA – INFORMATION REQUEST

- **Contact info:** servicer can establish an address that borrower must use to submit QWR (1024.36(b))
- **Acknowledge receipt:** send a written response w/in 5 business days (1024.36(c))
- **Response to IR:** provide contact info (phone #) for further assistance and: (1) requested info; or (b) info not available after reasonable investigation (1024.36(d)(1))

**Servicing**

## RESPA – INFORMATION REQUEST

- **Response to IR (timing):** in general, w/in 30 business days after receipt of IR (1024.36(d)(2))
- **Alternative compliance:** need not comply w/ acknowledgement rule if borrower receives requested info & contact phone # for additional assistance w/in 5 business days (1024.36(e))

**Servicing**



## RESPA – INFORMATION REQUEST

- **Requirements not applicable:** (a) duplicative; (b) confidential, proprietary or privileged; (c) irrelevant; (d) overbroad or unduly burdensome; or (e) untimely (1024.36(f))
- **Payment prohibition:** can't charge fee or require payment on \$ owed as a condition of responding to IR, but can charge for providing beneficiary notice per State law (1024.36(g))

**Servicing**

## RESPA – GENERAL POLICIES

- **Exemptions:** (a) small servicer (offer/extend 5,000 or fewer mortgages or is a Housing Finance Agency); (b) reverse mortgage; and (c) qualified lender under 12 CFR 617.7000 (1024.30(b))
- **Record retention:** (a) retain records that document actions taken on borrower's mortgage until 1 year after loan is discharged or transferred; and (b) certain info needs to be retained (e.g. notes reflecting communication w/ borrower) (1024.38(c))

**Servicing**

## RESPA – GENERAL POLICIES

- **Maintain policies:** reasonably designed to ensure servicer can: (i) provide timely & accurate information; (ii) evaluate loss mitigation applications; (iii) facilitate oversight of, and compliance by service providers; (iv) facilitate transfer of info during servicing transfers; (v) Inform borrowers of QWR procedures (1024.38(b))

**Servicing**

## RESPA – Delinquent Borrowers – EARLY INTERVENTION

- **Exemption:** see General Policies; + no contact if contact conflicts w/ other laws (1024.39(c))
- **Coverage:** mortgage secured by principal residence (1024.30(b))
- **Live contact:** establish (good faith effort) live contact w/ borrower w/in 36 days of delinquency and inform borrower of available loss mitigation options (1024.39(a))

**Servicing**

## RESPA – EARLY INTERVENTION

- **Written notice:** provide notice that satisfies 1024.39(b)(2) w/in 45 days of delinquency (1024.39(b)(1))
  - Only required to provide 1 notice during 180 days
- **Exemption:** (a) borrower in Title 11 bankruptcy; and (b) servicer subject to Fair Debt Collection Practices Act (FDCPA) where borrower sent notice per 805(c) of FDCPA (1024.39(d))

**Servicing**

## RESPA – Delinquent Borrowers - CONTINUITY OF CONTACT

- **Exemption:** see General Policies;
- **Coverage:** mortgage secured by principal residence (1024.30(b))
- **Maintain policies:** reasonably designed to ensure that: (a) servicer can contact and make personnel available to delinquent borrower (1024.40(a)); and (b) servicer personnel assigned to delinquent borrower can help borrower w/ loss/mit options (1024.40(b))

**Servicing**

## RESPA – Delinquent Borrowers - LOSS MITIGATION PROCEDURES (General Timeline)

1. If application is rec'v more than 37 days before foreclosure, then
2. Servicer must evaluate and notify borrower of (a) available loss/mit options; (b) reasons why they didn't qualify; (c) borrower has 7 days to respond
3. If app rec'v 90 days or more b4 foreclosure then borrower has 14 days to respond and right to appeal
4. Can't foreclose until these steps have been followed and can't make the first notice/filing required by law for foreclosure unless borrower is 120 days delinquent

**Servicing**

## RESPA – Delinquent Borrower - LOSS MITIGATION PROCEDURES

- **Exemption:** see General Policies + separate rules for small servicer;
- **Coverage:** mortgage secured by principal residence (1024.30(b))
- **Definition:** complete loss mitigation application (complete app) is an application where servicer has received all the info that s/he requires from a borrower in evaluating applications for loss mitigation options (1024.41(b)(1))

**Servicing**



## RESPA – LOSS MITIGATION PROCEDURES

### **Receipt of loss/mit application**

- if received 45 days or more before a foreclosure, servicer shall: (a) determine if complete; (b) notify borrower w/in 5 business days of receipt and indicate if application is complete or incomplete (in which case include additional docs that are needed) (1024.41(b)(2)(i)&(ii))

**Servicing**

## RESPA – LOSS MITIGATION PROCEDURES

### Evaluation of loss/mit application

- if complete loss/mit app is received more than 37 days before a foreclosure, then w/in 30 days, servicer shall: (1) evaluate for loss/mit options; (2) notify borrower of loss/mit options (+ reasons for denial), right to appeal (if any), amount of time s/he has to accept or reject or appeal (1024.41(c)(1)&(d))

