

REGULATORY COMPLIANCE UPDATE

2009 started off with an amendment to Bank Secrecy Act requirements. Effective January 5, 2009, the amendment changes CTR exemption reporting requirements. Specifically, credit unions are no longer required to file an initial (FinCEN Form 110) exemption on depository institutions (such as the bank or corporate credit union from whom they order cash), governments, and entities exercising governmental authority.

Eligibility requirements for exemptions from CTR reporting for non-listed businesses (commonly known as Phase II exemptions) also changed as follows:

- A. The frequency criteria has changed from 8 reportable cash transactions per year to 5 reportable cash transactions per year.
- B. The amount of time the member must have been conducting reportable cash transactions has changed from 12 months to 2 months OR the credit union can perform a risk analysis to determine if the member has a legitimate business purpose for conducting large currency transactions.

Once eligibility has been determined, credit unions will only have to file an initial exemption form. The biennial renewal form is no longer required to be filed; however, credit unions must still perform an annual review to determine if members continue to meet eligibility requirements for the Phase II exemption. In addition, credit unions will no longer be required to report a change in control of their non-listed business customers.

In the world of ACH, the deadline to implement software changes to prepare for the new Standard Entry Class code IAT (International ACH Transactions) has been extended from March 20, 2009 to September 18, 2009. The new IAT code will help credit unions identify international transactions (some of which may have previously been sent through the system as PPD or CCD entries) and implement due diligence procedures for screening these transactions in accordance with OFAC requirements.

The Federal Reserve Board adopted changes to Regulation Z (Truth in Lending and Home Ownership and Equity Protect Acts) last summer, with a focus on prohibiting unfair, abusive, and deceptive home mortgage lending and

servicing practices. The amendments also establish advertising standards and require certain transaction-specific disclosures to be given to applicants early enough in the process to use when looking for mortgage loans.


There are seven new restrictions/requirements for mortgage lending and servicing; some of which apply only to higher priced loans, while others apply to all mortgage loans secured by your member's principal dwelling. A higher priced loan has been defined in the amended regulation as a "consumer purpose, closed-end loan secured by a consumer's dwelling and has an APR that exceeds the average prime rate for comparable transactions by at least 1.5 percentage points for 1st lien loans and 3.5 percentage points for subordinate lien loans."

The restrictions/requirements applicable to higher priced mortgage loans:

- Credit unions cannot extend credit without considering a member's ability to repay from sources other than the collateral itself.
- Credit unions must verify income and assets they rely upon to determine repayment ability.
- Prepayment penalties are prohibited except under certain conditions.
- Credit unions must establish escrow accounts for taxes and insurance, but can permit borrowers to cancel, by written request, escrows 12 months after loan consummation.
- Closed-end mortgage loans must not be structured as open-end lines of credit for the purpose of evading these rules, which do not apply to open-end lines of credit.

The restrictions/requirements applicable to closed-end mortgage loans secured by a member's principal dwelling:

- Credit unions must not influence an appraiser to misstate the value of the principal dwelling connected with a mortgage loan.
- Mortgage servicers must not "pyramid" late fees, fail to credit payments as of the date of receipt, or fail to provide an accurate statement of the outstanding loan balance necessary to pay off the loan upon request within a reasonable time.

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- Members must be provided a good faith estimate of costs, such as the APR and loan payment schedule, within three business days of submitting their written application and before the member pays any fee except a reasonable fee for the review of the member's credit report.

Advertising standards have also been established to provide accurate information, in a clear and conspicuous manner, about rates, monthly payments, and other loan features. The new standards also enact rules to help prevent misleading or deceptive practices from lenders. These practices include:

- Advertisements that state "fixed" rates or payments for loans whose rates or payments can vary without adequately disclosing that the interest rate or payment amounts are "fixed" only for a limited period of time, rather than for the full term of the loan.
- Advertisements that compare an actual or hypothetical rate or payment obligation to the rates or payments that would apply if the consumer obtains the advertised product unless the advertisement states the rates or payments that will apply over the full term of the loan.
- Advertisements that characterize the products offered as "government loan programs," "government-supported loans," or otherwise endorsed or sponsored by a federal or state government entity even though the advertised products are not government supported or sponsored loans.
- Advertisements, such as solicitation letters, that display the name of the consumer's current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer's current lender.
- Advertisements that make claims of debt elimination if the product advertised would merely replace one debt obligation with another.

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- Advertisements that create a false impression that the mortgage broker or lender is a "counselor" for the consumer.
- Foreign-language advertisements in which certain information, such as a low introductory "teaser" rate, is provided in a foreign language, while required disclosures are provided only in English.¹

The compliance date for recently enacted Regulation Z amendments is October 1, 2009. There is a later compliance date for the requirement to establish escrow accounts: April 1, 2010 for site built homes and October 1, 2010 for manufactured homes.

The changes to Regulation Z also impact Regulation C, the Home Mortgage Disclosure Act. Regulation C was amended in order to conform to the new definition of higher-priced mortgage loans adopted by the Federal Reserve

Board under Regulation Z, which we have defined above. The change in Regulation C is effective October 1, 2009, and is mandatory for applications taken or loans that close on or after January 1, 2010. 

¹Federal Register, Vol. 73, No. 147, July 30, 2008

*Rachel E. Fisher, CISA, CTGA
Partner*

Nearman, Maynard, Vallez, CPAs, P.A.

Atlanta: 205 Brandywine Blvd., Suite 100, Fayetteville, GA 30214-1561 . (770) 461-5706 . FAX (770) 719-1888
Miami: 10621 North Kendall Dr., Miami, FL 33176 . (305) 598-1730 . FAX (305) 595-9316
Toll Free: (800) 288-0293 Website: www.nearman.com E-Mail: info@nearman.com