**Policy 7370: HOEPA Rule Requirement**

**Model Policy Revised Date: 1/3/2024**

**General Policy Statement:**

[[CUname]] (Credit Union) will comply with the Home Ownership and Equity Protection Act Rule published by the Consumer Financial Protection Bureau (CFPB) and the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Home Ownership and Equity Protection Rule requires that the Credit Union give additional disclosures, avoid certain loan terms, and ensure the member receives additional protections, including homeownership counseling when a member applies and consummates a high-cost mortgage loan.

1. **COVERED TRANSACTIONS.**
   1. **Determination**. The Credit Union will determine if a mortgage loan transaction is a Covered Transaction according to the Home Ownership and Equity Protection Act Rule (HOEPA).
   2. **Covered Transaction**. A Covered Transaction is defined as a consumer credit transaction that is secured by a member’s principal dwelling that meets any of the HOEPA coverage tests under the rule, including:  
      1. Purchase-money mortgages;
      2. Refinances;
      3. Closed-end home equity loans; **and**
      4. Open-end credit plans (i.e., HELOCs).
   3. **Exemption.** If the transaction is a reverse mortgage, construction loan, mortgage loan originated and directly financed by a Housing Financing Agency, or a mortgage loan originated under the USDA Rural Development Direct Loan Program it is exempt from the HOEPA Rule and the Credit Union will use the underwriting policies, procedures and standards that apply to that type of transaction.
   4. **Structuring**. The Credit Union will not structure a member’s mortgage loan transaction to evade HOEPA coverage.
2. **HOEPA COVERAGE TEST.**
   1. **APR Coverage Test.**The Credit Union will initially determine if the member’s mortgage transaction is a high-cost mortgage based on the annual percentage rate (APR). A transaction is a high-cost mortgage if its APR (measured as of the date the interest rate for the transaction is set) exceeds the Average Prime Offer Rate (APOR) for a comparable transaction on that date by more than:  
      1. 6.5 percentage points for first-lien transactions;
      2. 8.5 percentage points for first-lien transactions that are for less than $50,000 and secured by personal property; or
      3. 8.5 percentage points for junior-lien transactions.
   2. **Points and Fees Coverage Test.** The Credit Union will also determine if the member’s mortgage transaction is a high-cost mortgage based on the points and fees coverage test. A transaction is a high-cost mortgage if its points and fees exceed the following thresholds:  
      1. 5% of the total loan amount for a loan amount greater than or equal to $26,092; or
      2. 8% of the total loan amount or $1,305 (whichever is less) for a loan amount less than $26,092.
3. **HOEPA RULE REQUIRED DISCLOSURES.**
   1. **Disclosures.**The Credit Union will provide members whose mortgage transaction qualifies as a high-cost mortgage with additional disclosure information, which includes:  
      1. Inform the member that the loan will not be effective until consummation or account opening occurs;
      2. Explain the consequences of default;
      3. Disclose loan terms such as APR, amount borrowed, and monthly payment; **and**
      4. In the case of variable-rate loans, explain the maximum monthly payment that may be required under the terms of the loan or credit plan**.**
   2. **Form**. The Credit Union’s HOEPA disclosures will be in writing and in a form the member can keep.
   3. **Timing.**The Credit Union will provide the required HOEPA disclosures to members at least three business days prior to consummation or account opening of a high-cost mortgage.
4. **HIGH-COST MORTGAGE RESTRICTIONS.**  
   1. **Risky Loan Features.**The Home Ownership and Equity Protection Act Rule restricts or bans certain risky loan features for high-cost mortgages. The Credit Union will follow the guidance of the HOEPA Rule for risky loan features as defined under the requirements of the rule and the Home Equity Protection Act.
   2. **Balloon Payments.**Balloon payments are generally banned for high-cost mortgages and allowed in only three circumstances:  
      1. The payment schedule is adjusted to accommodate the member’s seasonal or irregular income;
      2. The loan is a short-term bridge loan (12 months or less) to finance a new home purchase for a member selling an existing home; or