**Servicing**

## RESPA – LOSS MITIGATION PROCEDURES

### Borrower response timeline

Complete app received x days b4 foreclosure

- 90 days or more: servicer must give borrower 14 days after receipt of loss/mit offer to accept or reject loss/mit offer (1024.41(e)(1))
- Less than 90 but more than 37 days: servicer must give borrower 7 days after receipt of loss/mit offer to accept or reject loss/mit offer (1024.41(e)(1))

**Servicing**

## RESPA – LOSS MITIGATION PROCEDURES

### **Prohibition on foreclosure filing**

- Servicer shall not make the first notice/filing required by applicable law for foreclosure unless: (i) borrower is 120 days delinquent; (ii) foreclosure is based on violation of a due-on-sale clause; or (iii) servicer is joining the foreclosure action of a subordinate lienholder (1024.41(f)(1))

**Servicing**

## RESPA – LOSS MITIGATION PROCEDURES

### **Prohibition on foreclosure filing after receipt of application**

- **Timing:** complete app received during 120 days after delinquency or before servicer has made first notice/filing required by applicable law (for foreclosure)
- Then....(see next slide)

**Servicing**

## RESPA – LOSS MITIGATION PROCEDURES

### Prohibition on foreclosure filing after receipt of application

- **Restriction:** servicer shall not make the first notice/filing required by applicable law for foreclosure process unless: (i) servicer has sent notice of loss mitigation options per 1024.41(c) and there's no appeal or appeal has been denied; (ii) borrower rejects loss mitigation options; or (iii) borrower fails to perform under a loss mitigation agreement (1024.41(f)(2)).

**Servicing**

## RESPA – LOSS MITIGATION PROCEDURE

### **Prohibition on foreclosure sale**

- If borrower submits a complete app after servicer has made the first notice /filing required for foreclosure but more than 37 days before a foreclosure, then a servicer can't foreclose unless: (a) the servicer has sent notice that borrower is not eligible for loss/mit per 1024.41(c)(1) and the appeal is denied or not requested/applicable; (b) borrower rejects all loss mitigation options; or (c) borrower fails to perform under loss mitigation agreement (1024.41(g)).

**Servicing**

## RESPA – LOSS MITIGATION PROCEDURES

- **Appeal:** of loss/mit options required if complete app received 90 days or more before foreclosure or before a foreclosure sale is scheduled (1024.41(h)(1))
- **Appeal timeline:** borrower must have 14 days after loss/mit options are provided (1024.41(h)(2))

**Servicing**



## RESPA – LOSS MITIGATION PROCEDURES

- **Appeal review:** conducted by different personnel from those responsible for evaluating complete app (1024.41(h)(3))
- **Appeal notification:** notice stating servicer's determination, how long (at least 14 days) borrower has to accept/reject offer (or prior offer). Determination not subject to further appeal (1024.41(h)(4))

**Servicing**

## RESPA – LOSS MITIGATION PROCEDURES

- **Duplicative requests:** servicer only required to comply w/ rules for a single complete app (1024.41(i))
- **Enforcement & limitations:** nothing in rules:
  - (a) require servicer to provide any borrower w/ any specific loss mitigation option; and
  - (b) creates a right for a borrower to enforce an agreement between a servicer and the owner of a mortgage loan (1024.41(a)).

**Servicing**

## RESPA – LOSS MITIGATION PROCEDURES

### **Small servicer requirements**

- Small servicer may not make the first notice/filing required for a foreclosure unless:  
(i) borrower is 120 days delinquent; (ii) foreclosure is based on violation of a due-on-sale clause; or (iii) servicer is joining the foreclosure action of a subordinate lienholder. Also, a small servicer may not foreclose if a borrower is performing pursuant to the terms of a loss mitigation agreement (1024.41(j)).

**Servicing**

- Theme 1: counseling required for expensive loans (HCML & ARMS) – TILA
- Theme 2: counseling required for 1<sup>st</sup> time borrower w/ negative amortization - TILA
- Theme 3: list of counselors should be provided to all borrowers in a federally related mortgage - RESPA

**Counseling**

## TILA – PRE LOAN COUNSELING

- **Coverage:** applies to TILA transactions that are high-cost mortgages (HCML) (1026.34(a)(5)(i))
- **Rule:** can't extend HCML unless creditor receives written certification - that satisfies 1026.34(a)(5)(iv)) - that the consumer has obtained counseling on the advisability of the mortgage from HUD approved counselor (1026.34(a)(5)(i))

**Counseling**

## TILA – PRE LOAN COUNSELING

- **Timing:** The counseling must occur after:  
(a) either consumer receives good faith estimate or disclosures required for HELOCS (per 1026.40); or (b) for transactions to which (a) doesn't apply, the consumer receives the disclosures required for high-cost mortgages as per 1026.32(c) (1026.34(a)(5)(ii)).

