

## MEMORANDUM

To: Subscribers to *Mortgage Lending Operations and Administration for Credit Unions*

From: Sheshunoff Information Services

Subject: Highlights

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Enclosed you will find the latest update to *Mortgage Lending Operations and Administration for Credit Unions*. This update brings your manual current by mentioning significant developments that have occurred in the past several months and enhances the manual by including additional materials:

### ***Regulatory Developments***

- ***Regulation Z Revision.*** On July 30, 2008, the Federal Reserve Board (FRB) published a substantial revision of several important sections of Regulation Z, including its advertising provisions for open- and closed-end credit (primarily home loan advertising). It also added new sections 226.35 and 226.36, imposing restrictions on a new category of loans called “higher-priced mortgage loans” and new prohibitions on home mortgage loans in general. See Chapter 21.
  - *Mortgage Broker Compensation.* In issuing the revision, the FRB withdrew its December 2007 proposal on mortgage broker compensation, which would have prohibited a lender from paying a mortgage broker more than the consumer had agreed in advance that the broker would receive. Based on consumer testing, however, it concluded that further development of disclosures of payments to mortgage originators may have merit.
  - *Earlier Transaction-Specific Disclosures.* Effective October 1, 2009, for each closed-end loan covered by the Real Estate Settlement Procedures Act (RESPA) and secured by the consumer’s principal dwelling, the FRB revised Regulation Z to require lenders to provide good faith estimates of the TILA disclosures no later than loan consummation or three business days after the lender receives the consumer’s written application, whichever is earlier and before the consumer pays a fee to any person except a bona fide and reasonable fee for obtaining the consumer’s credit history. See Chapter 21. It should be mentioned, as detailed below, that the Housing and Economic Recovery Act of 2008 will require additional tweaking of this requirement and earlier implementation (July 30, 2009).
- ***Housing and Economic Recovery Act of 2008.*** On the same day the Regulation Z revisions were published in the *Federal Register*, July 30, 2008, President Bush signed the Housing and Economic Recovery Act of 2008 (the Housing Bill of 2008), which included numerous provisions intended to jumpstart the economy by responding to some of the reported causes of the subprime mortgage meltdown and related financial challenges (see Chapter 11). The following provisions are of special importance for mortgage professionals:
  - *Nationwide Mortgage Licensing System.* The Housing Bill includes the Secure and Fair Enforcement (or SAFE) Mortgage Licensing Act of 2008, which requires the establishment of a nationwide mortgage licensing system for mortgage loan originators. See Chapter 21.

- *Servicemembers Civil Relief Act Amendments*. The Housing Bill amends the Servicemembers Civil Relief Act to afford greater mortgage foreclosure protections for servicemembers. See Chapter 21.
- *Three Amendments to TILA*. The Housing Bill included three amendments to TILA: (1) a provision requiring early and enhanced disclosures for closed-end home mortgage loans; (2) a section addressing the fiduciary duty of mortgage loan servicers; and (3) an increase in the civil penalties available in individual actions alleging violations of TILA. See Chapter 21.
- **Section 32 Loans**. In August 2008, the Federal Reserve Board made its annual adjustment to Regulation Z for section 32 loans, effective January 1, 2009. The section 32 requirements apply only if the APR is more than 10 percent (8 percent for first mortgage loans) above the current Treasury yield on securities having the same period to maturity or if the total points and fees payable by the consumer at or before closing exceed the greater of \$583 (formerly \$561) or 8 percent of the loan amount. See Chapter 21.
- **Subprime Lending Illustrations**. On May 29, 2008, the federal banking agencies issued *Illustrations of Consumer Information for Hybrid Adjustable Rate Mortgage Products* as a follow-up to their promise to provide illustrations for the interagency statement on subprime lending. See Chapter 11.
- **RESPA Proposal**. In March 2008, the U.S. Department of Housing and Urban Development (HUD) proposed revising Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA) to include a uniform Good Faith Estimate (GFE) form, to amend the HUD-1/1A Uniform Settlement Statement form so it would include a “closing script” to be read at all mortgage loan closings, and to permit average and discount pricing of settlement services. Because of overwhelming criticism of its proposals, HUD is not expected to take final action any time soon.
- **Flood Insurance**. The OCC identified two concerns about flood determination practices that could expose lenders to unnecessary risks. See Chapter 21.
- **Home Valuation Protection Code**. In an unusual twist that will affect the entire mortgage lending industry, FNMA and FHLMC entered into an agreement with the Attorney General of New York calling for FNMA and FHLMC nationwide to refuse to purchase loans from sellers who do not comply with a new Home Valuation Protection Code, effective January 1, 2009. The proposed code, for which the agencies have invited comments, will govern appraisal selection, solicitation, compensation, conflicts of interest, and independence, among other reforms. See Chapter 4.
- **Fair Lending – Outlier Institutions**. The FDIC described the process it follows after identifying an “outlier institution,” one that has pricing practices, identified through a review of HMDA data, that may be illegally discriminatory. See Chapter 21.
- **Internet Authentication**. The FDIC clarified that the federal banking agencies require stronger authentication for higher-risk transactions, not necessarily multifactor authentication. See Chapter 22.
- **HMDA Proposal**. In July 2008, when it released its revision of Regulation Z, the FRB proposed amending Regulation C (Home Mortgage Disclosure) to change the reporting requirements for “loan pricing” or “rate spread,” to coordinate it with Regulation Z’s new coverage of higher-priced mortgage loans (HPMLs), effective January 1, 2009. *73 Federal Register* 44,189 (July 30, 2008). See Chapter 21.

## Recent Court Decision

- ***Wining and Dining.*** A federal district court in Washington allowed a group of consumers to proceed in their RESPA action against some title companies they claimed had exchanged gifts (in the form of golf outings, sporting events, ski trips, and parties) in exchange for the referral of settlement service business. *Blaylock v. First American Title Ins. Co.* See Chapter 21, Regulatory Compliance, Real Estate Settlement Procedures Act.