      3. The Credit Union meets criteria for serving a rural or underserved area, and the loan meets specific criteria set forth in the Bureau’s Ability-to-Repay/Qualified Mortgage Rule.
   3. **Prepayment Penalties.**The Credit Union will not charge prepayment penalties for mortgage loans that are covered transactions for HOEPA Rules.
   4. **Due-on-Demand Features**. The Credit Union will only require due-on-demand features for covered transactions under the HOEPA Rule if:  
      1. The member commits fraud or makes a material misrepresentation in connection with the loan or credit agreement;
      2. The member defaults on payment; and/or
      3. The member’s action or inaction adversely affects the Credit Union’s security interest for the loan.
   5. **Recommending Default.**The Credit Union will not recommend that a member default on a current mortgage obligation to be refinanced by a high-cost mortgage.
   6. **Modification fee**. The Credit Union will not charge a fee to modify, defer, renew, extend, or amend a high-cost mortgage.
   7. **Late fees**. The Credit Union will restrict late fees on high-cost mortgage loans to no more than 4% of the past due payment and will not pyramid late fees.
   8. **Payoff Statement Fees**. The Credit Union will not charge a payoff statement fee to members with high-cost mortgages.
   9. **Points and Fees**. The Credit Union will not finance points and fees into high-cost mortgage loans.
   10. **Negative Amortization**. The Credit Union will not offer negatively amortizing loans that are high-cost mortgages.
   11. **Combined Payments**. The Credit Union will not offer a payment schedule that consolidates more than two periodic payments and pays them in advance from loan proceeds.
   12. **Default Rates**. The Credit Union will not increase the interest rate on a high-cost mortgage loan in the event of default.
   13. **Acceleration**. In the case of acceleration as a result of a member’s default in payment, the Credit Union will not provide a refund of interest calculated in a manner less favorable to the member than the actuarial method.
   14. **Contractor Payments**. The Credit Union will not pay a contractor under a home-improvement contract from the proceeds of a high-cost mortgage.
   15. **Refinancing**. The Credit Union will not refinance a high-cost mortgage into another high-cost mortgage within one year after having extended credit, unless the refinancing is in the member’s best interest.
   16. **Secondary Market Sales**. The Credit Union will not sell a high-cost mortgage in the secondary market without providing a high-cost mortgage notice to the assignee.
5. **ABILITY TO REPAY.**
   1. **Timing**. The Credit Union will determine a member’s ability to repay a high-cost mortgage prior to consummation or account opening.
   2. **Closed-end Credit Transactions**. When the Credit Union originates closed-end high-cost mortgages it will satisfy the ability to repay requirements as other closed-end mortgages under Truth in Lending and the CFPB’s Ability-to-Repay and Qualified Mortgage Rule and guidance in the Ability to Repay Policy.
   3. **Open-end High-cost Mortgages**. Repayment ability will still be determined using HOEPA’s ability-to-repay rule and the Credit Union will consider:  
      1. Current and reasonably expected income or assets (verified with W-2s, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence); **and**
      2. Current obligations, including any mortgage-related obligations such as property taxes, required insurance premiums, community association fees, ground rent, and leasehold payments.
6. **HOMEOWNERSHIP COUNSELING.**  
   1. **Homeownership Counseling List.**Applicants for mortgage loans will receive a written list of homeownership counseling organizations within three business days of application.
   2. **Homeownership Counseling Certification.** Prior to making a high-cost mortgage loan, or a loan to a first-time homebuyer with a negative amortization loan, the Credit Union will receive written certification that the member has received homeownership counseling on the advisability of the mortgage from a HUD-approved counselor or a state housing finance authority, if permitted by HUD.  
      1. The counseling will not be provided by a counselor affiliated with or employed by the Credit Union.