**Counseling**

## TILA – PRE LOAN COUNSELING

- **Fees:** creditor may pay the counselor fee but may not condition the payment of such fees on the consummation/account-opening of a mortgage (1026.34(a)(5)(v))
- **Steering prohibited:** creditor shall not steer/direct consumer to choose a particular counselor (1026.34(a)(5)(vi)).

**Counseling**

## TILA – NEGATIVE AMORTIZATION

- **Coverage:** first-time borrower on a closed-end transaction secured by a dwelling (1026.36(k)(1))
  - Exempt: (a) reverse mortgage; (b) timeshare plan
- **Definition:** 1<sup>st</sup> time borrower is a consumer who has not previously received a closed-end credit transaction or open-end credit plan secured by a dwelling (1026.36(k)(2)(i)).

**Counseling**



## TILA – NEGATIVE AMORTIZATION

- **Counseling:** can't extend credit that may result in negative amortization unless consumer has obtained homeownership counseling from a HUD certified counselor (1026.36(k)(1))
- **Anti-steering:** creditor cannot steer/direct a consumer to choose a particular counselor (1026.36(k)(3))

**Counseling**

## RESPA – LIST OF COUNSELORS

- **Coverage:** applies to all federally related mortgages (RESPA rule), except for reverse mortgages and timeshare plans (1024.20(c)).
- **Provide list:** lender, mortgage broker, or dealer must provide the loan applicant w/ a written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location (1024.20(a)(1))

**Counseling**

## RESPA – LIST OF COUNSELORS

- **List make-up:** list distributed shall be obtained no earlier than 30 days prior to the time when the list is provided from either:
  - (a) CFPB (see [www.consumerfinance.gov/find-a-housing-counselor](http://www.consumerfinance.gov/find-a-housing-counselor)); or
  - (b) HUD (1024.20(a)(1)).
- **Timing:** w/in 3 business days of receipt of loan application (1024.20(a)(1))
  - HELOCs, lender can either follow 3 business days or timing requirements in 1026.40(b) (1024.20(b))

**Counseling**

- Theme 1: expands coverage
- Theme 2: added more prohibitions

## **High-Cost Mortgage Loan**

- **Definition:** consumer credit transaction secured by principal dwelling in which: (a) excessive APR (exceeds APOR by: (i) 6.5% for 1<sup>st</sup> liens above \$50k; or (ii) 8.5% for jr liens); (b) excessive points&fees (5% for loan above \$20k); (c) excessive prepayment penalty (can charge 3+ years after loan or payments can exceed 2% of amount prepaid) (1026.32(a))
  - Exempt: reverse mortgages; initial construction; Housing Finance Agency; U.S. Dept of Agriculture

## High-Cost Mortgage Loan

- **Expanded coverage:** Coverage was expanded to include: (a) open-end credit; (b) purchase-money loans. Also definition no longer relies on treasury yields and is now based on APOR and now includes “excessive” prepayment penalties (1026.32(a)(1)).
- **Disclosures:** Changed the regular payment / balloon payment disclosure (1026.32(c)(3)&(5)).

## High-Cost Mortgage Loan

## Prohibitions

- Strengthened the balloon payment prohibition (1026.32(d)(1)(ii)&(iii)).
- No more prepayment penalties (1026.32(d)(6)).
- No more recommended default (1026.34(a)(6)).
- No more fees for loan modification or deferrals (1026.34(a)(7)).

**High-Cost Mortgage Loan**

## Prohibitions

- Limits on late fees – (i) can't exceed 4% of past due amount; (ii) only 1 late fee for a single late payment; (iii) payment is late if received 15-day after due date or 30-days for loans where interest is paid in advance (1026.34(a)(8)).
- No fees for payoff statement (except if sent by fax or courier or if sent 4 in a year) and must be provided w/in 5 business days of request (1026.34(a)(9)).

# High-Cost Mortgage Loan



## Prohibitions

- No financing of points and fees - cannot finance charges that are required to be included in calculation of points and fees (credit insurance premiums or debt cancellation or suspension fees that are calculated and paid in full on a monthly basis are exempt) (1026.34(a)(10)).
- Catchall – can't structure high-cost loan in a form, for purpose w/ and intent to evade HOEPA requirements (1026.34(b)).

## High-Cost Mortgage Loan

## UDAAP

- **Regulation:** section 1031 authorizes the CFPB to take action against a covered person who commits a UDAAP
- **Definition:** covered person is a person who engages in offering or providing a consumer financial product or service (section 1002 of Dodd-Frank)

**Unfair Deceptive or Abusive Acts  
or Practices**

## UDAAP

- **Rulemaking**: CFPB have no plans for rulemaking under UDAAP but will approach UDAAP standards on a situational (i.e. case by case) basis
- **Beware**: CFPB can use this act against any covered person who conducts an unfair (causes substantial injury), deceptive (lie/mislead), or abusive (take unfair advantage) act

**Unfair Deceptive or Abusive Acts  
or Practices**