

BY CARL G. PRY, CRCM

Make Life Easier: Standardize

IF YOU HAVE EVER SEEN ONE OF THE REGULATORS' periodic lists of most common compliance violations or spoken to a few examiners over the years you may have recognized a trend. Many of the most common lending compliance violations (some at the top of the lists) have to do with timeliness of disclosures. Preliminary truth in lending (TIL) disclosures and good faith estimates (GFEs) are not provided within the required three-day period. Servicing disclosure statements are not provided when required. Adverse action notices are not provided within the necessary 30-day period. After all the time these regulations have been with us and with all the resources being dedicated to compliance efforts, is it truly the case that banks just cannot get disclosures out in a timely manner?

Not necessarily: The chief culprit behind these violations lies in the many different definitions and standards of what constitutes an "application" under the regulations. Each of these violations revolves around what an application is or when it is "received" by the bank. Sometimes disclosure requirements are triggered by "receipt" or "submission" of an application. Other times they are triggered by a "written" or "completed" application. In many situations, an examiner just cannot determine what the application date is, and therefore when the disclosure clock begins to run.

The answer lies in understanding the several different definitions of "application" in the regulations and then standardizing what constitutes an application and when one is received or complete at your bank. After that is accomplished, make sure everyone in the bank responsible for disclosures understands and utilizes those standards. That way it is clear to auditors, examiners, or anyone else that the timing requirements are being met.

The most critical definition of "application" is in Equal Credit Opportunity Act (ECOA)/Regulation B, under which an application is defined as "an

oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested."¹ This is a powerful definition because it allows a bank to define for itself ("procedures established by a creditor") what makes up an application. As the commentary to Reg. B states, "A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants."² The problem is that many banks don't have any such processes or procedures, or the ones they have are inconsistently followed, and examiners cannot determine when that all-important disclosure clock begins to run. For example, if one loan officer provides an early TIL disclosure and GFE to an applicant upon receiving just a written application form, but another waits until a credit report and verifications are in hand, what is the application date?

The key is to determine what pieces of information your bank typically requires for the application to be considered complete. The definition in Reg. B goes on to say, "A completed application means an application in connection with which a creditor has received all

the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested. ...³ Does that include a written application form at your bank? Are credit reports and income verifications required? If so, state that in your procedures. The information required to begin the decision-making process should be reasonable and in line with your bank's actual practices. As Reg. B's commentary also states, an application "refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures."

Another helpful procedure would be to make it obvious when all the required information is received. Use a date stamp with "Application complete on [date]," for instance. Again the goal is to make sure it is apparent when the application is received, submitted, and complete. There is flexibility here, as the definition allows for distinct requirements per loan type; for example, the information and process that comprise a home improvement application can be different for an auto loan application.

Establishing and following guidelines—standardizing the application process—is helpful in meeting other regulatory requirements, not just those in Reg. B. Reg. Z (truth in lending) requires a preliminary TIL disclosure be provided "not

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later than three business days after the creditor receives the consumer's written application"⁴ in purchase money transactions for the borrower's primary dwelling. Requiring all applications for such loans to be submitted in writing, and making it clear when they are received, reduces the risk of a disclosure timing violation.

The commentary to this Reg. Z provision cross-references the Real Estate Settlement Procedures Act's (RESPA's) definition of "written application." In RESPA, an "application means the submission of a borrower's financial information in anticipation of a credit decision."⁵ This is similar to Reg.

B in that information submitted constitutes an application. Like Reg. B, RESPA is not specific as to the exact information that must be submitted, other than a property location (lack of property location means the request is merely a prequalification under RESPA). Again, the bank has the latitude to define for itself what information must be obtained before RESPA's three-day requirement to provide the GFE and begins, as the GFE must be provided "not later than three business days after the application is received or prepared."⁶ Does your bank know when applications are actually received?

Another requirement under RESPA is to provide a special information booklet upon receipt of "a written application for a federally related mortgage loan."⁷ To make things easier, make receipt of a written application form part of your procedure for what

makes an application "complete," and then follow that practice. Do so and you will avoid many of the disclosure timing requirements that are commonly assessed during exams. **BC**

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Endnotes

¹12 CFR 202.2(f).

²Comment #1 to 12 CFR 202.2(f).

³12 CFR 202.2(f).

⁴12 CFR 226.19(a)(1).

⁵24 CFR 3500.2(b).

⁶24 CFR 3500.7(a).

⁷24 CFR 3500.6(a).